

D R A F T  
FOR DISCUSSION ONLY

**SERIES OF UNINCORPORATED BUSINESS  
ENTITIES ACT**

---

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

---

March 20 – 21, 2015 Drafting Committee Meeting

*With Reporter's Introductory Note and Preliminary Prefatory Note*

Copyright © 2014  
By  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

---

*The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed on by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.*

March 4, 2015

**DRAFTING COMMITTEE ON SERIES OF UNINCORPORATED BUSINESS  
ENTITIES ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

STEVE FROST, 111 W. Monroe St., Chicago, IL 60603-4080, *Chair*

JOHN FOX ARNOLD, 714 Locust St., St. Louis, MO 63101

DAVID J. CLARK, 353 Bel Marin Keys Blvd., Suite 1, Novato, CA 94949

WILLIAM H. CLARK, JR., One Logan Square, 18<sup>th</sup> and Cherry Sts., Philadelphia, PA 19103-6996

LOUIS T. M. CONTI, 100 N. Tampa St., Suite 4100, Tampa, FL 33602

HARRY J. HAYNSWORTH, 108 Addingtons, Williamsburg, VA 23188

LISA R. JACOBS, One Liberty Place, 1650 Market St., Suite 4900, Philadelphia, PA, 19103-7300

DAVID C. McBRIDE, 1000 King St., P.O. Box 391, Wilmington, DE 19899

JAMES C. McKAY, JR., 441 4<sup>th</sup> St. NW, Suite 630 S., Washington, DC, 20001

EDWIN E. SMITH, 1 Federal St., 15<sup>th</sup> Floor, Boston, MA 02110-1726

DAVID S. WALKER, Drake University Law School, 2507 University Ave., Des Moines, IA 50311

DANIEL S. KLEINBERGER, 1818 Twin Circle Dr., Mendota Heights, MN 55118-4140  
*Reporter*

**EX OFFICIO**

HARRIET LANSING, 1 Heather Pl., St. Paul, MN 55102-2615, *President*

STEVEN N. LEITNESS, 10451 Mill Run Cir., Suite 1000, Baltimore, MD 21117, *Division Chair*

**AMERICAN BAR ASSOCIATION ADVISORS**

ALLAN G. DONN, Wells Fargo Center, 440 Monticello Ave., Suite 2200, Norfolk, VA 23510-2243, *ABA Advisor*

JAY ADKISSON, 2850 W. Horizon Ridge Pkwy., Suite 200, Henderson, NV 89052

MARJORIE R. BARDWELL, 601 Riverside Ave., Bldg. 5, Jacksonville, FL 32204-2901

CARTER G. BISHOP, Suffolk University Law School, 120 Tremont St., Boston, MA 02108-4977, *ABA Section Advisor*

J. LEIGH GRIFFITH, 511 Union St., Suite 2700, Nashville, TN 37219, *ABA Section Advisor*

GREG LADNER, One Rodney Square, 920 N. King St., Wilmington, DE 19801, *ABA Section Advisor*

KYUNG S. LEE, Two Houston Center, 909 Fanin St., 15<sup>th</sup> Floor, Houston, TX 77010, *ABA Section Advisor*

ELIZABETH S. MILLER, Baylor Law School, 1114 S. University Parks Dr., One Bear Place #97288, Waco, TX 76798, *ABA Section Advisor*

SANDRA K. MILLER, Widener University, School of Business Administration, One University Place, Chester, PA 19013-5792, *ABA Section Advisor*

MARLA H. NORTON, 222 Delaware Ave., Suite 900, P.O. Box 25130, Wilmington, DE 19899, *ABA Section Advisor*

NORMAN M. POWELL, Rodney Square, 1000 King St., Wilmington, DE 19801, *ABA Section Advisor*

THOMAS E. RUTLEDGE, 2000 PNC Plaza, 500 W. Jefferson St., Louisville, KY 40202-2874,  
*ABA Section Advisor*

ALLEN SPARKMAN, 1200 Binz St., Suite 650, Houston, TX 77004, *ABA Section Advisor*

JAMES J. WHEATON, 1716 Corporate Landing Pkwy., Virginia Beach, VA 23454, *ABA  
Section Advisor*

JOHN L. WILLIAMS, 1201 N. Orange St., Suite 600, Wilmington, DE 19801, *ABA Section  
Advisor*

**EXECUTIVE DIRECTOR**

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
111 N. Wabash Ave., Suite 1010  
Chicago, Illinois 60602  
312/450-6600  
[www.uniformlaws.org](http://www.uniformlaws.org)

**SERIES OF UNINCORPORATED BUSINESS ENTITIES ACT**

**TABLE OF CONTENTS**

Reporter’s Introductory Note ..... 1  
Prefatory Note – Preliminary ..... 8

**[ARTICLE] 1**

**GENERAL PROVISIONS**

SECTION 101. SHORT TITLE. .... 10  
SECTION 102. DEFINITIONS..... 10  
SECTION 103. ELIGIBLE ORGANIZATIONS; RELATIONSHIP OF [ACT] TO ORGANIC  
LAW OF ELIGIBLE ORGANIZATIONS..... 18  
SECTION 104. NATURE OF PROTECTED SERIES..... 19  
SECTION 105. POWERS, PURPOSE, AND CONDITIONAL DURATION OF PROTECTED  
SERIES..... 20  
SECTION 106. GOVERNING LAW..... 23  
SECTION 107. RELATIONSHIP OF PRIVATE ORGANIC RULES OF SERIES  
ORGANIZATION TO PROTECTED SERIES..... 24  
SECTION 108. SUPPLEMENTAL PRINCIPLES OF LAW..... 27

**[ARTICLE] 2**

**FORMATION AND RELATED PUBLIC FORMALITIES**

SECTION 201. ESTABLISHING PROTECTED SERIES; PROTECTED SERIES  
DESIGNATION; AMENDMENT AND CANCELLATION OF DESIGNATION..... 27  
SECTION 202. NAME. The name of a protected series must: ..... 28  
SECTION 203. REGISTERED AGENT; SERVICE OF PROCESS, NOTICE, OR  
DEMAND..... 29  
SECTION 204. [ANNUAL] [BIENNIAL] REPORTS..... 30  
SECTION 205. ORGANIC LAW CONCERNING [SECRETARY OF STATE]. ..... 30

**[ARTICLE] 3**

**ASSOCIATED PROPERTY, OWNERS, AND DISTRIBUTIVE INTERESTS;  
MANAGEMENT; LIABILITY LIMITATIONS; RIGHTS OF ACTION**

SECTION 301. PROPERTY ASSOCIATED WITH PROTECTED SERIES. .... 31  
SECTION 302. ASSOCIATED OWNER; ASSOCIATED DISTRIBUTABLE INTEREST.... 34  
SECTION 303. FINANCIAL RIGHTS AND OBLIGATIONS CONCERNING PROTECTED  
SERIES; RIGHTS OF JUDGMENT CREDITOR OF ASSOCIATED OWNER OR  
ASSOCIATED DISTRIBUTE. .... 35  
SECTION 304. TRANSFERABILITY LIMITED..... 36

SECTION 305. NO AGENCY POWER OF OWNER ASSOCIATED WITH PROTECTED SERIES. ....	37
SECTION 306. MANAGEMENT OF PROTECTED SERIES; RIGHTS AND DUTIES OF SERIES MANAGER. ....	37
SECTION 307. LIMITED LIABILITY. ....	39
SECTION 308. ACTIONS BY ASSOCIATED OWNERS .....	41

**[ARTICLE 4]**

**CEASING TO BE AN ASSOCIATED OWNER; WINDING UP  
AND TERMINATION OF PROTECTED SERIES**

SECTION 401. CEASING TO BE ASSOCIATED; CONSEQUENCES. ....	41
SECTION 402. DISSOLUTION AND WINDING UP OF PROTECTED SERIES.....	43

**[ARTICLE] 5**

**FOREIGN PROTECTED SERIES**

SECTION 501. GOVERNING LAW.....	44
SECTION 502. TRANSACTING BUSINESS IN THIS STATE; FOREIGN REGISTRATION; PERSONAL JURISDICTION.....	45

**[ARTICLE] 6**

**MISCELLANEOUS PROVISIONS  
TBA**

1 **Reporter’s Introductory Note**

2  
3 The first reading of the Series of Unincorporated Business Entities Act (“SUBE”) took place at  
4 the 2014 Annual Meeting in July, 2014 in Seattle. The first reading provoked extensive and  
5 spirited discussion, which was at times quite skeptical.

6  
7 At its November 2014 meeting, Drafting Committee considered an entirely new draft with a  
8 substantially different approach. The Committee accepted the new approach as a basis for  
9 moving the project forward.<sup>1</sup>

10  
11  
12 **The Approach Going Forward**

13  
14 Like the November 2014 draft,<sup>2</sup> this March 2015 draft (“Draft”):

- 15  
16 • is a stand-alone act:
- 17 ○ in the nature of a junction box (like META<sup>3</sup>);
  - 18 ○ applicable to various types of unincorporated entities as determined by each
  - 19 enacting state;
- 20 • has a defined term to refer generically to an organization that has in place at least one
- 21 protected series; and
- 22 • eschews the detailed “definition by substitution” approach proffered in Part 2 of the
- 23 2104 Annual Meeting Draft and uses instead a topic-by-topic “comparable
- 24 provisions” approach;<sup>4</sup> and
- 25 • provides for unprecedented transparency with regard to:
- 26 ○ the existence of protected series;
  - 27 ○ the relationship of a protected series to the organization that formed the series;
  - 28 and
  - 29 ○ the association of property with each protected series; and
- 30 • reflects generally a policy decision to decide close questions in favor of greater
- 31 transparency and precision.
- 32  
33

---

<sup>1</sup> Like all “*pendente lite*” Committee decisions, the acceptance of this general approach is subject to reconsideration.

<sup>2</sup> Dated October 23, 2014. Available at [http://www.uniformlaws.org/shared/docs/series%20of%20unincorporated%20business%20entities/2014nov\\_SUBEA\\_Mtg%20Draft.pdf](http://www.uniformlaws.org/shared/docs/series%20of%20unincorporated%20business%20entities/2014nov_SUBEA_Mtg%20Draft.pdf).

<sup>3</sup> Model Entity Transactions Act (2007) (Last Amended 2013).

<sup>4</sup> See Sections 103(c), 205(d), 305(a) and (b), 306(e) and (f), 401(b) and 402(d).

1 **This Draft Compared to the November 14, 2015 Draft**

2  
3 This Draft’s principal substantive change is in Section 108(b), which limits the power of a series  
4 organization and its owners to revise the organization’s organic rules in ways that affect a  
5 particular protected series. To achieve this result, the Draft brings back two concepts from an  
6 earlier draft: generally-applicable provisions and series-specific provisions. *See* Section 102(7),  
7 (19).  
8

9 The rest of the Draft’s many revisions are intended to improve the mechanics of the act,  
10 including distinguishing economic rights in the series organization from economic rights in a  
11 protected series. *Compare* Section 102(3) (defining “distributable interest”) *with* Section  
12 102(21) (defining “transferable interest”). *See also* Section 102(1)(A) (defining “associated  
13 distributable interest”).  
14  
15

16 **The Paradigm for Creating Default Rules Applicable to a Protected Series**

17  
18 A uniform business entity act must be self-executing – *i.e.*, workable without the need for any  
19 special tailoring by the users of the act. As a result, this act must provide a wide range of default  
20 rules for the internal affairs of a protected series. The act must also provide rules concerning the  
21 relationship of a protected series to various third parties (*e.g.*, the filing office, persons seeking to  
22 serve process). Because this is a stand-alone act, these rules may not be entity specific.  
23

24 For the most part, this Draft addresses this issue by extrapolation topic by topic,<sup>5</sup> which is best  
25 explained by example:  
26

27 **SECTION 303. FINANCIAL RIGHTS AND OBLIGATIONS CONCERNING**  
28 **PROTECTED SERIES; RIGHTS OF JUDGMENT CREDITOR OF ASSOCIATED**  
29 **OWNER OR ASSOCIATED DISTRIBUTE.**  
30

31 (a) Subject to subsection (c), if the organic law and the organic rules of a series  
32 organization contain provisions concerning financial rights and obligations of the series  
33 organization or its owners or transferees, this subsection establishes comparable provisions  
34 applicable<sup>6</sup> to each protected series of the series organization and the associated owners and  
35 associated distributees of each protected series.

---

<sup>5</sup> Dubbed by the Reporter the “Mini-me approach.” . (Mini-Me is “the clone of Austin Power's nemesis, Dr. Evil,” <http://www.urbandictionary.com/define.php?term=Mini%20Me> (last visited 10/21/14), in the comedies *Austin Powers: The Spy Who Shagged Me* (1999) and *Austin Powers in Goldmember* (2002). Mini-Me is “Dr. Evil's smaller and more concentrated pure evil protégé.” <http://www.imdb.com/name/nm0873942/> (last visited 10/21/14).)

<sup>6</sup> At its November 2014 meeting, the Drafting Committee considered substituting “makes those provisions applicable” for “establishes comparable provisions”. On reflection, the Reporter believes the original wording should be retained. The Committee’s liaison from the Committee on Style (“COSL”) agrees.

1 **Key Issues and the Drafting Committee’s Current Approaches**<sup>7</sup>

2  
3 Will the Internal Shields Hold under Bankruptcy Law  
4 and in States without Protected Series Legislation?  
5

6 No series act can directly answer these questions, because they implicate the Supremacy Clause  
7 (bankruptcy law) and choice of law doctrine (states without series legislation). The “internal  
8 affairs” doctrine does not control the choice of law question, because the internal shields  
9 dramatically affect the rights of creditors in a quite novel way.

10  
11 As for the internal shields under bankruptcy law, no directly relevant case law exists. The safest  
12 approach would be to characterize the protected series as a separate entity and provide the series  
13 the full spectrum of entity powers. However, most series statutes duck the characterization issue,  
14 declining even to define a series as a separate “legal person.” As for entity powers, a series can  
15 contract, own property, and sue and be sued, but cannot exist except within the overarching  
16 organization (i.e., a limited liability company or, under Delaware law, also a limited partnership).

17  
18 For investment trusts and captive insurance companies, a “non-entity” approach is essential for  
19 regulatory reasons. But outside those contexts the aversion to entity status remains unexplained  
20 – even though this aversion might conceptually undermine the shields. Moreover, there may be  
21 practical problems with saying, “It looks like a duck, quacks like a duck, swims like a duck, but  
22 it’s not a duck. Mobius strips and Klein bottles may seem real to mathematicians, but the series  
23 as non-entity, non-person may be so counter-intuitive to judges as to encourage piercing,  
24 substantive consolidation, and other theories of affiliate liability.

25  
26 In sum, with regard to the internal shields, the only thing we know for sure is that we know  
27 nothing for sure.

28  
29 *The Drafting Committee’s current approach: A protected series is a person distinct from*  
30 *the series organization, other series of the organization, and the owners of the organization.*  
31 *A series cannot exist on its own. See Section 105(c)(3).*  
32

33  
34 Will Other Important Areas of Business Law Accommodate the Series?  
35

36 The California Franchise Tax Board has decided to treat protected series as separate entities for  
37 filing and tax purposes, and the U.S. Treasury Department has formally proposed to treat each  
38 protected series as a separate taxpayer. However, it is uncertain how series will interrelate with  
39 other important areas of business law.

40  
41 The two most notable examples are bankruptcy law and Article 9 of the Uniform Commercial  
42 Code. As noted above, if bankruptcy law does not respect the internal shields, the shields are

---

<sup>7</sup> This part of the Reporter’s Introductory Note is taken essentially verbatim from Daniel S. Kleinberger, “Series of Unincorporated Business Entities: the Mobius Strip and Klein Bottle of Business Entity Law,” BUSINESS LAW TODAY (February 2015).

1 worthless. Moreover, if a series cannot enter bankruptcy on its own, the situation will be messy  
2 at best.

3  
4 As for Article 9, that law – not series law – determines where to file a financing statement on  
5 assets associated with a series. The determination depends on Article 9’s characterization of the  
6 debtor, and for a protected series that characterization involves three questions much at issue  
7 under most series statutes: (1) Is a series a distinct entity or at least a juridical person? (2) Does  
8 the formation of a series require the filing of a document with the government? (3) Precisely  
9 what “interest” does a series have in property associated with the series?

10  
11 Other examples are perhaps less dramatic, but nonetheless involve serious practical questions.  
12 For instance: How does a person make service on a protected series? How do statutes requiring  
13 foreign organizations to register to do business in a state apply to series? For the purposes of  
14 establishing personal jurisdiction over a series or an LLC with series, are the activities of the  
15 “parts” aggregated in a whole?

16  
17 *The Drafting Committee’s current approach: A protected series is a person whose*  
18 *formation requires the public filing of a document. One serves a series by serving the*  
19 *limited liability company. For purposes of foreign registration and personal jurisdiction,*  
20 *each series is distinct from the LLC and any other series of the LLC. See Section 502(b).*

### 21 22 23 Who Owns Property “Associated” with a Protected Series?

24  
25 To indicate that a particular protected series encompasses particular assets, series statutes use  
26 “associate” as the term of art. However, these statutes do not describe a series as “owning”  
27 associated assets. The statutes refer instead to “assets of a series.”

28  
29 If “assets of a series” means something less than ownership, the phrase is at best ambiguous.  
30 For the internal shields to function as intended, a protected series must have exclusive rights in  
31 its associated assets vis-à-vis the limited liability company and any other series of the LLC.  
32 Only in this way can those assets be made available solely to the series’ creditors, safe from  
33 competing claims from creditors of the LLC and other series. To have exclusive rights in  
34 property means to own the property, *see Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979)  
35 (characterizing “the right to exclude others” as “one of the most essential sticks in the bundle of  
36 rights that are commonly characterized as property”).

37  
38 *The Drafting Committee’s current approach: “Property associated with a protected*  
39 *series is owned by the protected series.” Section 301(d).*

### 40 41 42 How Is Property Associated with a Protected Series and 43 What are the Consequences of Defective Association?

44  
45 Associating property with a protected series is a matter of recordkeeping. Property is associated  
46 when the limited liability company’s records adequately identify the property and the series that

1 owns the property. Series statutes delineate adequacy in various ways, but in all events the  
2 standard is objective. No existing statute requires associated property to be held in the name of a  
3 series, even if the property is subject to a public recordation system (e.g., land, motor vehicles).

4  
5 Inadequate documentation imperils the internal shields, but to what extent? Current statutes  
6 appear to take an all-or-nothing approach. Either a series maintains generally adequate  
7 documentation and its internal shield works generally, or not. That is, generally inadequate  
8 documentation removes the shield even as to property documented with superlative specificity.

9  
10 In the alternative, adequacy could be determined asset by asset and the shield applied  
11 accordingly.

12  
13 *The Drafting Committee's current approach: Adequate documentation and shield*  
14 *protection are determined asset by asset. No consensus has yet formed around the*  
15 *recordation issue, which is addressed in Section 301(b).*

16  
17  
18 What Are the Duties of Those Who Manage a Protected Series and  
19 Who May Enforce Those Duties?

20  
21 Absent a contrary agreement, as a matter of agency law, a person who manages a protected series  
22 owes fiduciary duties. But who has standing to enforce those duties: the series itself? The  
23 members associated with the series? The limited liability company?

24  
25 In entity law generally, standing belongs to the person directly injured, subject to an owner's  
26 right to bring derivative claims. This approach may well be apt for protected series.

27  
28 *The Drafting Committee's current approach: In general, whatever rules of standing*  
29 *apply to the limited liability company apply as well to each protected series. However, a*  
30 *member not associated with a series has no standing to bring a derivative claim*  
31 *pertaining to the series. See Section 308(b).*

32  
33  
34 What about Competition and Business Opportunities  
35 Between an LLC and its Protected Series and Among those Series?

36  
37 No current statute addresses this issue; resolving the issue is accordingly the burden of those who  
38 draft operating agreements providing for protected series. The "rub" is likely to occur when the  
39 LLC manages more than one of its series.

40  
41 *The Drafting Committee's current approach: "A series manager of one protected series*  
42 *of a series organization does not in that capacity owe any fiduciary duties to another*  
43 *protected series of the organization or [to] the owners associated with another protected*  
44 *series." This Draft addresses "the Sinven/Nemec problem" Sinclair Oil Corp. v. Levien,*  
45 *280 A.2d 717 (Del. 1971) (shareholders of one corporate subsidiary [Sinven] brought*  
46 *derivative claims against the parent in part because the parent had allocated a business*

1 *opportunity to another subsidiary*); *Nemec v. Shrader*, 991 A.2d 1120 (Del. 2010)  
2 (deciding by a 3-2 vote that calling preferred stock did not breach the implied covenant of  
3 good faith and fair dealing, even though the call substantially prejudiced the owners of  
4 preferred stock to the benefit of the owners of common stock). *See Section 306(d)*.  
5  
6

7 What Is the Relationship of an LLC's Operating Agreement  
8 to a Protected Series Formed by the LLC?  
9

10 Even though their formation requires a public filing, limited liability companies are very much  
11 creatures of contract. The same is true for protected series. Accordingly, once an LLC has  
12 formed a series with at least one associated member, myriad contract issues arise. They include:  
13

- 14 • novel complexities of contract interpretation;
- 15 • the need for a default rule for amending a provision of the operating agreement specific  
16 to one series; and
- 17 • the need to address the consequences when an amendment to a generally-applicable  
18 provision of an operating agreement disproportionately prejudices a series or its  
19 associated members.

20  
21 No current statute addresses any of these issues.

22  
23 *The Drafting Committee's current approach: The Committee is aware of these issues but*  
24 *has not previously reviewed any proposed statutory language. This Draft addresses the*  
25 *second and third issues noted above but does not address the contract interpretation*  
26 *complexities.*  
27  
28

29 What Does the Public Need to Know About a Protected Series?  
30

31 Following Delaware's lead, almost every current series statute empowers a limited liability  
32 company to establish a protected series through a private document (the operating agreement), so  
33 long as the LLC's articles of formation state that the limited liability company has the power to  
34 establish series. Illinois law takes the opposite approach; a limited liability company must make  
35 a separate public filing to establish each series.  
36

37 From a transparency perspective, the Illinois approach seems a foregone conclusion. From a  
38 political science perspective, the Delaware approach is revolutionary; the sovereign delegates to  
39 a private organization the power to equip a private enterprise with a liability shield that abrogates  
40 traditional liability rules.  
41

42 The transparency question also raises issues relating to names. Should the name of a protected  
43 series: (1) indicate that the series is a series (a "designator" requirement); and (2) include the  
44 name of the limited liability company as part of the series name?  
45

1           *The Drafting Committee’s current approach: To form a protected series requires a*  
2           *publicly filed document, albeit a very simple one. The name of a protected series must*  
3           *include the name of the LLC and a designator. This Draft permits specified*  
4           *abbreviations to serve as designators. See Section 202(2)(B).*  
5  
6

7           What Business Needs Does the Protected Series Construct Uniquely Serve?

8           Outside the contexts of investment trusts and captive insurance companies, the special  
9           advantages of the protected series remain obscure. For example, an LLC with series can  
10          compartmentalize various divisions of an operating company or function as a holding company.  
11          But what advantage does the series provide over traditional structures that use separate affiliates  
12          to compartmentalize risk?

13  
14          Saving filing fees and paperwork cannot alone justify the protected series construct, especially  
15          given the uncertainty as to: (i) the efficacy of the internal shields; and (ii) how series provisions  
16          interrelate with important areas of business law. In fact, paperwork requirements for series may  
17          be more demanding than for other affiliate structures, because the requirements for associating  
18          assets are quite stringent.

19  
20          Likewise, saving filing fees seems a rather small tail for a rather large and potentially risky dog.  
21          For one thing, state governments have a way of noticing when fee revenue decreases. For  
22          example, as mentioned above, the state of California has acted proactively to protect its filing  
23          revenues (and franchise taxes as well).

24  
25          Perhaps the protective series remains attractive because it is novel, *appears* efficient, and “none  
26          of the chickens (open questions) have yet come home to roost.” The directly relevant case law  
27          consists of just two cases, neither of which answers any of the important questions.

28  
29                 *The Drafting Committee’s current approach: The Drafting Committee’s chair and*  
30                 *reporter continue to inquire into the question of “series advantages,” not only as a*  
31                 *response to “shell game” skeptics, but also because a statute should be shaped in light of*  
32                 *its primary purposes.*

33                 *The Committee appears to have decided (albeit provisionally) on two drafting*  
34                 *guidelines. (1) Current acts are loosely drafted (whether intentionally or not) and*  
35                 *therefore loaded with traps for the unwary which should be fixed.<sup>8</sup> Making such reforms*  
36                 *is a principal purpose of uniform acts. (2) We favor specificity and transparency; the*  
37                 *former to protect the user, and the latter to protect the user and the public.<sup>9</sup>*  
38

---

<sup>8</sup> Some of these traps might ensnare even the cognoscenti, or at least make their respective tasks more difficult. E.g., having to make multiple filing to perfect a security interest.

<sup>9</sup> Sometimes, these goals conflict. For example, should association of property subject to a recordation system require recording? Protect the public – yes; Avoid traps for the unwary user – no.

1 **Prefatory Note – Preliminary**<sup>10</sup>

2  
3 The Series Construct

4  
5 As provided by statutes in 12 states, the District of Columbia, and Puerto Rico,<sup>11</sup> the series  
6 construct involves:

- 7  
8 • an identifiable set of assets segregated within an unincorporated entity (“a series  
9 organization”);<sup>12</sup>
- 10 • with those assets:
- 11 ○ comprising a series, empowered to conduct activities in its own name and right;
  - 12 ○ being solely responsible to persons asserting claims pertaining to those assets or
  - 13 activities; and
  - 14 ○ not being responsible to persons asserting claims arising from the assets or
  - 15 activities of the series organization or any other set of assets segregated within the
  - 16 series organization; and
  - 17 ○ with perhaps one of more owners of the series organization associated with the
  - 18 series,<sup>13</sup> but not necessarily; and
- 19 • with distributions from the series going to:
- 20 ○ the unincorporated entity, if no owners are associated with the series; or
  - 21 ○ otherwise, to the owners associated with the series.
- 22

23 Thus, an organization that contains one or more series contains “internal shields” – i.e., asset  
24 partitions confining the assets and liabilities of each series to that series alone. These shields are  
25 conceptually and practically quite different from the shield that protects the owners of an entity  
26 from automatic liability for the entity’s obligations.

27  
28 Most series provisions connect to LLC statutes, although the Delaware limited partnership act

---

<sup>10</sup> The first part of this Prefatory Note is adopted from the Daniel S. Kleinberger, “Series of Unincorporated Business Entities: The Construct, the Import, the Recent Activity of the Uniform Law Commission, and the Issues on the Table,” XXXI THE LLC & PARTNERSHIP REPORTER 52.

<sup>11</sup> Following is a list of these statutes as of February 25, 2015, courtesy of Garrett Heilman, ULC Legislative Counsel, who works with the Drafting Committee. ALA. CODE §§ 10A-5A-11.01-.16 (2015); DEL. CODE ANN. tit. 6, §18-215 (West 2015); D.C. CODE ANN. §29-802.06 (2015); 805 ILL. COMP. STAT. ANN. 180/37-40 (West 2014); IOWA CODE ANN. §§ 489.1201-1206 (West 2014); KAN. STAT. ANN. § 17-76,143 (West 2014); MO. REV. STAT. § 347.186.1 (2014); MONTANA CODE ANN. § 35-8-304 (West 2013); NEV. REV. STAT. ANN. § 86.296 (West 2014); OKLA. ST. ANN. tit. 18, §§ 2005(B), 2054.4 (West 2014); TENN. CODE ANN. § 48-249-309 (West 2014); TEX. BUS. ORGS. CODE ANN. §§101.601-622 (West 2013); UTAH CODE ANN. §§ 48-3a-1201 to 1209 (West 2014); P.R. LAWS ANN. tit. 14, § 3967 (2011)

<sup>12</sup> The segregation is not necessarily physical and in some cases could not be.

<sup>13</sup> Allowing a non-owner to be associated with a series would cause daunting complexity while producing very little (if any) benefit.

1 also provides for series.  
2

3 In contrast, this act will be a stand-alone act, applicable to whatever unincorporated business  
4 entities an enacting state decides to include. As a result, the act relies on definitions from  
5 Article 1 of the Uniform Business Organizations Code (2011) (Last Amended 2013) (“Code”).  
6 Moreover, because the word “series” has a very different, established meaning with regard to  
7 bonds, corporate stock, etc., the act uses the term “protected series.”  
8  
9

### 10 The Import of the Protected Series Construct

11 The protected series:  
12

- 13 • is one of the most significant developments in the law of business organizations since the  
14 advent of the limited liability company;
- 15 • pushes the conceptual envelope of entity law by providing for a quasi-distinct legal  
16 construct existing *within* an overarching entity;
- 17 • establishes a new type of liability shield – rather than protecting the owners of an  
18 organization from vicarious liability for the organization’s debts, the “internal shields” of  
19 a series protect the assets of one series from the creditors of the series organization and  
20 any other series of the series organization.<sup>14</sup>  
21

---

<sup>14</sup> This construct has long existed in the context of investment trusts, but in that context cross-series liability claims do not arise. In 2009, the Commission adopted the Uniform Statutory Trust Entity Act, which provides a uniform vehicle for investment trusts. *See* Uniform Statutory Trust Entity Act (2009) (Last Amended 2013) §§ 401 through 405.

1                                   **SERIES OF UNINCORPORATED BUSINESS ENTITIES**

2   **[ARTICLE] 1**

3   **GENERAL PROVISIONS**

4                   **SECTION 101. SHORT TITLE.** This [act] may be cited as the Series of  
5 Unincorporated Business Entities Act.<sup>15</sup>

6                   **SECTION 102. DEFINITIONS.** In this [act]:

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

8                                   <sup>16</sup>(A) a distributable interest,<sup>17</sup> a distributable interest pertaining to a particular  
9 protected series;

10                                   (B) an owner, an owner that under Section 302 has become associated with a  
11 particular protected series; and

12                                   (C) property, property that under Section 301 has become associated with a  
13 particular protected series.

14                   (2) “Associated distributee”<sup>18</sup> means a person, other than an owner associated with a

---

<sup>15</sup> As a stand-alone act, this act needs a defined term for an organization that has one or more protected series in place. Following the usage of the proposed Treasury Regulations on series, this draft refers to “series organization”. If that usage continues into the final version, using “entities” in the act’s title may be confusing (albeit accurate – a series organization must be an entity). In any event, the Reporter prefers a simpler title: the Uniform Protected Series Act.

<sup>16</sup> A largely mechanical question exists as to when to have a defined term also apply in the context of foreign organizations, foreign protected series, etc. After the Drafting Committee’s March 2015 meeting, the Reporter will address these mechanics, in consultation with the COSL.

<sup>17</sup> At its November 2014 meeting, the Drafting Committee decided to substitute “distributional” for “distributable”. However, “distributional interest” has a different meaning under the Code. *See Code* § 1-102(7) (defining “[d]istributional interest” as “means the right under an unincorporated entity’s organic law and organic rules to receive *from the entity*”) (emphasis added). The Reporter has therefore retained the original word.

<sup>18</sup> This draft substitutes “distributee” for “transferee” to distinguish economic interests pertaining to a protected series from economic interests pertaining to a series organization (the latter being “transferable interests,” which are owned by either owners or “transferees”). “Distributee” has an analogous but

1 protected series,<sup>19</sup> to which all or part of an associated distributive interest has been transferred.  
2 The term applies whether or not the transferor is an associated owner and includes a person that  
3 owns an associated distributable interest under Section 401(c)(1).<sup>20</sup>

4 (3) “Distributable interest” means the right, as initially owned by a person in the person’s  
5 capacity as an owner associated with a protected series, to receive distributions from the series,  
6 whether or not the person remains an associated owner of the series or continues to own any part  
7 of the right. The term applies to any fraction of the interest, by whomever owned.<sup>21 22</sup>

8 (4) “Foreign organization” means an entity<sup>23</sup> governed as to its internal affairs by the law  
9 of a jurisdiction other than this state.<sup>24</sup>

---

distinct meaning in the law of wills and intestate succession. BLACK'S LAW DICTIONARY, distributee (10th ed. 2014) (“1. A beneficiary entitled to payment. 2. An heir, esp. one who obtains personal property from the estate of an intestate decedent.”) A comment will explain both the analogy and the distinction.

<sup>19</sup> Under this definition, “distributee” includes an owner not associated with the particular protected series.

<sup>20</sup> Under the cited provision, an owner that ceases to be associated with a protected series is stripped of all rights except the person’s associated distributive interest, which the owner then owns in the nature of an associated transferee.

<sup>21</sup> This definition is taken almost verbatim from the definition of transferable interest that appears in ULLCA (2013), ULPA (2013), UPA (2013), and Paragraph 20 of these definitions. In contrast, the Code § 1-102(7) defines “[d]istributable interest” to mean simply “the right under an unincorporated entity’s organic law and organic rules to receive distributions from the entity.” Query: Should this act follow ULLCA, ULPA, and UPA or the Code?

<sup>22</sup> This draft does not mention “distributable interest” in the context of foreign organizations. *See* the note to Section 102(1)(A).

<sup>23</sup> This definition confines the category of foreign organizations to entities. Query: Correct policy choice? Query: Is it necessary to define “entity”?

<sup>24</sup> At its November 2014 meeting, the Drafting Committee decided to remove from this definition reference to the foreign organization being “of a type corresponding to one of the entity types listed in Section 103(a)”. A comment will draw attention to the different treatment of foreign and domestic organizations. Query: Should the old language be reinstated, given that otherwise any limitation stated in Section 103(a) will be vitiated?

1 (5) “Foreign protected series” means a structure, arrangement, or relationship:<sup>25</sup>

2 (A) that has been formed<sup>26</sup> by a foreign organization; and

3 (B) whose capacities, powers, liability protections, and all other material  
4 characteristics under the law governing the foreign organization are substantially similar to the  
5 capacities, powers, liability protections, and all other material characteristics of a protected  
6 series.<sup>27</sup>

7 (6) “Foreign series organization” means a foreign organization that has at least one  
8 foreign protected series.

9 (7) “Generally-applicable provision” means a provision of a series organization’s organic  
10 rules which is not a series-specific provision.<sup>28</sup>

11 (8) “Governor” means a domestic entity, foreign entity, or individual that is:

12 (A) a director of a business corporation;

---

<sup>25</sup> The Drafting Committee has decided to characterize a domestic protected series as a person. *See* Section 104. However, it would be unwise to limit the scope of “foreign protected series” based on that characterization, because most current series statutes duck the characterization issue. Therefore, to use “person” in this definition would indicate that being a person is a precondition to being a foreign protected series. *Compare* Section 106(6) (stating that the law of this jurisdiction governs the characterization of a protected series as a person) *with* Section 501 (omitting a comparable provision for foreign protected series).

<sup>26</sup> At its November 2014 meeting the Drafting Committee decided to substitute “formed” for “established”. “Formed” fits better with UCC, Article 9. *See* UCC § 9-102(71) “‘Registered organization’ means an organization *formed or organized* solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States.”) (emphasis added).

<sup>27</sup> Contrast ULLCA (2013) § 102(5), which defines “foreign limited liability company” as “an unincorporated entity formed under the law of a jurisdiction other than this state which would be a limited liability company if formed under the law of this state.” The Reporter tentatively prepares Paragraph (5)(B) as written, because the paragraph states the point directly rather than by an analogy. The downside to Paragraph (5)(B) – whether differences as to the entity/person *vel non* issue will be seen as a material difference.

<sup>28</sup> This definition derives from an earlier draft and is used in Section 108(b).

1 (B) a director or trustee of a nonprofit corporation;  
2 (C) a general partner of a general partnership;  
3 (D) a general partner of a limited partnership;  
4 (E) a manager of a manager-managed limited liability company;  
5 (F) a member of a member-managed limited liability company;  
6 [(G) a director of a general cooperative association;]  
7 (H) a director of a limited cooperative association;  
8 (I) a manager of an unincorporated nonprofit association;  
9 (J) a trustee of a statutory trust, business trust, or common-law business trust; or  
10 (K) any other person under whose authority the powers of an entity are exercised  
11 and under whose direction the activities and affairs of the entity are managed pursuant to the  
12 organic law and organic rules of the entity.<sup>29 30</sup>

13 (9) “Organic law” means the law of an organization’s or foreign organization’s  
14 jurisdiction of formation which governs the internal affairs of the organization or foreign  
15 organization.

16 (10) “Organic law and organic rules” mean, with regard to a domestic or foreign entity,

---

<sup>29</sup> At its November 2014 meeting, the Drafting Committee concluded that rewriting Section 306 eliminated the need for “governance authority as a defined term. However, the concept is used in several places in the draft. This draft has resurrected the concept while changing the defined term to “governor.” so as to conform to Code § 1-102(18). *See, e.g.*, Sections 102(12)(C) (part of the definition of “owner”); 306(d) (pertaining to management of a protected series); 501(2)(F) (pertaining to foreign series organizations and foreign protected series), 501(5)(F) (same).

<sup>30</sup> This definition and several others derive from the Code. In each instance a comment will so indicate. Assuming the act remains a stand-alone act, later in the drafting process the Reporter will determine whether the act needs to incorporate additional Code definitions. For example, it seems likely that the act will include the Code’s definition of “entity.”

1 the entity’s organic law as supplemented, restricted, or both, by the entity’s organic rules.<sup>31</sup>

2 “Organic rules” means the public organic record and private organic rules of an organization.

3 (11) “Organization, except in the phrase “foreign organization”, means a domestic entity  
4 of a type listed in Section 103(a), regardless of whether the organization has any protected series.

5 (12) “Owner” means:

6 (A) a member of a domestic or foreign limited liability company;

7 (B) a partner in a domestic or foreign limited liability partnership or limited  
8 partnership; and

9 (C) any other person having the right under the organic law and organic rules of a  
10 domestic or foreign entity, other than in the capacity of an agent, assignee, proxy, or governor,  
11 to:

12 (i) receive or demand access to information concerning, or the books and  
13 records of, the organization or foreign organization;

14 (ii) consent or vote for the election of a person under whose authority the  
15 powers of an entity are exercised and under whose direction the activities and affairs of the entity  
16 are managed pursuant to the organic law and organic rules of the entity; or

17 (iii) receive notice of or consent or vote on an issue involving the internal  
18 affairs of the organization or foreign organization.<sup>32</sup>

---

<sup>31</sup> The Reporter added this definition in consultation with the COSL.

<sup>32</sup> At its November 2014 meeting, the Drafting Committee decided to delete the language now in Subparagraph (C) and insert a legislative note advising states to revise this definition accordingly whenever Section 103(a) is amended to add another type of entity. However, that approach will not work as to foreign series organizations, due to the Committee’s decision to free those organizations from the strictures of Section 103(a). Since the language in Subparagraph (C) must remain with regard to foreign organizations, the Reporter recommends applying the language to domestic organizations as well. A legislative note can recommend adding another specific definition whenever another type of entity is

1 (13) “Person” means an:  
2 (A) an individual;  
3 (B) a protected series or foreign protected series; and  
4 (C) a domestic or foreign business corporation, nonprofit corporation, partnership,  
5 limited partnership, limited liability company, [general cooperative association,] limited  
6 cooperative association, unincorporated nonprofit association, statutory trust, business trust,  
7 common-law business trust, estate, trust, association, joint venture, public corporation,  
8 government or governmental subdivision, agency, or instrumentality, or any other legal or  
9 commercial entity.<sup>33</sup>

10 (14) “Private organic rules” means the rules, whether or not in a record, that govern the  
11 internal affairs of an organization or foreign organization and the organization’s or foreign  
12 organization’s protected series, if any, which are binding on all its owners and all persons  
13 owning a distributable interest in the organization or foreign organization, and are not part of the  
14 public organic record, if any, of the organization or foreign organization. The term includes:

15 (A) the partnership agreement of a general partnership that is a limited liability  
16 partnership;<sup>34</sup>

17 (B) the partnership agreement of a limited partnership;<sup>35</sup>

18 (C) the operating agreement of a limited liability company; and

---

added to Section 103(a).

<sup>33</sup> The Committee on Style has the standard definition of “person” under review, due to concerns expressed that the current definition is problematic with regard to some types of unincorporated business organizations.

<sup>34</sup> See the first note to Section 103(a)(1).

<sup>35</sup> See the first note to Section 103(a)(1).

1 (D) ....

2 (15) “Protected series”, except in the phrase “foreign protected series”, means a person  
3 formed under Section 201.

4 (16) “Public organic record” means the record the filing of which by the [Secretary of  
5 State] is required to form an organization and any amendment to or restatement of that record.  
6 The term includes the certificate of limited partnership of a limited partnership, the certificate of  
7 organization of a limited liability company, and the certificate of series designation of a  
8 protected series.

9 (17) “Series manager” means a person under whose authority the powers of a protected  
10 series or foreign protected series are exercised and under whose direction the activities and  
11 affairs of the series are managed pursuant to the organic law and organic rules of the series’  
12 organization or foreign series organization.<sup>36</sup>

13 (18) “Series organization”, except in the phrase “foreign series organization”, means an  
14 entity of the type<sup>37</sup> listed in Section 103(a) which has at least one protected series.<sup>38</sup>

15 <sup>39</sup>(19) “Series-specific provision” means a provision of the organic rules of a series  
16 organization which [expressly?] applies to a particular protected series or its activities, affairs,

---

<sup>36</sup> “Series manager” is thus a subset of “governor.” The Reporter believes the overlap useful for helping distinguish the roles of governor of a series organization from governor of a protected series.

<sup>37</sup> The Code § 1-102(48) defines “type of entity,” but: (i) in the Code the concept has a much heavier burden to carry (helping to define “conversion”); and (ii) in this act, unlike in the Code, the context – *i.e.* Section 103(a) helps delineate the meaning.

<sup>38</sup> Under this definition, an organization might go in and out of “series organization” status (and back in again).

<sup>39</sup> This concept has been resurrected from the February, 2013 meeting draft and that draft’s language substantially revised for the purpose of Section 108(b) (requiring as default rule the consent of each owner associated with a series for a series-specific amendment to the organic rules of a series organization).

1 associated property, associated owners, associated distributable interests, associated distributees,  
2 or series manager,<sup>40</sup> and not generally to the series organization or its owners in that capacity, its  
3 transferees in that capacity, its activities, affairs, or property. A provision of a series  
4 organization’s organic rules may be a series-specific provision as to more than one protected  
5 series. The term includes provisions specific to the relationship between a particular protected  
6 series or its activities, affairs, associated property, associated owners, associated distributable  
7 interests, associated distributees, or series manager, and:

8 (A) another protected series or its activities and affairs, associated property,  
9 associated owners, associated distributable interests, associated distributees, or series manager;  
10 or

11 (B) the series organization or its owners in that capacity, its transferees in that  
12 capacity, its activities, affairs, or property.

13 (20) “Transfer” includes:

14 (A) an assignment;

15 (B) a conveyance;

16 (C) a sale;

17 (D) a lease;

18 (E) an encumbrance, including a mortgage or security interest;

19 (F) a gift; and

20 (G) a transfer by operation of law.

---

<sup>40</sup> These lengthy lists could be replaced with a definition stating that “‘Activities and affairs’ includes: (A) with regard to an organization, [list]; and (B) with regard to a protected series, [list].” Because no other uniform business organization act has such a definition, the Reporter has not yet made the change, pending a discussion at the March, 2015 meeting.

1 (21) “Transferable interest” means the right, as initially owned by a person in the  
2 person’s capacity as an owner, to receive distributions from an organization, whether or not the  
3 person remains an owner or continues to own any part of the right. The term applies to any  
4 fraction of the interest, by whomever owned.

5 (22) “Transferee” means a person to which all or part of a transferable interest has been  
6 transferred, whether or not the transferor is an owner.

7 **SECTION 103. ELIGIBLE ORGANIZATIONS; RELATIONSHIP OF [ACT] TO**  
8 **ORGANIC LAW OF ELIGIBLE ORGANIZATIONS.**

9 (a) This [act] applies to foreign series organizations and to the following types of  
10 domestic<sup>41</sup> unincorporated entities:<sup>42</sup>

11 (1) general partnerships that are limited liability partnerships;<sup>43 44</sup>

12 (2) limited partnerships;<sup>45</sup>

13 (3) limited liability companies;

14 (4).....<sup>46</sup>

---

<sup>41</sup> Query: Necessary to define “domestic”?

<sup>42</sup> The list excludes statutory trusts, because this act neither displaces nor overlaps USTEAA.

<sup>43</sup> The automatic, vicarious liability of partners in an unshielded general partnership would moot the internal shields largely if not entirely. A comment will so explain. This draft uses “general partnership that is a limited liability partnership” rather than simply “limited liability partnership” to protect the careless reader against thinking of a limited partnership.

<sup>44</sup> Query: Should this provision be deleted or at least bracketed? Currently, no U.S. jurisdiction provides for protected series in a general partnership, LLP or not.

<sup>45</sup> See note 43, explaining why this draft excludes non-LLP general partnerships. This draft does not add a comparable exclusion here, because in many limited partnership the general partner is a thinly capitalized shielded entity (most often an LLC or corporation). As a result, the internal shields will matter. A comment will raise the issue of how the general partner’s liability interacts with the internal shields.

<sup>46</sup> In light of the act’s characterization of a protected series as a person distinct from its series organization

- 1 (b) If this [act] conflicts with the organic law of a series organization;
- 2 (1) a court should reconcile the conflicting provisions if possible; and
- 3 (2) otherwise, this [act] governs.
- 4 (c) Whenever this [act] establishes provisions described as comparable to specified
- 5 provisions of the organic law and organic rules of a series organization, the comparable
- 6 provisions do not include any provision that the difference in context renders moot or
- 7 impracticable.<sup>47</sup>

8 **SECTION 104. NATURE OF PROTECTED SERIES.** Except as otherwise provided

9 in Section 105(c)(3) and (d),<sup>48</sup> a protected series is a person distinct from:<sup>49 50</sup>

---

and other protected series, a legislative note will indicate the unintended consequences that might result from including a statutory trust or business law trust.

<sup>47</sup> This draft uses “comparable provisions” to perform the Mini-Me function. (See the Reporter’s Introductory Note.)

<sup>48</sup> The cited subsections provide that a protected series cannot exist on its own. In that sense, therefore, a protected series is not distinct from the organization whose existence is a precondition to the existence of the protected series.

<sup>49</sup> The word “distinct” derives from ULLCA (2006) (Last Amended 2013), Section 108(a): “A limited liability company is an entity distinct from its member or members.” *See also* ULP (2001) (Last Amended 2013) § 110(a); UPA (1997) (Last Amended 2013) § 201(a). 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.

<sup>50</sup> 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.”)).

- 1 (1) the series organization that formed the protected series;
- 2 (2) any other protected series of the series organization;
- 3 (3) any owner of the series organization, whether or not the owner is associated with the
- 4 protected series;
- 5 (4) any person owning a transferable interest in the series organization; and
- 6 (5) any person owning a distributable interest in the series organization, whether or not
- 7 the person is an associated distributee of the protected series.

8 **SECTION 105. POWERS, PURPOSE, AND CONDITIONAL DURATION OF**  
9 **PROTECTED SERIES.**

- 10 (a) A protected series has the capacity to sue and be sued in its own name.<sup>51</sup>
- 11 (b) Except as otherwise provided in subsections (c) through (f), a protected series:
  - 12 (1) has the same powers as the series organization that formed the protected
  - 13 series; and
  - 14 (2) may have any lawful purpose, regardless of whether for profit.<sup>52</sup>
- 15 (c) A protected series may not:
  - 16 (1) establish a protected series, whether of itself or its series organization;<sup>53</sup>

---

<sup>51</sup> Stated separately to enable the act to render this provision non-waivable. *See* Section 108(b)(1).

<sup>52</sup> Subsection (b) states default rules. Thus, the organic rules of a series organization can: (i) cause a protected series to have fewer powers than its series organization; (ii) accord powers to a protected series which transcend limitations imposed by the organic rules on the series organization; and (iii) confine the purposes of a protected series so as to correspond to limitations applicable to the series organization or in any other way.

<sup>53</sup> At its November 2014 meeting, the Drafting Committee discussed whether a series organization could establish a structure similar to the structure that would result from permitting a protected series to form its own protected series. The method contemplated was having the organization establish two series and make one of the series the sole person associated with another. However, that method will not work unless the act removes the prerequisite that a person be an owner in order to be associated with a protected series. *See* Section 302(a).

1                   (2) be a party to:<sup>54</sup>  
2                               (A) an interest exchange, conversion, domestication, or comparable  
3 transaction;<sup>55</sup>  
4                               (B) a merger, except as otherwise provided in subsection (d); or<sup>56 57</sup>  
5                   (3) continue after the its series organization has dissolved and completed winding  
6 up,<sup>58</sup> unless:  
7                               (A) the protected series has been a party to a merger permitted by  
8 subsection (d); and  
9                               (B) the merger becomes effective before the termination becomes  
10 effective.  
11                   (d) A protected series may participate in a merger as a party only if, when the merger has

---

<sup>54</sup> Relocated so that the provision on termination comes last in this subsection.

<sup>55</sup> The Committee has postponed deciding whether to permit a protected series to be party to these transactions until after the Committee decides whether to permit a protected series to be a party to a merger. The decision should determine whether the act encompasses conversions and domestications. Interest exchanges raise separate issues pertaining to the requirement that a person be an owner in order to be associated with a protected series.

<sup>56</sup> These restrictions apply only when a protected series is itself party to the transaction. A series organization might be party to a transaction, with a protected series involved as a non-party. For example, an LLC acquiring a target through a merger might provide consideration to the owners of the target by admitting the owners as members and associating them with a protected series. Or, if permitted by the operating agreement (and subject to the Voidable Transactions Act), the LLC might use the assets of a protected series as consideration to the owners of the target.

<sup>57</sup> Pending the Drafting Committee's decision on whether to permit a protected series to participate as a party in organic transactions, this Draft authorizes only mergers. If the Committee decides to permit mergers, the new draft will provide appropriate provisions on mechanics and consequences (probably through the Mini-Me approach) Query: What results if a series organization domesticates into a state whose organic law does not provide for protected series, or converts to an entity whose governing law is likewise inhospitable?

<sup>58</sup> See 402(e)(1) (providing that a series organization has not completed its winding up until each of its protected series has completed its winding up).

1 taken effect, the protected series:

2 (1) does not continue {or: ceases to exist};<sup>59</sup> or

3 <sup>60</sup>(2) continues as:

4 (A) a protected series of the series organization or another series  
5 organization; or

6 (B) a foreign protected series;<sup>61</sup>

7 (e) If the law of this state other than this [act] prohibits a series organization from  
8 engaging in an activity or affair, conducting a business, entering into a transaction, or  
9 functioning or operating in any other way, the prohibition applies to a protected series of the  
10 organization.<sup>62</sup>

11 [(f) A protected series may not:

12 (1) ...

13 (2) ...]<sup>63</sup>

---

<sup>59</sup> Note – Suppose a protected series is merged out of existence into an entity whose organic law does not permit protected series. Necessarily, as part of the merger, all associated property will cease to be associated and the internal shields will disappear. Of course, the surviving entity will be liable to all creditors of the series, but that liability (if unsecured) will be subsumed into all the entity’s liabilities. If a protected series were to dissolve and wind up, any transfers would be subject both to clawback provisions and voidable transfer statutes. However, an analogous situation exists with regard to an ordinary, entity-into-entity merger.

<sup>60</sup> This provision authorizes but does not require the continuation of a protected series. The plan of merger might well provide for a protected series to be discontinued. *See* Subsection (d)(1).

<sup>61</sup> At its November 2014 meeting, the Drafting Committee discussed including in Subparagraph 2(B) only foreign protected series whose formation requires the filing of a public document. The Reporter recalls the rationale being that, otherwise, the merger would not be of record in the jurisdiction of the surviving protected series. The Reporter’s notes do not indicate a decision on this issue.

<sup>62</sup> Non-waivable.

<sup>63</sup> Conduct that a state considers acceptable for an organization might be unacceptable for a “mere” protected series.

1           **SECTION 106. GOVERNING LAW.** The law of this state governs:

2           (1) the internal affairs of a protected series;

3           (2) the relations between a protected series and each of the following:<sup>64</sup>

4                   (A) the series organization;

5                   (B) another protected series of the series organization;

6                   (C) an owner of the series organization, whether or not associated with the  
7 protected series;<sup>65</sup>

8                   (D) a person owning a transferable interest in the series organization; and

9                   (E) a person owning a distributable interest, whether or not associated with the  
10 protected series.<sup>66</sup>

11           (3) the liability of the series organization for a debt, obligation, or other liability of a  
12 protected series of the series organization;

13           (4) the liability of a protected series for a debt, obligation, or other liability of its series  
14 organization or any other protected series of the series organization;

15           (5) the liability for a debt, obligation, or other liability of a protected series of:

16                   (A) an owner of the series organization in that capacity, whether or not associated  
17 with the protected series;

18                   (B) an owner associated with the protected series in that capacity;

---

<sup>64</sup> These provisions cover each relationship in both directions.

<sup>65</sup> Query: Is the phrase “whether or not associated with the protected series” necessary here and in subparagraph E?

<sup>66</sup> Possible alternative formulation for “whether or not associated with the protected series” – “whether or not the person is an associated distributee of the protected series”. Whichever formulation the Committee chooses, the same formulation should be used wherever the concept appears in the act.

1 (C) an owner of a transferable interest in the series organization in that capacity;

2 (D) a person owning a distributable interest in that capacity, whether or not the

3 interest is associated with the protected series;

4 (E) an associated distributee of the protected series in that capacity;

5 (F) a series manager in that capacity;<sup>67</sup> and

6 (G) a governor of the series organization in that capacity;<sup>68</sup> and

7 (6) the characterization of a protected series as a person.<sup>69</sup>

8 **SECTION 107. RELATIONSHIP OF PRIVATE ORGANIC RULES OF SERIES**

9 **ORGANIZATION TO PROTECTED SERIES.<sup>70</sup>**

10 (a) Except as otherwise provided in subsection (b), a series organization's organic rules<sup>71</sup>

11 govern:

12 (1) the activities, affairs, and property<sup>72</sup> of a protected series, the conduct of those

---

<sup>67</sup> It is important to keep conceptually separate a series manager (or any person in a similar capacity):

- being directly liable for the manager's (person's) own misconduct or through a guarantee; and
- being vicariously liable for the obligations of the protected series.

The latter is theoretically possible under a smattering of cases that contemplate veil piercing against corporate officers and directors or against the managers of an LLC.

<sup>68</sup> Query: Should "or other agent" be added after "manager" here and in Paragraph (F)?

<sup>69</sup> Note reference to law of this state rather than "this act." It is unclear, for example, whether a state's version of U.C.C, Article 9 would defer to this act's characterization of a protected series as a person.

<sup>70</sup> A comment will discuss the variety of ways the organic rules of a series organization might provide for protected series, including appendices, exhibits, etc.

<sup>71</sup> In unincorporated organizations, the organic record, if any, typically has little role in the internal affairs of the organization. However, to the best of the Reporter's knowledge, no organic law precludes greater use of an organization's public record.

<sup>72</sup> This provision specifically refers to "property," because a protected series is, most fundamentally, an asset protection device.

1 activities and affairs, and the use of that property;

2 (2) relations among the associated owners in that capacity and between the  
3 associated owners in that capacity and:

4 (A) the protected series;

5 (B) any other protected series of the organization;

6 (C) the series organization;

7 (D) any owner not associated with the protected series;

8 (E) any person owning a transferable interest in the series organization;

9 and

10 (F) any person owning a distributive interest in the protected series,

11 whether or not the interest is an associated distributive interest of the protected series; and

12 (3) relations among the protected series, the series organization, and any other  
13 protected series of the organization; and

14 (4) the rights and duties under this [act] of a person in the capacity of series  
15 manager.

16 (b) An amendment to a series-specific provision is ineffective unless each associated  
17 owner of the protected series consents to the amendment. An amendment to a generally-  
18 applicable provision which causes a material adverse effect to a protected series or its associated  
19 property or owners<sup>73</sup> is ineffective unless each associated owner consents to the amendment.

20 (c) If the organic law<sup>74</sup> of a series organization authorizes the series organization's

---

<sup>73</sup> Note the omission of series manager and associated distributees. The former needs to look to a separate agreement to protect its/her/his rights and the latter has no governance rights in general.

<sup>74</sup> This act is part of the organic law of an organization that becomes a series organization. Query: What consequences?

1 organic rules to include a particular provision concerning the series organization or its activities,  
2 affairs, property, owners, transferees, or governors,<sup>75</sup> this subsection establishes a comparable  
3 authorization concerning the organic rules applicable to a protected series or its activities, affairs,  
4 associated property, associated owners, associated distributees, or series managers.<sup>76</sup>

5 (d) If the organic law of a series organization prohibits the series organization’s organic  
6 rules from including a particular provision concerning the series organization or its activities,  
7 affairs, property, owners, transferees, or governors, this subsection establishes a comparable  
8 prohibition concerning the organic rules applicable to a protected series or its activities, affairs,  
9 associated property, associated owners, associated distributees, or series managers.<sup>77</sup>

10 (e) The consent or voting requirements for amending the organic rules of an organization  
11 do not change when the organization becomes a series organization.

12 (f) The organic rules of a series organization:

13 (1) may not vary:

14 (A) Section 103, 104, 105(a), (c), (d), (e), 106, or 108,<sup>78</sup> or TBA;

15 (B) any requirement, procedure, or other provision of this [act]

16 concerning:

---

<sup>75</sup> Query: Should this list also include “persons having no interest in or relationship with the organization”?

<sup>76</sup> If the first clause is revised to include “persons having no interest in or relationship with the organization”, the same revision should be made here and in subsection (d).

<sup>77</sup> An earlier version of this Draft combined subsections (c) and (d). Separation involves repetition but may produce easier reading.

<sup>78</sup> The cited provisions refer respectively to eligible organizations (103); nature of protected series (104); power, purpose, and duration of protected series (105), governing law (106), and relationship of private organic rules of series organization to protected series (108). Once the Drafting Committee approves this approach and decides which prohibitions to include, the Reporter will refine this formulation.

1 (i) registered agents; or  
2 (ii) the [Secretary of State], including provisions concerning  
3 records authorized or required to be delivered to the [Secretary of State] for filing under this  
4 [act]; or

5 (2) vary Subsection 107(c) except to:  
6 (A) negate subsection 107(c) entirely; or  
7 (B) make more demanding the requirements of Subsection 107(c)(1),  
8 (c)(2), or both.

9 **SECTION 108. SUPPLEMENTAL PRINCIPLES OF LAW.** Unless displaced by  
10 particular provisions of this [act], the principles of law and equity supplement this [act].

11 **[ARTICLE] 2**

12 **FORMATION AND RELATED PUBLIC FORMALITIES**

13 **SECTION 201. ESTABLISHING PROTECTED SERIES; PROTECTED SERIES**  
14 **DESIGNATION; AMENDMENT AND CANCELLATION OF DESIGNATION.**

15 (a) With the affirmative vote or consent of all its owners, an organization<sup>79</sup> may establish  
16 a protected series pursuant to subsections (b) through (d).<sup>80</sup>

17 (b) To establish a protected series, an organization must deliver to the [Secretary of State]  
18 for filing a protected series designation, signed by the organization, stating the name of the  
19 organization and the name of the protected series.<sup>81</sup>

---

<sup>79</sup> “Organization” rather than “series organization” because an organization is not a series organization unless the organization has at least one existing protected series. (“Organization” encompasses “series organization,” so “organization” works even when a protected series already exists.

<sup>80</sup> Earlier drafts referred to “one or more protected series” to make clear that a series organization may have more than one series.

<sup>81</sup> Omitted – language permitting additional information. Rationale: keeping the designation as simple as

1 (c) A protected series is formed when the protected series designation becomes effective  
2 under the organization’s organic law.

3 (d) A series organization may amend or cancel a protected series designation by  
4 delivering to the [Secretary of State] for filing a statement of designation<sup>82</sup> change or  
5 cancellation that states the name of the organization, the name of the protected series to which  
6 the designation applies,<sup>83</sup> and:

7 (1) for an amendment, the information to be in effect as a result of filing the  
8 statement;<sup>84</sup> and

9 <sup>85</sup>(2) for cancellation, that:

10 (A) the protected series has dissolved and wound up its activities and  
11 affairs; and

12 (B) the designation is canceled.

13 **SECTION 202. NAME.** The name of a protected series must:<sup>86</sup>

14 (1) comply with the organic law of the series organization; and

---

possible; dispensing with language explaining how additional information cannot evade restrictions on the organic rules.

<sup>82</sup> “Designation” included to avoid confusion with organic laws that use “statement of change” for a different purpose. *See, e.g.*, ULLCA (2006) (Last Amended 2013), § 116 (Change of Registered Agent or Address for Registered Agent by Limited Liability Company).

<sup>83</sup> It would be possible, though more complicated, to empower each protected series to deliver for filing statements of change. However, there is some rationale for keeping the series organization in charge of all filed records pertaining to it.

<sup>84</sup> Given the narrow scope of a certificate of designation, the only amendments possible would change the name of the series organization, the name of a protected series, or both.

<sup>85</sup> In this draft, Section 402(c) also provides for the statement of designator cancellation. Query: Is the provision better placed here or there? Section 402(c) also states the effect of a statement designator cancellation.

<sup>86</sup> TBA – parallel provision for name of foreign protected series.

- 1 (2) contain:
- 2 (A) the name of the series organization; and
- 3 (B) the phrase “protected series” or the abbreviation “P.S.”, “PS”, “Prot. Ser.” or
- 4 “Prot Ser.”<sup>87</sup>

5 **SECTION 203. REGISTERED AGENT; SERVICE OF PROCESS, NOTICE, OR**

6 **DEMAND.**

7 (a) A registered agent of a series organization is also the registered agent for each

8 protected series of the organization.<sup>88</sup>

9 (b) Before delivering a certificate of protected series designation to the [Secretary of

10 State] for filing, an organization shall arrange with its registered agent that the registered agent

11 will also serve as the registered agent for the protected series to be formed when the certificate

12 becomes effective.<sup>89</sup>

13 (c) Signing a certificate of designation that is delivered to the [Secretary of State]<sup>90</sup> for

14 filing is an affirmation of fact that the organization on whose behalf the certificate is delivered

15 for filing has complied with subsection (b).

16 (d) Except as otherwise provided in an agreement between a series organization and its

17 registered agent, the agent is not responsible for distinguishing between a process, notice,

---

<sup>87</sup> Given the requirement of including the name of the series organization, there is less worry about “designator” confusion. The next draft will address how to override name provisions in other statutes that prohibit use of entity names and designators (*e.g.*, limited liability company, limited partnership, LLC) except in the name of that type of entity.

<sup>88</sup> This provision does not apply to a foreign protected series. Section 502(c) applies instead

<sup>89</sup> If the Drafting Committee decides to permit an organization to acquire a protected series by merger, conversation or domestication, this subsection will be revised accordingly.

<sup>90</sup> The affirmation does not take effect until the filling office has received the certificate of designation.

1 demand, or other record concerning a protected series and a process, notice, demand, or other  
2 record concerning the series organization or another protected series of the organization.<sup>91</sup>

3 **SECTION 204. [ANNUAL] [BIENNIAL] REPORTS.**<sup>92</sup> If the organic law of a series  
4 organization requires the organization periodically to deliver to the [Secretary State] for filing  
5 information<sup>93</sup> concerning the organization, the information must also include the name of each  
6 protected series of the organization as of the date the organization delivers the information to the  
7 [Secretary of State].

8 **SECTION 205. ORGANIC LAW CONCERNING [SECRETARY OF STATE].**<sup>94</sup>

9 (a) Subject to subsection (b), if the organic law of a series organization contains  
10 provisions concerning records required or permitted to be delivered to the [Secretary of State] for  
11 filing under the organic law, this subsection establishes comparable provisions applicable to  
12 records required or permitted to be delivered to the [Secretary of State] for filing under this [act].

13 (b) A record delivered to the [Secretary of State] for filing under this [act] on behalf of a  
14 protected series must be signed by a person authorized by:

- 15 (1) the series, if the series has any associated members; and  
16 (2) otherwise by the series organization.

17

---

<sup>91</sup> Thus, the registered agent is not required to perform a sorting function unless so provided in an agreement with the series organization. This Draft adds “or other record” to the standard formulation because the latter authorizes, while this provision protects. The addition has the salutary side effect of clarifying that a “process, notice, demand” must be in record form.

<sup>92</sup> The Drafting Committee has not yet decided whether to provide for a certificates of good standing for a protected series or foreign protective series.

<sup>93</sup> Revised to conform to the style adopted in the Harmonization Project.

<sup>94</sup> This section exemplifies the Mini-Me approach to delineating the relationship of a protected series to a third party. See Reporter’s Introductory Note, *The Default Paradigm for a Protected Series*.

1 [ARTICLE] 3

2 ASSOCIATED PROPERTY, OWNERS, AND DISTRIBUTIVE INTERESTS;

3 MANAGEMENT; LIABILITY LIMITATIONS; RIGHTS OF ACTION

4 SECTION 301. PROPERTY ASSOCIATED WITH PROTECTED SERIES.<sup>95</sup>

5 (a) Property, from whatever source and however acquired, is<sup>96</sup> associated with a protected  
6 series when the series organization:<sup>97</sup>

7 (1) creates and maintains<sup>98</sup> a record<sup>99</sup> that identifies the protected series and  
8 contains:

9 (A) a description of the property which is sufficiently specific<sup>100</sup> to permit

---

<sup>95</sup> Property is the subject matter of the first section of this article because associated property is the *sine qua non* for a functioning protected series.

<sup>96</sup> “becomes” (previous drafts) => “is” to fit with the “maintains” requirement added to subsection (a)(1).

<sup>97</sup> The 2014 Annual Meeting Draft did not specify who is responsible for this record. The November 2014 draft included this language to reflect the sentiments expressed by the Committee of the Whole.

<sup>98</sup> Under the “maintains” requirement, property once associated with a protected series will cease to be associated if *inter alia*: (i) the series organization or another protected series acquires property that renders insufficient a previously adequate description; or (ii) the series organization otherwise fails to adequately maintain the records. Of course, the series organization can delegate the recordkeeping responsibility to another person. Query: Should the act require that the records of associated property for all protected series be kept together or at least be retrievable together? Otherwise, the series organization could delegate the responsibility in a way that might split the records and make life more difficult for creditors. (For example, the series organization might delegate the recordkeeping responsibility for property associated with each protected series to the series with which the property is associated.)

<sup>99</sup> Non-record designation (“the memory of man runneth not to the contrary”) could not possibly satisfy the specificity requirement stated in Section 109(a). *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.”)

<sup>100</sup> A comment will note that different methods may be appropriate for describing different types of property (e.g., fungible versus non-fungible goods; tangible property versus intangible property).

1 a reasonable person that has no connection with or interest in the protected series or the series  
2 organization to identify the property and distinguish it from:

3 (i) property of the series organization; and

4 (ii) property associated with or otherwise owned by any other  
5 protected series of the series organization; and

6 (B) a statement of when and from whom the series acquired the property.<sup>101</sup>

7 (b) In addition to the requirement under subsection (a) for associating property, in the case of  
8 property that is subject to a public system for registering title:

9 (1) association of the property with a protected series requires compliance with the  
10 system;<sup>102</sup> and

11 (2) in complying with the system a protected series may register the title in the name  
12 of a nominee to the same extent that a person not a protected series could do so for property that the  
13 person owns.<sup>103</sup>

14 (c) A series organization shall maintain its record of each item of property associated  
15 with a protected series until the earlier of:

16 (1) [six] years after the date on which the protected series ceases to have any  
17 interest in the property; or

---

<sup>101</sup> Under this subsection, property might be owned by a protected series without being associated with the protected series. That result is intentional. The category of “associated property” provides support for the internal shields, *see* Section 307(f), and being properly identified is the only entryway into that protected situation. Property owned by a protected series but not associated is outside the series’ shield wall— *i.e.*, available to creditors of the series, the series organization, and any other protected series of the organization. Query: Will a comment suffice to make this “outside the wall” point?

<sup>102</sup> In an arm’s length transaction, the transferee has strong incentive to update the public record. That incentive is weaker, if even extant, within a series organization.

<sup>103</sup> A comment will state that the series organization or another protected series could be the nominee. Query: Given the discussion at the 2014 annual meeting, should the act state the opposite rule?

1                   (2) the date on which the protected series has completed winding up its activities  
2 and affairs.<sup>104</sup>

3                   (d) Property associated with a protected series is owned by the protected series.<sup>105</sup>

4 However, subject to subsections (a) and (b), a protected series may hold associated property  
5 directly or indirectly, through a nominee, or otherwise, including in the name of the protected  
6 series, the series organization, or another protected series of the organization.<sup>106</sup>

7                   (e) In a dispute concerning whether an item of property is associated with a protected  
8 series, the series has the burden of proving association<sup>107</sup> by a preponderance of the evidence.<sup>108</sup>

9 <sup>109</sup>

10

---

<sup>104</sup> At its November 2014 meeting, the Drafting Committee decided to make the deadline the earlier of the two dates, rather than the later. Query: What are the consequences if the internal shields become relevant to a claim brought after a protected series has finished its winding up and discarded its records?

<sup>105</sup> Like ULLCA and ULPA, this draft does not delineate the mechanics for transferring ownership of property. Contrast UPA § 302 (1997) (Last Amended 2013) (providing detailed rules for the transfer of property owned by a general partnership).

<sup>106</sup> The language pertaining to “nominee” in subsection (b) is necessarily more limited than this language, due to the comparison made in subsection (b). E.g., what would it mean to state that a protected series can register title in the name of the series organization to the same extent that a person not a series could do so?

<sup>107</sup> Up to this point, this subsection is modeled on ULLCA (2006) (Last Amended 2013) § 410(h) (“In a dispute concerning the reasonableness of a restriction under this subsection [permitting an LLC to impose access and use restrictions on information], the company has the burden of proving reasonableness.”).

<sup>108</sup> At the November 2014 meeting, it was suggested that the act include “by a preponderance of the evidence” to align the act with the Uniform Voidable Transactions Act. *See, e.g.*, UVTA § 5(c) (providing that “a creditor making a claim for relief under subsection (a) or (b) has the burden of proving the elements of the claim for relief by a preponderance of the evidence”).

<sup>109</sup> This provision applies even to a dispute involving solely one or more protected series or one or more protected series and the series organization. Query: Should the rule apply to those circumstances or should this act leave the burden of proof to the ordinary rules of civil procedure? (Having the same rule in both contexts might make offensive collateral estoppel easier to apply and understand.)

1           **SECTION 302. ASSOCIATED OWNER; ASSOCIATED DISTRIBUTABLE**

2           **INTEREST.**

3           (a) Only an owner of a series organization may become associated with a protected series  
4 of the organization.<sup>110</sup>

5           (b) An owner becomes associated with a protected series when the organic rules of the  
6 series organization or a procedure established under those rules:

7                   (1) identifies the owner as associated with the protected series; and

8                   (2) states any associated distributable interest owned or to be owned by the owner  
9 in connection with becoming or being associated with the protected series.

10          (c) A series organization may acquire an associated transferrable interest:

11                   (1) from an associated owner or distributee;<sup>111</sup> or

12                   (2) as provided in the organic rules of the series organization.<sup>112</sup>

---

<sup>110</sup> This restriction: (i) is ubiquitous in series provisions; and (ii) fits with the controlling power that the organic rules of the series organization have over each protected series. The Drafting Committee has flirted with the notion of allowing the series organization itself to be associated with one or more of its own protected series. For several reasons, this draft does not take that approach:

1. The approach substantially increases drafting complexity.
2. The approach makes an already novel, counterintuitive concept (the protected series) even more difficult to understand.
3. Virtually the same results are achieved by: (i) making the series organization the series manager for a protected series with no associated owners; (ii) allowing the operating agreement to allocate associated distributable interests to the series organization *ab initio*; and (iii) permitting the series organization to obtain associated distributable interests from associated owners and associated transferees.

<sup>111</sup> Assume that a series organization redeems an owner's distributable interest a protected series. If the redeemed interest disappears, the series organization will have paid for an increase in the distribution shares of the remaining associated owners. This provision takes the alternate approach – the person (i.e., the series organization) that pays for the redemption succeeds to the benefits of the redeemed interest.

<sup>112</sup> This provision enables a series organization to own an associated distributive interest upon the establishment of a protected series. If the Drafting Committee approves this approach, the definition of

1           **SECTION 303. FINANCIAL RIGHTS AND OBLIGATIONS CONCERNING**  
2 **PROTECTED SERIES; RIGHTS OF JUDGMENT CREDITOR OF ASSOCIATED**  
3 **OWNER OR ASSOCIATED DISTRIBUTEES.** <sup>113</sup>

4           (a) Subject to subsection (c), if the organic law and organic rules of a series organization  
5 contain provisions concerning financial rights and obligations of the series organization or its  
6 owners or transferees, this subsection establishes comparable provisions applicable to each  
7 protected series of the series organization and the associated owners and associated distributees  
8 of each protected series.<sup>114</sup>

9           (b) If the organic law and organic rules of a series organization contain provisions  
10 concerning a judgment creditor of an owner or transferee, this subsection establishes comparable  
11 provisions applicable to a judgment creditor of an associated owner or associated distributee.

12           (c) If a protected series has no associated distributable interests,<sup>115</sup> a distribution from the  
13 protected series is made to the series organization.<sup>116</sup>

---

“distributable interest” will require revision to accommodate an interest that begins life as owner by the series organization. (However, no revision will be required if the Committee decides to follow the Code rather than ULLCA, ULPA, and UPA in defining this term. See the first footnote to Section 102(3) (defining “distributable interest”).

<sup>113</sup> This section is another example of the Mini-Me approach. See Reporter’s Introductory Note, The Default Paradigm for a Protected Series.

<sup>114</sup> The reference to financial obligations includes clawback provisions, and a comment will so state.

<sup>115</sup> Note: a protected series can have associated distributable interests without having any associated owners; e.g., all associated owners have transferred their economic rights to persons not associated owners; the series organization acquired all the associated distributive interests upon formation or subsequently and either retains those interests or transfers them to a person or persons that are not associated owners.

<sup>116</sup> At the Fall 2013 meeting, the Drafting Committee tentatively chose this approach by a vote of 5 to 3. At the Winter 2014 meeting, the Committee reaffirmed its decision by a substantially larger margin.

1           **SECTION 304. TRANSFERABILITY LIMITED.**

2           (a) Subject to subsection (b), if the organic law and organic rules of a series organization  
3 limit the rights of owners or transferees to transfer their respective rights of ownership, this  
4 subsection establishes comparable limitations applicable to the rights of owners associated with a  
5 protected series and associated distributees to transfer their respective rights concerning the  
6 protected series.

7           (b) An associated distributee in that capacity:<sup>117</sup>

8                   (1) has only the right to receive distributions according to the associated  
9 distributive interest owned by the distributee;<sup>118</sup> and

10                   (2) does not have any right to:

11                           (A) participate in the management, activities, and affairs of the protected  
12 series; or

13                           (B) except as otherwise provided in subsection (c) and Section 401(d),  
14 have access to records or other information concerning the company's activities and affairs.<sup>119</sup>

15           (c) In a dissolution and winding up of a protected series, an associated distributee is  
16 entitled to an account of the series transactions only from the date of dissolution.

---

<sup>117</sup> Extrapolation under subsection (a) is subject to this subsection, but this subsection contains default rules which are subject to the series organization's organic rules. The subsection deviates from the act's general Mini-Me approach and should be deleted unless the Drafting Committee thinks the transfer restrictions so fundamentally important as to require special treatment.

<sup>118</sup> Contrast ULLCA (2013) § 502(b): "A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled."

<sup>119</sup> *A fortiori*, no rights viz a viz the series organization. Query: Will a comment suffice to make this point?

1           **SECTION 305. NO AGENCY POWER OF OWNER ASSOCIATED WITH**  
2 **PROTECTED SERIES.**<sup>120</sup>

3           (a) An owner is not an agent of a protected series solely by reason of being associated  
4 with the protected series.

5           (b) A person’s status as an owner associated with a protected series does not prevent or  
6 restrict law other than this [act] from imposing liability on the protected series because of the  
7 person’s conduct.

8           **SECTION 306. MANAGEMENT OF PROTECTED SERIES; RIGHTS AND**  
9 **DUTIES OF SERIES MANAGER.**<sup>121</sup>

10          (a) Regarding the management of a protected series, each decision concerning the  
11 protected series or its activities or affairs must be made under the procedures that would apply  
12 and by the person who would make the decision if the decision concerned the series organization  
13 or its activities or affairs.<sup>122</sup>

14          (b) A series manager of one protected series of a series organization does not in that  
15 capacity owe any duties to another protected series of the organization or the owners associated  
16 with another protected series.<sup>123</sup>

17          (c) Whenever this [act] or the organic rules of a series organization require or authorize

---

<sup>120</sup> Derived essentially verbatim from ULLCA (2013), Section 301.

<sup>121</sup> A comment will note that the rules stated in this section apply during winding up as well as during operations.

<sup>122</sup> This subsection can illustrate the advantages of having a “includes” definition for “activity and affairs.” Note that the list here is much shorter than in other sections, *see, e.g.*, Section 108(c) and (d), but no difference in meaning is intended.

<sup>123</sup> Relocated from former Section 107 (arm’s length relationship). A comment will indicate that the reference to no duties to owners associated with another protected series implies nothing about duties, if any, to owners associated with the protected series for which the series manager is a manager.

1 the organization<sup>124</sup> to make a decision that has the potential to benefit one protected series to the  
2 prejudice of another protected series or the organization, or to benefit the organization to the  
3 detriment of a protected series of the organization, the organization is not liable for damages  
4 under this [act] or the organization’s organic law,<sup>125</sup> whether the claim is in law or equity,<sup>126</sup> if  
5 the organization makes the decision with:

6 (1) the honest belief that the decision serves the best interests of the series  
7 organization or one or more protected series of the organization; and

8 (2) the reasonable belief that the decision breaches no owner’s rights under the  
9 organization’s organic rules.<sup>127</sup>

10 (d) If the organic law and organic rules of a series organization contain provisions  
11 concerning the rights of an owner or governor to participate in management, have access to  
12 information, be reimbursed for expenses, be indemnified, or be provided advancements on  
13 indemnification, this subsection establishes comparable provisions applicable to an owner  
14 associated with a protected series or series manager.<sup>128</sup>

---

<sup>124</sup> Query – Should the act address the *USACafes* issue and extend this subsection’s protections to the managers and other agents of the series organization? *See In re USACafes, L.P. Litig.*, 600 A.2d 43, 48 (Del. Ch. 1991) (holding that “directors of a corporate general partner owe fiduciary duties to the [limited] partnership and its limited partners”).x

<sup>125</sup> Note that this protection does not apply to claims for breach of the organic rules. Those rules could certainly so provide.

<sup>126</sup> The reference to equity is to block so-called “restitutionary damages.” *See, e.g., Benjamin v. Erk*, 138 Md. App. 459, 471, 771 A.2d 1106, 1113 (2001) (stating that “restitutionary damages may be awarded in connection with an equitable claim for rescission”).

<sup>127</sup> This subsection is based on an example in the comments to ULLCA (2006) (Last Amended 2013). *See* ULLCA (2013) § 105(c)(6), cmt. (third example). A series organization’s organic rules may raise the standards stated in Paragraphs (1) and (2), and may override this subsection entirely, but may not otherwise vary the subsection. *See* Section 108(e)(2)..

<sup>128</sup> Query: Should this and comparable provisions be expanded to refer to former owners and persons

1 (e) If the organic law and organic rules of a series organization contain provisions  
2 concerning the duties and obligations of an owner or governor in the series organization, this  
3 subsection establishes comparable provisions applicable to an owner associated with a protected  
4 series and a series manager.

5 **SECTION 307. LIMITED LIABILITY.**<sup>129</sup>

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

9 (b) A series organization is not liable, directly or indirectly, by way of contribution or  
10 otherwise, for a debt, obligation, or other liability of a protected series of the organization solely  
11 by reason of having formed or being the series manager of the protected series.

12 (c) A protected series is not personally liable, directly or indirectly, by way of  
13 contribution or otherwise, for a debt, obligation, or other liability of its series organization or  
14 another protected series of the organization solely by reason of being a protected series of the  
15 series organization or having as a series manager the organization or another protected series.

16 (d) A person is not liable, directly or indirectly, by way of contribution or otherwise, for a  
17 debt, obligation, or other liability of a protected series solely by reason of being or acting as:

18 (1) an owner, whether or not associated with the protected series;

19 (2) a distributee, whether or not the distributee's<sup>130</sup> distributable interest is

20 associated with the protected series; or

---

formerly associated with a protected series?

<sup>129</sup> Subsections (a) – (c) establish the “internal shields.” Subsection (d) provides the traditional liability shield. Subsection (e) connects the internal shields with the concept of associated property.

<sup>130</sup> Query: Is “distributee’s” necessary or does the context adequately make the point?

1 (3) a series manager or other agent of the protected series.

2 (e) Subject to subsection (f), a judgment against a series organization or protected series  
3 is subject to enforcement against the organization or series in the same manner as a judgment  
4 against a person not an organization or series.<sup>131</sup>

5 (f) Property of a series organization<sup>132</sup> is not subject to the enforcement of a judgment  
6 against a protected series of the series organization solely by reason of being property of the  
7 series organization. Property associated with a protected series is not subject to the enforcement  
8 of a judgment against the series organization or another protected series of the series  
9 organization solely by reason of being associated with the protected series.<sup>133</sup> This subsection  
10 applies regardless of whether enforcement is sought by levy, attachment, execution, judicial sale,  
11 or other means.<sup>134 135</sup>

12 (g) This section applies regardless of:

13 (1) the dissolution and winding up of a protected series; and

14 (2) the dissolution and winding up of the series organization.<sup>136</sup>

---

<sup>131</sup> Query: Should subsections (e) and (f) be combined?

<sup>132</sup> “Property *of* a series organization” is vague and in particular ducks the question of whether, once the series organization has records for property associated with a protected series, the series organization must also maintain records for the “property *of* the series organization.” This question reflects a policy issue: whether “unscheduled” property should be available only to the creditors of the series organization or both to those creditors and the creditors of any protected series.

<sup>133</sup> Query: Is it clear that “the protected series” refers to the first-mentioned protective series and not to “another protective series”?

<sup>134</sup> Query: Should a legislative note advise states to include a comparable provision in the shield provisions of each relevant organic law so as to avoid a negative inference?

<sup>135</sup> A comment will explain that this subsection applies asset by asset.

<sup>136</sup> Query: Should this subsection also refer to termination?

1 (h) Subject to Section 301(a) and (b), the failure of a series organization or protected  
2 series of the series organization to observe formalities relating to the exercise of their respective  
3 powers or management of their respective activities, affairs, or property is not a ground for  
4 disregarding a provision of this section.<sup>137</sup>

5 **SECTION 308. ACTIONS BY ASSOCIATED OWNERS**

6 (a) Subject to subsection (b), if the organic law or organic rules of a series organization  
7 contain provisions concerning the rights of owners to bring actions concerning the organization  
8 or its activities, affairs, property, owners, managers, or transferees, this section establishes  
9 comparable provisions applicable to the rights of an owner associated with a series to bring an  
10 action concerning the protected series or its activities and affairs, associated owners, series  
11 managers, associated property, or associated distributees.

12 (b) An owner not associated with a protective series has no standing to bring a derivative  
13 claim concerning the protected series.<sup>138</sup>

14 **[ARTICLE 4]**

15 **CEASING TO BE AN ASSOCIATED OWNER; WINDING UP**

16 **AND TERMINATION OF PROTECTED SERIES**

17 **SECTION 401. CEASING TO BE ASSOCIATED; CONSEQUENCES.**

18 (a) A person that is an owner associated with a protected series ceases to be associated  
19 when the person ceases to be an owner.<sup>139</sup>

---

<sup>137</sup> Query: Should subsection (h) be moved to precede what is now subsection (g)?

<sup>138</sup> This statement may be unnecessary. However, mismanagement of one protected series can prejudice another protected series.

<sup>139</sup> This provision is not waivable.

1 (b) If the organic law and organic rules of a series organization contain provisions  
2 concerning a person ceasing to be an owner of the organization, this subsection establishes  
3 comparable provisions applicable to an owner ceasing to be associated with a protected series.

4 <sup>140</sup>(c) If a person ceases<sup>141</sup> to be associated with a protected series, the person’s rights and  
5 duties concerning the protected series terminate as to future matters, except:

6 (1) any associated distributable interest owned by the person in the person’s  
7 capacity as an associated owner immediately before the person ceased to be associated is owned  
8 by the person solely as an associated distributee; and

9 (2) as provided in subsection (e).

10 (d) A person’s ceasing to be associated with a protected series does not of itself:

11 (1) discharge the person from any debt, obligation, or other liability to the  
12 protected series or to other associated owners of the protected series which the person incurred  
13 while associated with the protected series; or

14 (3) change the person’s status as an owner of the series organization or as an  
15 owner associated with another protected series.<sup>142</sup>

16 (e) If the organic law and organic rules of a series organization provide to a person that  
17 has ceased to be an owner of the series organization rights to information concerning the series  
18 organization,<sup>143</sup> this subsection establishes comparable provision concerning rights to

---

<sup>140</sup> This section has been reorganized to conform to comparable provisions in ULLCA, ULPA, and UPA, as harmonized. *See, e.g.*, ULLCA (2013) § 603 (Effect of Dissociation).

<sup>141</sup> “Person” rather than “owner” because it may be the person’s dissociation from the series organization that causes the person to cease to be associated with the protected series.

<sup>142</sup> Query: Necessary to add “of the series organization”?

<sup>143</sup> Note the omission of the usual list of owners, property, activities, affairs, etc. The omission is to further illustrate the benefits of defining “activities and affairs.”

1 information for a person that has ceased to be associated with a protected series.

2 **SECTION 402. DISSOLUTION AND WINDING UP OF PROTECTED SERIES.**

3 (a) When a series organization has dissolved, each protected series of the series  
4 organization:<sup>144</sup>

5 (1) is dissolved; and

6 (2) shall:

7 (A) immediately begin winding up its activities and affairs; and

8 (B) complete winding up not later than when the series organization  
9 completes its winding up.

10 (b) The series manager of each protected series manages the winding up the activities and  
11 affairs of that series.

12 (c) When a protected series has completed winding up, the series organization shall  
13 deliver to the [Secretary of State] for filing a statement of designation cancellation that cancels  
14 the statement of designation of the protected series. When the statement of designation  
15 cancellation takes effect, the existence of the protected series terminates.<sup>145</sup>

16 (d) If the organic law and organic rules of a series organization contain provisions  
17 concerning the dissolution and winding up of a series organization,<sup>146</sup> this subsection makes  
18 comparable provisions applicable to a protected series of the organization.

---

<sup>144</sup> The organic rules of a series organization may provide additional grounds for winding up a protected series.

<sup>145</sup> In contrast, the uniform business entity acts permit but do not require the filing of a statement of termination. Those acts take the permissive approach in part because the law cannot put any “teeth” behind a requirement. In this context, however, teeth exist; the series organization has not completed its winding up until a statement of designation cancellation has taken effect for each protected series of the organization.

<sup>146</sup> Another illustration of the “define activities and affairs” issue.

1 (e) A series organization has not completed winding up until, regarding each of its  
2 protected series:  
3 (1) the series has completed winding up;  
4 (2) the series organization has complied with subsection (c); and  
5 (3) the statement of designation cancellation delivered to the [Secretary of State]  
6 for filing has become effective.

7 **[ARTICLE] 5**

8 **FOREIGN PROTECTED SERIES**

9 **SECTION 501. GOVERNING LAW.**<sup>147</sup> The law of the jurisdiction of formation of a  
10 foreign series organization<sup>148</sup> governs:

- 11 (1) the internal affairs of a foreign protected series of the foreign series organization;<sup>149</sup>  
12 (2) the relationship between a foreign protected series and:  
13 (A) the foreign series organization;  
14 (B) another protected series of the foreign series organization;  
15 (C) an owner of the foreign series organization, whether or not the owner is  
16 associated with the protected series;  
17 (D) a person owning a [TBA – the analog to a transferable interest in a (domestic)  
18 series organization]<sup>150</sup> in the foreign series organization;

---

<sup>147</sup> Note that under Section 501as written, none of the transparency and specificity protections in this act apply to foreign protected series doing business in the domestic jurisdiction.

<sup>148</sup> This provision is limited to a foreign series organization. The comparable provision for a foreign organization appears in the organization’s organic law.

<sup>149</sup> Characterization of a foreign protected series as a person *vel non* is omitted. For example, an enacting state might want its own U.C.C, Article 9 to determine the person/entity/“thing” characterization issue.

<sup>150</sup> In the alternative, the act could define transferable interests, etc. to apply to foreign as well as domestic

1 (E) a person owning a [TBA – the analog to a distributable interest in a (domestic)  
2 protected series ] in the foreign protected series , whether or not the [TBA] interest is associated  
3 with the foreign protected series; and

4 (F) a governor of the foreign protected series;

5 (3) the liability of the foreign series organization for a debt, obligation, or other liability  
6 of a foreign protected series of the foreign series organization;

7 (4) the liability of a foreign protected series for a debt, obligation, or other liability of its  
8 foreign series organization or any other protected series of the foreign series organization; and

9 (5) the liability for a debt, obligation, or other liability of a foreign protected series of:

10 (A) an owner of the foreign series organization in that capacity, whether or not  
11 associated with the foreign protected series;

12 (B) an owner associated with the foreign protected series in that capacity;

13 (C) a person owning a [TBA] in the foreign series organization in that capacity;

14 (D) a person owning a [TBA] in that capacity, whether or not associated with the  
15 foreign protected series;

16 (E) a person owning a [TBA] associated with the protected series in that capacity;

17 and

18 (F) a governor of the protected series in that capacity.

19 **SECTION 502. TRANSACTING BUSINESS IN THIS STATE; FOREIGN**  
20 **REGISTRATION; PERSONAL JURISDICTION.**

21 (a) The law of this state concerning the registration of a foreign organization doing  
22 business in this state applies to a foreign protected series of a foreign series organization as if the

---

situations.

1 foreign protected series were itself a separate foreign organization of the same type as the foreign  
2 series organization.

3 (b) For purposes of determining whether a foreign series organization or foreign  
4 protected series has transacted business in this state and whether this state has personal  
5 jurisdiction over a foreign series organization or foreign protected series:

6 (1) the activities of a foreign series organization are not attributable to a foreign  
7 protected series of the foreign organization solely by reason of the foreign organization having  
8 formed the foreign protected series;<sup>151</sup> and

9 (2) the activities of a foreign protected series are not attributable to its foreign  
10 series organization or to another foreign protected series of that organization solely by reason of  
11 the foreign series organization having formed the foreign protected series or the other foreign  
12 protected series.<sup>152</sup>

13 **[ARTICLE] 6**

14 **MISCELLANEOUS PROVISIONS**

15 **TBA**

---

<sup>151</sup> This non-attribution rule does not apply, however, to the activities of a series organization as series manager of a protected series. Contrast Section 107(b) (internal liability shield of series organization not negated “solely by reason of [the series organization] having established or managed [a] protected series”).

<sup>152</sup> A comment will state that each foreign series organization and each of its foreign protected series can and, if applicable, must qualify separately..