

D R A F T

FOR APPROVAL

MODEL ENTITY TRANSACTIONS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

AMERICAN BAR ASSOCIATION

MEETING IN ITS ONE-HUNDRED-AND-THIRTEENTH YEAR
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MODEL ENTITY TRANSACTIONS ACT

WITH PREFATORY NOTE

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NATIONAL CONFERENCE OF COMMISSIONERS
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**DRAFTING COMMITTEE OF NATIONAL CONFERENCE OF
COMMISSIONERS ON UNIFORM STATE LAWS**

HARRY J. HAYNSWORTH, IV, William Mitchell College of Law, 875 Summit Ave., St. Paul, MN 55105, *Chair*

K. KING BURNETT, P.O. Box 910, Salisbury, MD 21803-0910

RONALD W. DEL SESTO, Del Sesto-Hall's Building, 49 Weybosset St., Providence, RI 02903

STANLEY M. FISHER, 30100 Chagrin Blvd., Suite 301, Cleveland, OH 44122, *Enactment Plan Coordinator*

STEVEN G. FROST, Suite 1500, 111 W. Monroe St., Chicago, IL 60603-4006

HENRY M. KITTLESON, P.O. Box 32092, 92 Lake Wire Dr., Lakeland, FL 33802-2092

LEON M. McCORKLE, JR., P.O. Box 256, 4288 W. Dublin-Granville Rd., Dublin, OH 43017-0387

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EX OFFICIO

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DRAFTING COMMITTEE OF AMERICAN BAR ASSOCIATION

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Vermillion, SD 57069-2390

ROBERT R. KEATINGE, Suite 3200, 555 17th Street, Denver, CO 80202-3979

CAROL G. KROCH, RR 1 E College Rd E, P.O. Box 2316, Princeton, NJ 08543

BARRY NEKRITZ, 8000 Sears Tower, 233 S. Wacker Dr., Chicago, IL 60606

SECTION ON TAX LAW

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OBSERVERS

CARTER G. BISHOP, American University Law School, 4801 Massachusetts Ave. NW,
Washington, DC 20016-8181

DANIEL S. KLEINBERGER, William Mitchell College of Law, 875 Summit Ave., St. Paul,
MN 55105

MELISSA WANGEMANN, Kansas Secretary of State, 120 SW 10th Ave., Topeka, KS
66612-1594

Copies of this Act may be obtained from:

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

211 E. Ontario Street, Suite 1300,

Chicago, Illinois 60611

312/915-0195

www.nccusl.org

**AMERICAN BAR ASSOCIATION
SECTION ON BUSINESS LAW**

321 N. Clark St.

Chicago, Illinois 60610

312/988-6244

www.abanet.org

MODEL ENTITY TRANSACTIONS ACT

TABLE OF CONTENTS

Prefatory Note	1
----------------------	---

[ARTICLE] 1 GENERAL PROVISIONS

SECTION 101. SHORT TITLE	5
SECTION 102. DEFINITIONS	5
SECTION 103. RELATIONSHIP OF [ACT] TO OTHER LAWS	10
SECTION 104. REQUIRED NOTICE OR APPROVAL	10
SECTION 105. STATUS OF FILINGS	11
SECTION 106. NONEXCLUSIVITY	11
SECTION 107. REFERENCE TO EXTERNAL FACTS	11
[SECTION 108. APPRAISAL RIGHTS	12
[SECTION 109. EXCLUDED ENTITIES AND TRANSACTIONS	12

[ARTICLE] 2 MERGER

SECTION 201. MERGER AUTHORIZED	13
SECTION 202. PLAN OF MERGER	14
SECTION 203. APPROVAL OF MERGER	14
SECTION 204. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER	15
SECTION 205. STATEMENT OF MERGER; EFFECTIVE DATE	17
SECTION 206. EFFECT OF MERGER	18

[ARTICLE] 3 INTEREST EXCHANGE

SECTION 301. INTEREST EXCHANGE AUTHORIZED	21
SECTION 302. PLAN OF INTEREST EXCHANGE	22
SECTION 303. APPROVAL OF INTEREST EXCHANGE	22
SECTION 304. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST EXCHANGE	24
SECTION 305. STATEMENT OF INTEREST EXCHANGE; EFFECTIVE DATE	25
SECTION 306. EFFECT OF INTEREST EXCHANGE	26

[ARTICLE] 4 CONVERSION

SECTION 401. CONVERSION AUTHORIZED	29
SECTION 402. PLAN OF CONVERSION	29
SECTION 403. APPROVAL OF CONVERSION	30
SECTION 404. AMENDMENT OR ABANDONMENT OF PLAN OF CONVERSION	31
SECTION 405. STATEMENT OF CONVERSION; EFFECTIVE DATE	33
SECTION 406. EFFECT OF CONVERSION	34

[ARTICLE] 5
DOMESTICATION

SECTION 501. DOMESTICATION AUTHORIZED	37
SECTION 502. PLAN OF DOMESTICATION	37
SECTION 503. APPROVAL OF DOMESTICATION	38
SECTION 504. AMENDMENT OR ABANDONMENT OF PLAN OF DOMESTICATION	39
SECTION 505. STATEMENT OF DOMESTICATION; EFFECTIVE DATE	41
SECTION 506. EFFECT OF DOMESTICATION	42

[ARTICLE] 6
DIVISIONS [RESERVED]

[ARTICLE] 7
MISCELLANEOUS PROVISIONS

SECTION 701. UNIFORMITY OF APPLICATION	46
SECTION 702. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT	46
SECTION 703. CONFORMING AMENDMENTS AND REPEALS	46
SECTION 704. EFFECTIVE DATE	46
SECTION 705. SAVINGS CLAUSE	46

APPENDIX 1
FILINGS

Introductory Comment to Appendix 1	47
SECTION A1-1. REQUIREMENTS FOR DOCUMENTS; EXTRINSIC FACTS	47
SECTION A1-2. FORMS	50
SECTION A1-3. FILING, SERVICE, AND COPYING FEES	50
SECTION A1-4. EFFECTIVE TIME AND DATE OF DOCUMENT	51
SECTION A1-5. CORRECTING FILED DOCUMENT	51
SECTION A1-6. FILING DUTY OF [SECRETARY OF STATE]	52
SECTION A1-7. APPEAL FROM REFUSAL TO FILE A DOCUMENT	53
SECTION A1-8. EVIDENTIARY EFFECT OF COPY OF FILED DOCUMENT	53
SECTION A1-9. PENALTY FOR SIGNING FALSE DOCUMENT	53
SECTION A1-10. POWERS OF [SECRETARY OF STATE]	53

APPENDIX 2
LEGISLATIVE NOTE ON INTEGRATION OF THIS ACT WITH EXISTING ENTITY
LAWS and CONFORMING AMENDMENTS AND REPEALS

SECTION A2-1. MODEL BUSINESS CORPORATION ACT	58
SECTION A2-2. MODEL NONPROFIT CORPORATION ACT	66
SECTION A2-3. UNIFORM PARTNERSHIP ACT	67
SECTION A2-4. UNIFORM LIMITED PARTNERSHIP ACT	70
SECTION A2-5. UNIFORM LIMITED LIABILITY COMPANY ACT	79
SECTION A2-6. PROTOTYPE LIMITED LIABILITY COMPANY ACT	83

MODEL ENTITY TRANSACTIONS ACT

Prefatory Note

1. Development of the Act

The Model Entity Transactions Act (META) is the result of a unique collaborative effort of the National Conference of Commissioners on Uniform State Laws (Conference) and the American Bar Association (ABA) to address an issue that cuts across their traditional areas of expertise.

For over 90 years, the Conference has prepared and periodically revised uniform laws for the organization of unincorporated entities, such as general partnerships, limited partnerships and limited liability companies. Similarly, for over 50 years committees of the ABA have prepared and periodically revised model laws for the incorporation of business corporations and nonprofit corporations.

During the past decade, three new types of business entities – limited liability companies, limited liability partnerships and limited liability limited partnerships – have come into wide use; other forms of business entities once thought to be almost obsolete – most notably business trusts and cooperatives – have received new prominence; and a form of entity previously organized only under the common law – unincorporated nonprofit association – has been recognized by statute. Also during the past decade, restructuring transactions by and among all of the various types of entities began to occur with increased frequency. Because of a lack of clear statutory authority in most states, these restructuring transactions have often been completed in two or three indirect steps rather than directly in a single transaction.

The Conference included provisions permitting mergers among different forms of entities and authorizing the conversion of one form of entity to another in the Uniform Limited Liability Company Act (1996), Uniform Partnership Act (1997) and Uniform Limited Partnership Act (2001). The ABA added similar provisions to the Model Business Corporation Act in 2003. In each case, the new provisions only apply if an entity of the type formed under the statute is a party to the transaction. Both the Conference and the ABA recognized, however, that a better approach would be for states to enact a single statute covering all types of restructuring transactions by and among all types of entity forms. Thus, the Conference and the ABA independently began projects to prepare a comprehensive statute to meet this need.

After beginning their independent drafting projects, both the Conference and the ABA realized that combining their respective areas of expertise would produce the best product for enactment by the states. They have accordingly combined their efforts so that the Model Entity Transactions Act (2004) draws on the expertise of the Conference in the law of unincorporated entities and of the ABA in the law of corporations.

2. Scope and Approach of the Act

(a) Background

Prior to the development of this Act, state business organization statutes (both incorporated and unincorporated) varied in their approach to same-species and cross-species mergers, consolidations, divisions, conversions, share/interest exchanges, and domestications by or among domestic and foreign for-profit and nonprofit entities. The dissimilarities in state statutes generally entailed either silence or non-uniformity regarding: (1) which transactions were authorized; (2) whether entities of more than one type could be parties to the same transaction; (3) inclusion of for-profit and nonprofit entities; (4) inclusion of incorporated and unincorporated organizations; and (5) single or dual status for converting, domesticating or transferring entities. For example, The Uniform Partnership Act (1997) (“RUPA”) authorized the conversion or merger of partnerships or limited partnerships. RUPA did not, however, anticipate the conversion or merger of forms of business other than partnerships or limited partnerships nor did it address divisions, interest exchanges, or domestications. The Uniform Limited Partnership Act (1976 with 1985 amendments) (“RULPA”) is silent regarding mergers and any form of cross-species transaction. A RULPA limited partnership could, however, effect a conversion or merger by “linking back” to the limited RUPA merger or conversion provisions. The Uniform Limited Partnership Act (2001) (“Re-RULPA”) anticipated for-profit and nonprofit cross-species conversions and mergers but not cross or same-species interest exchanges, divisions or domestications. The Uniform Limited Liability Company Act (1996) (“ULLCA”) authorized cross-species mergers and conversions but was silent regarding for-profit and nonprofit cross or same-species interest exchanges, divisions and domestications.

New Chapter 9 of the Revised Model Business Corporation Act (“MBCA”) authorized a domestic business corporation to become a different form of entity or, conversely, permitted a non-domestic business corporation to become a domestic business corporation. The transactions addressed in Chapter 9 of the MBCA include: (1) domestication (a procedure in which a corporation may change its state of incorporation, either domestic to foreign, or foreign to domestic); (2) nonprofit conversion (a procedure that permits a domestic business corporation to become either a domestic nonprofit corporation or a foreign nonprofit corporation); (3) foreign nonprofit domestication and conversion (a procedure that permits a foreign nonprofit corporation to become a domestic business corporation); and (4) entity conversion (procedures that authorize a domestic business corporation to become a domestic or foreign other entity or that permit a foreign other entity to become a domestic business corporation). Chapter 9 of the MBCA anticipated only those transactions that involve a domestic business corporation either at the outset or at the termination of the transaction.

(b) Scope of the Act

Article 1 of this Act sets forth general provisions applicable to the other articles. It defines terms that are used throughout the Act and specifies the general procedures for the filings required under other articles.

Article 2 governs mergers. Article 2 is derived in large part from existing corporation and unincorporated entity laws. Certain provisions dealing with necessary approvals,

information required in the plan of merger and some filing requirements represent an amalgamation of existing law.

Article 3 governs interest exchanges. The interest exchange transaction is derived from the share exchange in corporate law and reflected in Chapter 11 of the *MBCA*. Interest exchanges are not authorized as a separate form of transaction in any uniform unincorporated entity act.

Article 4 governs conversions. A conversion is a statutory procedure authorizing an entity to change its form of organization to another type of entity.

Article 5 governs domestications. It authorizes a foreign entity to become a domestic entity of the same type and authorizes a domestic entity to become a foreign entity of the same type so long as the laws of the foreign jurisdiction authorize the domestication.

Article 6 has been reserved for the subsequent development of provisions permitting the division of an entity. As currently conceived, a division would involve the reverse of a merger and would permit the dividing entity to subdivide itself into two or more separate and distinct entities.

Article 7 sets out certain miscellaneous provisions, including: (1) severability; (2) effective date; (3) repeals of affected provisions in RUPA, ULLCA, Re-RULPA and MBCA; (4) applicability; (5) savings clause; and (6) e-sign language.

Appendix 1 is an optional set of provisions relating to the processing of filings under the Act by the Secretary of State.

Appendix 2 is a series of amendments and repeals to the various model, uniform, and prototype entity laws that show an adopting state how to integrate this Act and those entity laws into one coherent statutory system.

(c) Approach of the Act

Mergers have been an accepted part of corporation law for a long time and are found in all state corporation laws. On the other hand, mergers are a more recent development in unincorporated entity laws. Following the lead of the *MBCA*, some states have begun to authorize cross-species mergers in their corporation laws. States that have adopted RUPA or ULLCA also have provisions on cross-species mergers and conversions in those laws. This Act is drafted on the assumption that states will not be comfortable repealing mergers completely out of their corporation laws or those unincorporated entity laws where merger provisions have begun to appear. To create a consistent pattern across their various entity laws, it is recommended that states limit the existing provisions on mergers in their entity laws to same-species mergers and add provisions on same-species mergers to those entity laws where they are currently missing.

Appendix 2 of this Act sets forth conforming amendments to the various uniform and model entity laws that will create a consistent and coherent set of entity laws that are fully integrated with this Act.

1 **MODEL ENTITY TRANSACTIONS ACT**

2
3 **[ARTICLE] 1**

4
5 **GENERAL PROVISIONS**

6
7 **SECTION 101. SHORT TITLE.** This [act] may be cited as the [State] Entity
8 Transactions Act.

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

10 (1) “Acquired entity” means the entity, all of one or more classes or series of
11 interests in which are acquired in an interest exchange.

12 (2) “Acquiring entity” means the entity that acquires all of one or more classes or
13 series of interests of the exchanging entity in an interest exchange.

14 (3) “Approve” means, in the case of an entity, for its governors and interest
15 holders to take whatever steps are necessary under its organic rules, organic law, and other law
16 to:

17 (A) propose a transaction subject to this [act];

18 (B) adopt and approve the terms and conditions of the transaction; and

19 (C) conduct any required proceedings or otherwise obtain any required
20 votes or consents of the governors or interest holders.

21 (4) “Conversion” means a transaction of the kind authorized by [Article] 4.

22 (5) “Converted entity” means the converting entity as it continues in existence
23 after a conversion.

24 (6) “Converting entity” means the domestic entity that approves a plan of
25 conversion pursuant to Section 403 or the foreign entity that approves a conversion pursuant to
26 the law of its jurisdiction of organization.

1 (7) “Domestic entity” means an entity whose internal affairs are governed by the
2 law of this state.

3 (8) “Domesticated entity” means the domesticating entity as it continues in
4 existence after a domestication.

5 (9) “Domesticating entity” means the domestic entity that approves a plan of
6 domestication pursuant to Section 503 or the foreign entity that approves a domestication
7 pursuant to the law of its jurisdiction of organization.

8 (10) “Domestication” means a transaction of the kind authorized by [Article] 5.

9 (11) “Entity” means a person other than an individual that either has a separate
10 legal existence or has the power to acquire an interest in real property in its own name. The term
11 does not include a testamentary, inter vivos, or charitable trust, but does include a business trust
12 or similar trust. The term also does not include:

13 (A) an association or relationship that is not a partnership by reason of
14 [Section 202(c) of the Uniform Partnership Act (1997)] or a similar provision of the law of any
15 other jurisdiction;

16 (B) a decedent’s estate; or

17 (C) a government, a governmental subdivision, agency, or instrumentality,
18 or a quasi-governmental instrumentality.

19 (12) “Filing entity” means an entity that is created by the filing of a public
20 organic document.

21 (13) “Foreign entity” means an entity other than a domestic entity.

22 (14) “Governance interest” means the right under the organic law or organic
23 rules of an entity, other than as a governor, agent, assignee, or proxy, to:

1 (A) receive or demand access to information concerning, or the books and
2 records of, the entity;

3 (B) vote for the election of the governors of the entity; or

4 (C) receive notice of or vote on any or all issues involving the internal
5 affairs of the entity.

6 (15) “Governor” means a person by or under whose authority the powers of an
7 entity are exercised and under whose direction the business and affairs of the entity are managed
8 pursuant to the organic law and organic rules of the entity.

9 (16) “Interest” means:

10 (A) a governance interest in an unincorporated entity;

11 (B) a transferable interest in an unincorporated entity; or

12 (C) a share or membership in a corporation.

13 (17) “Interest exchange” means a transaction of the kind authorized by [Article]

14 3.

15 (18) “Interest holder” means a person that is the direct holder of an interest.

16 (19) “Interest holder liability” means personal liability for a liability of an entity
17 that is imposed on a person:

18 (A) solely by reason of the status of the person as an interest holder; or

19 (B) by the organic rules of the entity pursuant to a provision of the organic
20 law authorizing the organic rules to make one or more specified interest holders or categories of
21 interest holders liable in their capacity as interest holders for all or specified liabilities of the
22 entity.

1 (20) “Jurisdiction of organization” of an entity means the jurisdiction whose law
2 includes the organic law of the entity.

3 (21) “Liability” means a debt, obligation, or any other kind of liability arising in
4 any manner and whether or not secured.

5 (22) “Merger” means a transaction of the kind authorized by [Article] 2.

6 (23) “Merging entity” means an entity that is a party to a merger and exists
7 immediately before the merger becomes effective.

8 (24) “Organic law” means the statute principally governing the internal affairs of
9 an entity.

10 (25) “Organic rules” means the public organic document and private organic
11 rules of an entity.

12 (26) “Person” means an individual, corporation, business or similar trust, estate,
13 trust, partnership, limited liability company, association, joint venture, public corporation,
14 government, or governmental subdivision, agency, or instrumentality, or any other legal or
15 commercial entity.

16 (27) “Plan” means a plan of merger, interest exchange, conversion, or
17 domestication.

18 (28) “Private organic rules” mean the rules, whether or not in a record, that
19 govern the internal affairs of an entity, are binding on all of its interest holders, and are not part
20 of its public organic document, if any.

21 (29) “Protected agreement” means:

1 (A) a debt security, note, or similar evidence of indebtedness for money
2 borrowed, whether secured or unsecured, issued or signed by an entity that is unpaid, in whole or
3 in part, on the effective date of this [act];

4 (B) a contract or agreement that is binding on an entity on the effective
5 date of this [act];

6 (C) the organic rules of an entity in effect on the effective date of this
7 [act]; or

8 (D) a contract or agreement that is binding on any of the governors or
9 interest holders of an entity on the effective date of this [act].

10 (30) “Public organic document” means the public record the filing of which
11 creates an entity, and any amendment to or restatement of that record.

12 (31) “Qualified foreign entity” means a foreign entity that is authorized to
13 transact business in this state pursuant to a filing with the [Secretary of State].

14 (32) “Record” means information that is inscribed on a tangible medium or that
15 is stored in an electronic or other medium and is retrievable in perceivable form.

16 (33) “Sign” means:

17 (A) to execute or adopt a tangible symbol with the present intent to
18 authenticate a record; or

19 (B) to attach or logically associate an electronic symbol, sound, or
20 process to or with a record with the present intent to authenticate the record.

21 (34) “Surviving entity” means the entity that continues in existence after or is
22 created by a merger.

1 (35) “Transferable interest” means the right under an entity’s organic law to
2 receive distributions from the entity.

3 (36) “Type,” with regard to an entity, means a generic form of entity:

4 (A) recognized at common law; or

5 (B) organized under an organic law, whether or not some entities
6 organized under that organic law may also be subject to certain provisions of that law that create
7 different categories of the form of entity organized under that law.

8 **SECTION 103. RELATIONSHIP OF [ACT] TO OTHER LAWS.**

9 (a) Unless displaced by a specific provision in this [act], the principles of law and
10 equity supplement this [act].

11 (b) This [act] does not authorize an act prohibited by, and does not affect the
12 application or requirements of, law other than this [act].

13 (c) A transaction effected under this [act] may not create or impair any right or
14 obligation on the part of a person under a provision of the law of this state other than this [act]
15 relating to a change in control, takeover, business combination, control-share acquisition, or
16 similar transaction involving a domestic merging, acquired, converting, or domesticating
17 corporation unless:

18 (1) if the corporation does not survive the transaction, the transaction
19 satisfies any requirements of the provision; or

20 (2) if the corporation survives the transaction, the approval of the plan
21 would also be sufficient to create or impair the right or obligation directly under the provision.

22 **SECTION 104. REQUIRED NOTICE OR APPROVAL.**

1 (a) If a domestic or foreign entity may not sell some or all of its assets, be a party
2 to a merger, or change its purposes or form of organization without notice to or the approval of
3 [the attorney general], [the department of banking], [the department of insurance], [the public
4 utility commission], [name of court], or [____], the entity may not be a party to a transaction
5 under this [act] unless the notice has been given in a record or the approval in a record has been
6 obtained.

7 (b) Property held for a charitable purpose under the law of this state by a domestic
8 or foreign entity immediately before a transaction under this [act] becomes effective may not, as
9 a result of the transaction, be diverted from the objects for which it was donated, granted, or
10 devised, unless the entity obtains an order of [name of court] [the attorney general] to the extent
11 required by or pursuant to [cite state statutory cy pres or other nondiversion law] specifying the
12 disposition of the property.

13 **SECTION 105. STATUS OF FILINGS.** A filing under this [act] by a domestic entity
14 becomes part of the public organic document of the entity if the organic law of the entity
15 provides that similar filings under that law become part of the public organic document of the
16 entity.

17 **SECTION 106. NONEXCLUSIVITY.** The fact that a transaction under this [act]
18 produces a certain result does not preclude the same result from being accomplished in any other
19 manner permitted by law other than this [act].

20 **SECTION 107. REFERENCE TO EXTERNAL FACTS.** A plan may refer to facts
21 ascertainable outside of the plan if the manner in which the facts will operate upon the plan is
22 specified in the plan. The facts may include, without limitation, the occurrence of an event or a

determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

[SECTION 108. APPRAISAL RIGHTS. Except as otherwise provided in the entity's organic law or organic rules, an interest holder of a domestic merging, acquired, converting, or domesticating entity shall be entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights in the event the entity were a party to a merger under its organic law.]

[SECTION 109. EXCLUDED ENTITIES AND TRANSACTIONS.

(a) The following entities may not participate in a transaction under this [act]:

(1)

(2)

(b) This [act] may not be used to effect a transaction that:

(1) [converts an insurance company organized on the mutual principle to one organized on a stock-share basis];

(2)

(3)]

1 [ARTICLE] 2

2 MERGER

3 SECTION 201. MERGER AUTHORIZED.

4 (a) Except as otherwise provided in this section and by complying with this
5 [article]:

6 (1) one or more domestic entities may merge with one or more domestic
7 or foreign entities into a domestic or foreign surviving entity; and

8 (2) two or more foreign entities may be parties to a merger in which the
9 surviving entity is a domestic entity.

10 (b) Except as otherwise provided in this section and by complying with this
11 [article], a foreign entity may be a party to a merger under this [article] or may be the surviving
12 entity in such a merger if the merger is authorized by the laws of the foreign entity's jurisdiction
13 of organization.

14 (c) This [article] does not apply to a merger under:

15 (1) [Chapter 11 of the Model Business Corporation Act];

16 (2) [Chapter 11 of the Model Nonprofit Corporation Act];

17 (3) [Article 9 of the Uniform Partnership Act (1997)];

18 (4) [Article 11 of the Uniform Limited Partnership Act (2001)];

19 (5) [Article 12 of the Prototype Limited Liability Company Act];

20 (6) [Article 9 of the Uniform Limited Liability Company Act]; or

21 (7)

22 [(d) The following entities may not participate in a merger under this [article]:

23 (1)

1 (2)]

2 **SECTION 202. PLAN OF MERGER.**

3 (a) A domestic entity may become a party to a merger under this [article] by
4 approving a plan of merger. The plan of merger must be in a record and contain:

5 (1) as to each merging entity, its name, jurisdiction of organization, and
6 type of entity;

7 (2) if the surviving entity is to be created in the merger, a statement to
8 that effect and its name, jurisdiction of organization, and type of entity;

9 (3) the manner and basis of converting the interests in each party to the
10 merger into interests, securities, obligations, rights to acquire interests or securities, cash, or
11 other property, or any combination of the foregoing;

12 (4) if the surviving entity exists before the merger, any proposed
13 amendments to its public organic document or to its private organic rules that are, or are
14 proposed to be, in a record;

15 (5) if the surviving entity is to be created in the merger, its proposed
16 public organic document, if any, and the full text of its organic rules that are proposed to be in a
17 record; and

18 (6) the other terms and conditions of the merger.

19 (b) In addition to the provisions required by subsection (a), a plan of merger must
20 contain any other provision required by the law of a merging entity's jurisdiction of organization
21 or the organic rules of a merging entity and may contain any other provision not prohibited by
22 law other than this [act].

23 **SECTION 203. APPROVAL OF MERGER.**

1 (a) A plan of merger is not effective unless it has been approved:

2 (1) by a domestic merging entity:

3 (A) in accordance with the requirements, if any, in its organic law
4 and organic rules for approval of a merger; or

5 (B) if neither its organic law nor organic rules provide for approval
6 of a merger, by all of the interest holders of the entity entitled to vote on or consent to any
7 matter; and

8 (2) in a record by each interest holder of a domestic merging entity that
9 will have interest holder liability for liabilities that arise after the merger becomes effective,
10 unless:

11 (A) the organic rules of the entity provide in a record for the
12 approval of a merger in which some or all of its interest holders become subject to interest holder
13 liability by the vote or consent of fewer than all of the interest holders; and

14 (B) the interest holder has voted for or consented in a record to that
15 provision of the organic rules or became an interest holder after the adoption of that provision.

16 (b) Each merging entity that is a foreign entity shall approve the merger in
17 accordance with the law of the foreign entity's jurisdiction of organization.

18 **SECTION 204. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.**

19 (a) A plan of merger of a domestic merging entity may be amended:

20 (1) in the same manner as the plan was approved if the plan does not
21 provide for the manner in which it may be amended; or

22 (2) by the governors or interest holders of the entity in the manner
23 provided in the plan, except that an interest holder that was entitled to vote on or consent to

1 approval of the merger is entitled to vote on or consent to any amendment of the plan that will
2 change:

3 (A) the amount or kind of interests, securities, obligations, rights to
4 acquire interests or securities, cash, or other property, or any combination of the foregoing to be
5 received by the interest holders of any party to the plan;

6 (B) the public organic document or private organic rules of the
7 surviving entity that will be in effect immediately after the merger becomes effective, except for
8 changes that would not require the approval of the interest holders of the surviving entity under
9 its organic law or organic rules; or

10 (C) any of the other terms or conditions of the plan if the change
11 would adversely affect the interest holder in any material respect.

12 (b) After a plan of merger has been approved by a domestic merging entity and
13 before a statement of merger becomes effective, the plan may be abandoned:

14 (1) as provided in the plan; or

15 (2) unless prohibited by the plan, in the same manner as the plan was
16 approved.

17 (c) If a merger is abandoned after a statement of merger has been filed with the
18 [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed
19 on behalf of a merging entity, must be filed with the [Secretary of State] before the statement of
20 merger becomes effective. The statement of abandonment takes effect upon filing and the
21 merger is abandoned and does not become effective. The statement of abandonment must
22 contain:

1 (1) the name of each merging or surviving entity that is a domestic entity
2 or a qualified foreign entity;

3 (2) the date on which the statement of merger was filed; and

4 (3) a statement that the merger has been abandoned in accordance with
5 this section.

6 **SECTION 205. STATEMENT OF MERGER; EFFECTIVE DATE.**

7 (a) A statement of merger must be signed by each merging entity and filed with
8 the [Secretary of State].

9 (b) A statement of merger must contain:

10 (1) the name, jurisdiction of organization, and type of entity of each
11 merging entity that is not the surviving entity;

12 (2) the name, jurisdiction of organization, and type of entity of the
13 surviving entity;

14 (3) if the statement of merger is not to be effective upon filing, the later
15 date and time on which it will become effective, which may not be more than 90 days after the
16 date of filing;

17 (4) a statement that the merger was approved by each domestic merging
18 entity, if any, in accordance with this [article] and by each foreign merging entity, if any, in
19 accordance with the law of its jurisdiction of organization;

20 (5) if the surviving entity exists before the merger and is a domestic filing
21 entity, any amendments to its public organic document approved as part of the plan of merger;

22 (6) if the surviving entity is created by the merger and is a domestic filing
23 entity, a copy of its public organic document, as an attachment; and

1 (7) if the surviving entity is created by the merger and is a domestic
2 limited liability partnership, a copy of its [statement of qualification], as an attachment.

3 (c) In addition to the provisions required by subsection (b), a statement of merger
4 may contain any other provision not prohibited by law other than this [act].

5 (d) If the surviving entity is a domestic entity, the name of the surviving entity
6 must satisfy the requirements of the law of this state. If the surviving entity is to be a qualified
7 foreign entity, its name must be available for use in this state or it must adopt an available name
8 for that purpose.

9 (e) A plan of merger that is signed by all of the merging entities and contains all
10 of the provisions required by subsection (b) may be filed with the [Secretary of State] instead of
11 a statement of merger and upon filing has the same effect. If a plan of merger is filed as
12 provided in this subsection, references in this [act] to a statement of merger mean the plan of
13 merger filed under this subsection.

14 (f) A statement of merger becomes effective upon the date and time of filing or
15 the later date and time specified in the statement of merger.

16 **SECTION 206. EFFECT OF MERGER.**

17 (a) When a merger becomes effective:

18 (1) The surviving entity continues or comes into existence.

19 (2) Each merging entity that is not the surviving entity ceases to exist.

20 (3) All property and contract rights of each merging entity vest in the
21 surviving entity without assignment, reversion, or impairment.

22 (4) All liabilities of each merging entity are the liabilities of the surviving
23 entity.

1 (5) Except as otherwise provided by law other than this [act] or the plan of
2 merger, all of the rights, privileges, immunities, powers, and purposes of each merging entity
3 vest in the surviving entity.

4 (6) If the surviving entity exists before the merger:

5 (A) all of its property and contract rights continue to be vested in it
6 without reversion or impairment; and

7 (B) it remains subject to all of its liabilities.

8 (7) The name of the surviving entity may be substituted in any pending
9 action or proceeding for the name of any merging entity.

10 (8) If the surviving entity exists before the merger, its public organic
11 document, if any, and its private organic rules are amended to the extent provided in the plan of
12 merger and are binding upon the interest holders of the surviving entity.

13 (9) If the surviving entity is created by the merger, its public organic
14 document, if any, and its private organic rules are effective and are binding upon the interest
15 holders of the surviving entity.

16 (10) The interests in each merging entity that are to be converted in the
17 merger are converted, and the interest holders of those interests are entitled only to the rights
18 provided to them under the plan of merger and to any appraisal rights they have under Section
19 108.

20 (b) A person that did not have interest holder liability with respect to any of the
21 merging entities and that becomes subject to interest holder liability with respect to a domestic
22 entity as a result of a merger has interest holder liability only to the extent provided by the

1 organic law of the entity and only for those liabilities that arise after the merger becomes
2 effective.

3 (c) Upon a merger, the interest holder liability of a person that ceases to hold an
4 interest in a domestic merging entity with respect to which the person had interest holder liability
5 is as follows:

6 (1) The merger does not discharge any interest holder liability under the
7 organic law of the domestic merging entity to the extent the interest holder liability arose before
8 the merger became effective.

9 (2) The person does not have interest holder liability under the organic law
10 of the domestic merging entity for any liability that arises after the merger becomes effective.

11 (3) The organic law of the domestic merging entity continues to apply to
12 the release, collection, or discharge of any interest holder liability preserved by paragraph (1) as
13 if the merger had not occurred and the surviving entity were the domestic merging entity.

14 (4) The person has whatever rights of contribution from any other person
15 are provided by the organic law or organic rules of the domestic merging entity with respect to
16 any interest holder liability preserved by paragraph (1) as if the merger had not occurred.

17 (d) A foreign entity that is the surviving entity:

18 (1) may be served with process in this state for the collection and
19 enforcement of any liabilities of a domestic merging entity; and

20 (2) appoints the [Secretary of State] as its agent for service of process for
21 collecting or enforcing those liabilities.

22 (e) When a merger becomes effective, the certificate of authority or other foreign
23 qualification of any foreign merging entity that is not the surviving entity is canceled.

1 [ARTICLE] 3

2 INTEREST EXCHANGE

3 SECTION 301. INTEREST EXCHANGE AUTHORIZED.

4 (a) Except as otherwise provided in this section and by complying with this
5 [article]:

6 (1) a domestic entity may acquire all of one or more classes or series of
7 interests of another domestic or foreign entity in exchange for interests, securities, obligations,
8 rights to acquire interests or securities, cash, or other property, or any combination of the
9 foregoing; or

10 (2) all of one or more classes or series of interests of a domestic entity
11 may be acquired by another domestic or foreign entity in exchange for interests, securities,
12 obligations, rights to acquire interests or securities, cash, or other property, or any combination
13 of the foregoing.

14 (b) Except as otherwise provided in this section and by complying with this
15 [article], a foreign entity may be the acquired entity in an interest exchange under this [article] if
16 the interest exchange is authorized by the law of the foreign entity's jurisdiction of organization.

17 (c) This [article] does not apply to an interest exchange under:

18 (1) [Chapter 11 of the Model Business Corporation Act]; or

19 (2)

20 (d) If a protected agreement contains a provision that applies to a merger of a
21 domestic entity but does not refer to an interest exchange, the provision applies to an interest
22 exchange in which the domestic entity is the acquired entity as if the interest exchange were a
23 merger until the provision is amended after the effective date of this [act].

1 [(e) The following entities may not participate in an interest exchange under this
2 [article]:

3 (1)

4 (2)]

5 **SECTION 302. PLAN OF INTEREST EXCHANGE.**

6 (a) A domestic entity may be the acquired entity in an interest exchange under
7 this [article] by approving a plan of interest exchange. The plan of interest exchange must be in
8 a record and contain:

9 (1) the name and type of entity of the acquired entity;

10 (2) the name, jurisdiction of organization, and type of entity of the
11 acquiring entity;

12 (3) the manner and basis of converting the interests in the acquired entity
13 into interests, securities, obligations, rights to acquire interests or securities, cash, or other
14 property, or any combination of the foregoing;

15 (4) any proposed amendments to the public organic document or private
16 organic rules that are, or are proposed to be, in a record of the acquired entity; and

17 (5) the other terms and conditions of the interest exchange.

18 (b) In addition to the provisions required by subsection (a), a plan of interest
19 exchange must contain any other provision required by the law of this state or the organic rules
20 of the acquired entity and may contain any other provision not prohibited by law other than this
21 [act].

22 **SECTION 303. APPROVAL OF INTEREST EXCHANGE.**

1 (a) Except as otherwise provided in subsection (d), a plan of interest exchange is
2 not effective unless it has been approved:

3 (1) by a domestic acquired entity:

4 (A) in accordance with the requirements, if any, in its organic law
5 and organic rules for approval of an interest exchange;

6 (B) if neither its organic law nor organic rules provide for approval
7 of an interest exchange, in accordance with the requirements, if any, for approval of a merger in
8 its organic law and organic rules as if the interest exchange were a merger; or

9 (C) if neither its organic law nor organic rules provide for approval
10 of an interest exchange or a merger, by all of the interest holders of the entity entitled to vote on
11 or consent to any matter; and

12 (2) in a record by each interest holder of a domestic acquired entity that
13 will have interest holder liability for liabilities that arise after the interest exchange becomes
14 effective, unless:

15 (A) the organic rules of the entity provide in a record for the
16 approval of an interest exchange in which some or all of its interest holders become subject to
17 interest holder liability by the vote or consent of fewer than all of the interest holders; and

18 (B) the interest holder has voted for or consented in a record to that
19 provision of the organic rules or became an interest holder after the adoption of that provision.

20 (b) An acquired entity that is a foreign entity shall approve the interest exchange
21 in accordance with the law of the foreign entity's jurisdiction of organization.

22 (c) Except as otherwise provided in its organic law or organic rules, the interest
23 holders of the acquiring entity are not required to approve the interest exchange.

1 (d) A provision of the organic law of a domestic acquired entity that would permit
2 a merger between the acquired entity and the acquiring entity to be approved without the vote or
3 consent of the interest holders of the acquired entity because of the percentage of interests in the
4 acquired entity held by the acquiring entity does not apply to approval of an interest exchange
5 under subsection (a)(1)(B).

6 **SECTION 304. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST**
7 **EXCHANGE.**

8 (a) A plan of interest exchange of a domestic acquired entity may be amended:

9 (1) in the same manner as the plan was approved if the plan does not
10 provide for the manner in which it may be amended; or

11 (2) by the governors or interest holders of the entity in the manner
12 provided in the plan, except that an interest holder that was entitled to vote on or consent to
13 approval of the interest exchange is entitled to vote on or consent to any amendment of the plan
14 that will change:

15 (A) the amount or kind of interests, securities, obligations, rights to
16 acquire interests or securities, cash, or other property, or any combination of the foregoing to be
17 received by any of the interest holders of the acquired entity under the plan;

18 (B) the public organic document or private organic rules of the
19 acquired entity that will be in effect immediately after the interest exchange becomes effective,
20 except for changes that would not require the approval of the interest holders of the acquired
21 entity under its organic law or organic rules; or

22 (C) any of the other terms or conditions of the plan if the change
23 would adversely affect the interest holder in any material respect.

(b) After a plan of interest exchange has been approved by a domestic acquired entity and before a statement of interest exchange becomes effective, the plan may be abandoned:

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If an interest exchange is abandoned after a statement of interest exchange has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of the acquired entity, must be filed with the [Secretary of State] before the statement of interest exchange becomes effective. The statement of abandonment takes effect upon filing and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the acquired entity;

(2) the date on which the statement of interest exchange was filed; and

(3) a statement that the interest exchange has been abandoned in accordance with this section.

SECTION 305. STATEMENT OF INTEREST EXCHANGE; EFFECTIVE DATE.

(a) A statement of interest exchange must be signed by a domestic acquired entity and filed with the [Secretary of State].

(b) A statement of interest exchange must contain:

(1) the name and type of entity of the acquired entity;

(2) the name, jurisdiction of organization, and type of entity of the acquiring entity;

1 (3) if the statement of interest exchange is not to be effective upon filing,
2 the later date and time on which it will become effective, which may not be more than 90 days
3 after the date of filing;

4 (4) a statement that the plan of interest exchange was approved by the
5 acquired entity in accordance with this [article]; and

6 (5) any amendments to the acquired entity's public organic document
7 approved as part of the plan of interest exchange.

8 (c) In addition to the provisions required by subsection (b), a statement of interest
9 exchange may contain any other provision not prohibited by law other than this [act].

10 (d) A plan of interest exchange that is signed by a domestic acquired entity and
11 contains all of the provisions required by subsection (b) may be filed with the [Secretary of
12 State] instead of a statement of interest exchange and upon filing has the same effect. If a plan
13 of interest exchange is filed as provided in this subsection, references in this [act] to a statement
14 of interest exchange mean the plan of interest exchange filed under this subsection.

15 (e) A statement of interest exchange becomes effective upon the date and time of
16 filing or the later date and time specified in the statement of interest exchange.

17 **SECTION 306. EFFECT OF INTEREST EXCHANGE.**

18 (a) When an interest exchange becomes effective:

19 (1) The interests in the acquired entity that are the subject of the interest
20 exchange cease to exist or are converted or exchanged, and the interest holders of those interests
21 are entitled only to the rights provided to them under the plan of interest exchange and to any
22 appraisal rights they have under Section 108.

1 (2) The acquiring entity becomes the interest holder of the interests in the
2 acquired entity stated in the plan of interest exchange to be acquired by the acquiring entity.

3 (3) The public organic document, if any, of the acquired entity is amended
4 to the extent provided in the plan of interest exchange and is binding upon the interest holders of
5 the acquired entity.

6 (4) The private organic rules of the acquired entity that are to be in a
7 record, if any, are amended to the extent provided in the plan of interest exchange and are
8 binding upon the interest holders of the acquired entity.

9 (b) A person that did not have interest holder liability with respect to the acquired
10 entity and that becomes subject to interest holder liability with respect to a domestic entity as a
11 result of an interest exchange has interest holder liability only to the extent provided by the
12 organic law of the entity and only for those liabilities that arise after the interest exchange
13 becomes effective.

14 (c) Upon an interest exchange, the interest holder liability of a person that ceases
15 to hold an interest in a domestic acquired entity with respect to which the person had interest
16 holder liability is as follows:

17 (1) The interest exchange does not discharge any interest holder liability
18 under the organic law of the domestic acquired entity to the extent the interest holder liability
19 arose before the interest exchange became effective.

20 (2) The person does not have interest holder liability under the organic law
21 of the domestic acquired entity for any liability that arises after the interest exchange becomes
22 effective.

1 (3) The organic law of the domestic acquired entity continues to apply to
2 the release, collection, or discharge of any interest holder liability preserved by paragraph (1) as
3 if the interest exchange had not occurred.

4 (4) The person has whatever rights of contribution from any other person
5 are provided by the organic law or organic rules of the domestic acquired entity with respect to
6 any interest holder liability preserved by paragraph (1) as if the interest exchange had not
7 occurred.

1 [ARTICLE] 4

2 CONVERSION

3 SECTION 401. CONVERSION AUTHORIZED.

4 (a) Except as otherwise provided in this section and by complying with this
5 [article], a domestic entity may become:

6 (1) a domestic entity of a different type; or

7 (2) a foreign entity of a different type, if the conversion is authorized by
8 the law of the foreign jurisdiction.

9 (b) Except as otherwise provided in this section and by complying with this
10 [article], a foreign entity may become a domestic entity of a different type if the conversion is
11 authorized by the law of the foreign entity's jurisdiction of organization.

12 (c) If a protected agreement contains a provision that applies to a merger of a
13 domestic entity but does not refer to a conversion, the provision applies to a conversion of the
14 entity as if the conversion were a merger until the provision is amended after the effective date
15 of this [act].

16 [(d) The following entities may not engage in a conversion under this [article]:

17 (1)

18 (2)]

19 SECTION 402. PLAN OF CONVERSION.

20 (a) A domestic entity may convert to a different type of entity under this [article]
21 by approving a plan of conversion. The plan of conversion must be in a record and contain:

22 (1) the name and type of entity of the converting entity;

(2) the name, jurisdiction of organization, and type of entity of the converted entity;

(3) the manner and basis of converting the interests in the converting entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;

(4) the proposed public organic document of the converted entity if it will be a filing entity;

(5) the full text of the private organic rules of the converted entity that are proposed to be in a record; and

(6) the other terms and conditions of the conversion.

(b) In addition to the provisions required by subsection (a), a plan of conversion must contain any other provision required by the law of this state or the organic rules of the converting entity and may contain any other provision not prohibited by law other than this [act].

SECTION 403. APPROVAL OF CONVERSION.

(a) A plan of conversion is not effective unless it has been approved:

(1) by a domestic converting entity:

(A) in accordance with the requirements, if any, in its organic rules for approval of a conversion;

(B) if its organic rules do not provide for approval of a conversion, in accordance with the requirements, if any, for approval of a merger in its organic law and organic rules as if the conversion were a merger; or

1 (C) if neither its organic law nor organic rules provide for approval
2 of a conversion or a merger, by all of the interest holders of the entity entitled to vote on or
3 consent to any matter; and

4 (2) in a record by each interest holder of a domestic converting entity that
5 will have interest holder liability for liabilities that arise after the conversion becomes effective,
6 unless:

7 (A) the organic rules of the entity provide in a record for the
8 approval of a conversion in which some or all of its interest holders become subject to interest
9 holder liability by the vote or consent of fewer than all of the interest holders; and

10 (B) the interest holder has voted for or consented in a record to that
11 provision of the organic rules or became an interest holder after the adoption of that provision.

12 (b) A foreign converting entity shall approve the conversion in accordance with
13 the law of the foreign entity's jurisdiction of organization.

14 **SECTION 404. AMENDMENT OR ABANDONMENT OF PLAN OF**
15 **CONVERSION.**

16 (a) A plan of conversion of a domestic converting entity may be amended:

17 (1) in the same manner as the plan was approved if the plan does not
18 provide for the manner in which it may be amended; or

19 (2) by the governors or interest holders of the entity in the manner
20 provided in the plan, except that an interest holder that was entitled to vote on or consent to
21 approval of the conversion is entitled to vote on or consent to any amendment of the plan that
22 will change:

1 (A) the amount or kind of interests, securities, obligations, rights to
2 acquire interests or securities, cash, or other property, or any combination of the foregoing to be
3 received by any of the interest holders of the converting entity under the plan;

4 (B) the public organic document or private organic rules of the
5 converted entity that will be in effect immediately after the conversion becomes effective, except
6 for changes that would not require the approval of the interest holders of the converted entity
7 under its organic law or organic rules; or

8 (C) any of the other terms or conditions of the plan if the change
9 would adversely affect the interest holder in any material respect.

10 (b) After a plan of conversion has been approved by a domestic converting entity
11 and before a statement of conversion becomes effective, the plan may be abandoned:

12 (1) as provided in the plan; or

13 (2) unless prohibited by the plan, in the same manner as the plan was
14 approved.

15 (c) If a conversion is abandoned after a statement of conversion has been filed
16 with the [Secretary of State] and before the filing becomes effective, a statement of
17 abandonment, signed on behalf of the entity, must be filed with the [Secretary of State] before
18 the statement of conversion becomes effective. The statement of abandonment takes effect upon
19 filing and the conversion is abandoned and does not become effective. The statement of
20 abandonment must contain:

21 (1) the name of the converting entity;

22 (2) the date on which the statement of conversion was filed; and

(3) a statement that the conversion has been abandoned in accordance with this section.

SECTION 405. STATEMENT OF CONVERSION; EFFECTIVE DATE.

(a) A statement of conversion must be signed by the converting entity and filed with the [Secretary of State].

(b) A statement of conversion must contain:

(1) the name, jurisdiction of organization, and type of entity of the converting entity;

(2) the name, jurisdiction of organization, and type of entity of the converted entity;

(3) if the statement of conversion is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) if the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with this [article] or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of organization;

(5) if the converted entity is a domestic filing entity, a copy of its public organic document, as an attachment; and

(6) if the converted entity is a domestic limited liability partnership, a copy of its [statement of qualification], as an attachment.

(c) In addition to the provisions required by subsection (b), a statement of conversion may contain any other provision not prohibited by law other than this [act].

1 (d) If the converted entity is a domestic entity, its name must satisfy the
2 requirements of the law of this state.

3 (e) A plan of conversion that is signed by a domestic converting entity and
4 contains all of the provisions required by subsection (b) may be filed with the [Secretary of
5 State] instead of a statement of conversion and upon filing has the same effect. If a plan of
6 conversion is filed as provided in this subsection, references in this [act] to a statement of
7 conversion mean the plan of conversion filed under this subsection.

8 (f) A statement of conversion becomes effective upon the date and time of filing
9 or the later date and time specified in the statement of conversion.

10 **SECTION 406. EFFECT OF CONVERSION.**

11 (a) When a conversion becomes effective:

12 (1) The converted entity is:

13 (A) organized under and subject to the organic law of the
14 converted entity; and

15 (B) the same entity without interruption as the converting entity.

16 (2) All property and contract rights of the converting entity continue to be
17 vested in the entity without assignment, reversion, or impairment.

18 (3) All liabilities of the converting entity continue as liabilities of the
19 entity.

20 (4) Except as provided by law other than this [act] or the plan of
21 conversion, all of the rights, privileges, immunities, powers, and purposes of the converting
22 entity remain in the converted entity.

1 (5) The name of the converted entity may be substituted in any pending
2 action or proceeding for the name of the converting entity.

3 (6) Unless otherwise provided by the organic law of the converting entity,
4 the conversion does not cause the dissolution of the converting entity.

5 (7) If a converted entity is a filing entity, its public organic document is
6 effective and is binding upon the interest holders of the converted entity.

7 (8) If the converted entity is a limited liability partnership, its [statement
8 of qualification] is effective simultaneously.

9 (9) The private organic rules of the converted entity approved as part of
10 the plan of conversion are effective and are binding upon the interest holders of the converted
11 entity.

12 (10) The interests in the converting entity are converted, and the interest
13 holders of the converting entity are entitled only to the rights provided to them under the plan of
14 conversion and to any appraisal rights they have under Section 108.

15 (b) A person that did not have interest holder liability with respect to the
16 converting entity and that becomes subject to interest holder liability with respect to a domestic
17 entity as a result of a conversion has interest holder liability only to the extent provided by the
18 organic law of the entity and only for those liabilities that arise after the conversion becomes
19 effective.

20 (c) When a conversion becomes effective:

21 (1) The conversion does not discharge any interest holder liability under
22 the organic law of a domestic converting entity to the extent the interest holder liability arose
23 before the conversion became effective.

1 (2) A person does not have interest holder liability under the organic law
2 of a domestic converting entity for any liability that arises after the conversion becomes
3 effective.

4 (3) The organic law of a domestic converting entity continues to apply to
5 the release, collection, or discharge of any interest holder liability preserved by paragraph (1) as
6 if the conversion had not occurred.

7 (4) A person has whatever rights of contribution from any other person are
8 provided by the organic law or organic rules of the domestic converting entity with respect to
9 any interest holder liability preserved by paragraph (1) as if the conversion had not occurred.

10 (d) A foreign entity that is the converted entity:

11 (1) may be served with process in this state for the collection and
12 enforcement of any of its liabilities; and

13 (2) appoints the [Secretary of State] as its agent for service of process for
14 collecting or enforcing those liabilities.

15 (e) If the converting entity is a qualified foreign entity, the certificate of authority
16 or other foreign qualification of the converting entity is canceled when the conversion becomes
17 effective.

1 [ARTICLE] 5

2 DOMESTICATION

3 SECTION 501. DOMESTICATION AUTHORIZED.

4 (a) Except as otherwise provided in this section and by complying with this
5 [article], a domestic entity may become a domestic entity of the same type in a foreign
6 jurisdiction if the domestication is authorized by the law of the foreign jurisdiction.

7 (b) Except as otherwise provided in this section and by complying with this
8 [article], a foreign entity may become a domestic entity of the same type in this state if the
9 domestication is authorized by the law of the foreign entity's jurisdiction of organization.

10 (c) When the term domestic entity is used in this [article] with reference to a
11 foreign jurisdiction, it means an entity whose internal affairs are governed by the law of the
12 foreign jurisdiction.

13 (d) If a protected agreement contains a provision that applies to a merger of a
14 domestic entity but does not refer to a domestication, the provision applies to a domestication of
15 the entity as if the domestication were a merger until the provision is amended after the effective
16 date of this [act].

17 [(e) The following entities may not engage in a domestication under this [article]:

18 (1)

19 (2)]

20 SECTION 502. PLAN OF DOMESTICATION.

21 (a) A domestic entity may become a foreign entity in a domestication under this
22 [article] by approving a plan of domestication. The plan of domestication must be in a record
23 and contain:

- (1) the name and type of entity of the domesticating entity;
- (2) the name and jurisdiction of organization of the domesticated entity;
- (3) the manner and basis of converting the interests in the domesticating entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;
- (4) the proposed public organic document of the domesticated entity if it is a filing entity;
- (5) the full text of the private organic rules of the domesticated entity that are proposed to be in a record; and
- (6) the other terms and conditions of the domestication.

(b) In addition to the provisions required by subsection (a), a plan of domestication must contain any other provision required by the law of this state or the organic rules of the domesticating entity and may contain any other provision not prohibited by law other than this [act].

SECTION 503. APPROVAL OF DOMESTICATION.

(a) A plan of domestication is not effective unless it has been approved:

(1) by a domestic domesticating entity:

(A) in accordance with the requirements, if any, in its organic rules for approval of a domestication;

(B) if its organic rules do not provide for approval of a domestication, in accordance with the requirements, if any, for approval of a merger in its organic law and organic rules as if the domestication were a merger; or

1 (C) if neither its organic law nor organic rules provide for approval
2 of a domestication or a merger, by all of the interest holders of the entity entitled to vote on or
3 consent to any matter; and

4 (2) in a record by each interest holder of a domestic domesticating entity
5 that will have interest holder liability for liabilities that arise after the domestication becomes
6 effective, unless:

7 (A) the organic rules of the entity in a record provide for the
8 approval of a domestication in which some or all of its interest holders become subject to interest
9 holder liability by the vote or consent of fewer than all of the interest holders; and

10 (B) the interest holder has voted for or consented in a record to that
11 provision of the organic rules or became an interest holder after the adoption of that provision.

12 (b) A foreign domesticating entity shall approve the domestication in accordance
13 with the law of the foreign entity's jurisdiction of organization.

14 **SECTION 504. AMENDMENT OR ABANDONMENT OF PLAN OF**
15 **DOMESTICATION.**

16 (a) A plan of domestication of a domestic domesticating entity may be amended:

17 (1) in the same manner as the plan was approved if the plan does not
18 provide for the manner in which it may be amended; or

19 (2) by the governors or interest holders of the entity in the manner
20 provided in the plan, except that an interest holder that was entitled to vote on or consent to
21 approval of the domestication is entitled to vote on or consent to any amendment of the plan that
22 will change:

1 (A) the amount or kind of interests, securities, obligations, rights to
2 acquire interests or securities, cash, or other property, or any combination of the foregoing to be
3 received by any of the interest holders of the domesticating entity under the plan;

4 (B) the public organic document or private organic rules of the
5 domesticated entity that will be in effect immediately after the domestication becomes effective,
6 except for changes that would not require the approval of the interest holders of the domesticated
7 entity under its organic law or organic rules; or

8 (C) any of the other terms or conditions of the plan if the change
9 would adversely affect the interest holder in any material respect.

10 (b) After a plan of domestication has been approved by a domestic domesticating
11 entity and before a statement of domestication becomes effective, the plan may be abandoned:

12 (1) as provided in the plan; or

13 (2) unless prohibited by the plan, in the same manner as the plan was
14 approved.

15 (c) If a domestication is abandoned after a statement of domestication has been
16 filed with the [Secretary of State] and before the filing becomes effective, a statement of
17 abandonment, signed on behalf of the entity, must be filed with the [Secretary of State] before
18 the statement of domestication becomes effective. The statement of abandonment takes effect
19 upon filing and the domestication is abandoned and does not become effective. The statement of
20 abandonment must contain:

21 (1) the name of the domesticating entity;

22 (2) the date on which the statement of domestication was filed; and

(3) a statement that the merger has been abandoned in accordance with this section.

SECTION 505. STATEMENT OF DOMESTICATION; EFFECTIVE DATE.

(a) A statement of domestication must be signed by the domesticating entity and filed with the [Secretary of State].

(b) A statement of domestication must contain:

(1) the name, jurisdiction of organization, and type of entity of the domesticating entity;

(2) the name and jurisdiction of organization of the domesticated entity;

(3) if the statement of domestication is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) if the domesticating entity is a domestic entity, a statement that the plan of domestication was approved in accordance with this [article] or, if the domesticating entity is a foreign entity, a statement that the domestication was approved by the foreign domesticating entity in accordance with the law of its jurisdiction of organization;

(5) if the domesticated entity is a domestic filing entity, a copy of its public organic document, as an attachment; and

(6) if the domesticated entity is a domestic limited liability partnership, a copy of its [statement of qualification], as an attachment.

(c) In addition to the provisions required by subsection (b), a statement of domestication may contain any other provision not prohibited by law other than this [act].

1 (d) If the domesticated entity is a domestic entity, its name must satisfy the
2 requirements of the law of this state.

3 (e) A plan of domestication that is signed by a domesticating domestic entity and
4 contains all of the provisions required by subsection (b) may be filed with the [Secretary of
5 State] instead of a statement of domestication and upon filing has the same effect. If a plan of
6 domestication is filed as provided in this subsection, references in this [act] to a statement of
7 domestication mean the plan of domestication filed under this subsection.

8 (f) A statement of domestication becomes effective upon the date and time of
9 filing or the later date and time specified in the statement of domestication.

10 **SECTION 506. EFFECT OF DOMESTICATION.**

11 (a) When a domestication becomes effective:

12 (1) The domesticated entity is:

13 (A) organized under and subject to the organic law of the
14 domesticated entity; and

15 (B) the same entity without interruption as the domesticating
16 entity.

17 (2) All property and contract rights of the domesticating entity continue to
18 be vested in the entity without assignment, reversion, or impairment.

19 (3) All liabilities of the domesticating entity continue as liabilities of the
20 entity.

21 (4) Except as provided by law other than this [act] or the plan of
22 domestication, all of the rights, privileges, immunities, powers, and purposes of the
23 domesticating entity remain in the domesticated entity.

1 (5) The name of the domesticated entity may be substituted in any pending
2 action or proceeding for the name of the domesticating entity.

3 (6) Unless otherwise provided by the organic law of the domesticating
4 entity, the domestication does not cause the dissolution of the domesticating entity.

5 (7) If the domesticated entity is a filing entity, its public organic document
6 is effective and is binding upon the interest holders of the domesticated entity.

7 (8) If the domesticated entity is a limited liability partnership, its
8 [statement of qualification] is effective simultaneously.

9 (9) The private organic rules of the domesticated entity approved as part
10 of the plan of domestication are effective and are binding upon the interest holders of the
11 domesticated entity.

12 (10) The interests in the domesticating entity are converted to the extent
13 and as approved in connection with the domestication, and the interest holders of the
14 domesticating entity are entitled only to the rights provided to them under the plan of
15 domestication and to any appraisal rights they have under Section 108.

16 (b) A person that did not have interest holder liability with respect to the
17 domesticating entity and that becomes subject to interest holder liability with respect to a
18 domestic entity as a result of a domestication has interest holder liability only to the extent
19 provided by the organic law of the entity and only for those liabilities that arise after the
20 domestication becomes effective.

21 (c) When a domestication becomes effective:

1 (1) The domestication does not discharge any interest holder liability
2 under the organic law of a domesticating domestic entity to the extent the interest holder liability
3 arose before the domestication became effective.

4 (2) A person does not have interest holder liability under the organic law
5 of a domestic domesticating entity for any liability that arises after the domestication becomes
6 effective.

7 (3) The organic law of a domestic domesticating entity continues to apply
8 to the release, collection, or discharge of any interest holder liability preserved by paragraph (1)
9 as if the domestication had not occurred.

10 (4) A person has whatever rights of contribution from any other person are
11 provided by the organic law or organic rules of a domestic domesticating entity with respect to
12 any interest holder liability preserved by paragraph (1) as if the domestication had not occurred.

13 (d) A foreign entity that is the domesticated entity:

14 (1) may be served with process in this state for the collection and
15 enforcement of any of its liabilities; and

16 (2) appoints the [Secretary of State] as its agent for service of process for
17 collecting or enforcing those liabilities.

18 (e) If the domesticating entity is a qualified foreign entity, the certificate of
19 authority or other foreign qualification of the domesticating entity is canceled when the
20 domestication becomes effective.

1

[ARTICLE] 6

2

DIVISIONS [RESERVED]

3

1 [ARTICLE] 7

2 MISCELLANEOUS PROVISIONS

3 SECTION 701. UNIFORMITY OF APPLICATION. In applying and construing this
4 [act], consideration must be given to the need to promote uniformity of the law with respect to
5 its subject matter among states that enact it.

6 SECTION 702. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
7 AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal
8 Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.),
9 but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or
10 authorize electronic delivery of any of the notices described in Section 103(b) of that act (15
11 U.S.C. Section 7003(b)).

12 SECTION 703. CONFORMING AMENDMENTS AND REPEALS. [See Appendix
13 2.]

14 SECTION 704. EFFECTIVE DATE. This [act] takes effect [January 1, 200____.]

15 SECTION 705. SAVINGS CLAUSE. This [act] does not affect an action or
16 proceeding commenced or right accrued before the effective date of this [act].

1 **APPENDIX 1**

2 **FILINGS**

3 **Introductory Comment to Appendix 1**

4 This appendix provides a set of optional provisions dealing with the manner in which
5 filings under this Act are to be processed by the Secretary of State. The provisions in this
6 appendix will not be needed in those enacting states where this Act is integrated into a code of
7 organic laws that already contains provisions similar to this appendix. If this Act is not
8 integrated into such a code of organic laws, however, there may not be provisions similar to this
9 appendix that will apply to filings under this Act.

10
11 The provisions in this appendix are patterned after the filing provisions in the Model
12 Business Corporation Act. States enacting this appendix should conform its provisions to their
13 particular filing requirements and any existing provisions on filings in their organic laws.

14
15 **SECTION A1-1. REQUIREMENTS FOR DOCUMENTS; EXTRINSIC FACTS.**

16 (a) To be entitled to filing by the [Secretary of State], a document must satisfy the
17 following requirements and the requirements of any other provision of this [act] that adds to or
18 varies these requirements:

19 (1) This [act] requires or permits filing the document in the office of the
20 [Secretary of State].

21 (2) The document contains the information required by this [act] and may
22 contain other information.

23 (3) The document is in a record.

24 (4) The document is in the English language, but the name of an entity
25 need not be in English if written in English letters or Arabic or Roman numerals.

26 (5) The document is signed:

27 (A) by an officer of a domestic or foreign corporation;

1 (B) by a person authorized by a domestic or foreign entity that is
2 not a corporation; or

3 (C) if the entity is in the hands of a receiver, trustee, or other court-
4 appointed fiduciary, by that fiduciary.

5 (6) The document must state the name and capacity of the person that
6 signed it. The document may contain a corporate seal, attestation, acknowledgment, or
7 verification.

8 (7) The document must be delivered to the office of the [Secretary of
9 State] for filing. Delivery may be made by electronic transmission if and to the extent permitted
10 by the [Secretary of State]. If a document is filed in typewritten or printed form and not
11 transmitted electronically, the [Secretary of State] may require one exact or conformed copy to
12 be delivered with the document.

13 (b) When a document is delivered to the office of the [Secretary of State] for
14 filing, the correct filing fee, and any franchise tax, license fee, or penalty required to be paid
15 therewith by this [act] or other law must be paid or provision for payment made in a manner
16 permitted by the [Secretary of State].

17 (c) Whenever a provision of this [act] permits any of the terms of a plan or a filed
18 document to be dependent on facts objectively ascertainable outside the plan or filed document,
19 the following rules apply:

20 (1) The manner in which the facts will operate upon the terms of the plan
21 or filed document must be set forth in the plan or filed document.

22 (2) The facts may include, but are not limited to:

1 (A) any of the following that is available in a nationally recognized
2 news or information medium either in print or electronically: statistical or market indices, market
3 prices of any security or group of securities, interest rates, currency exchange rates, or similar
4 economic or financial data;

5 (B) a determination or action by any person or body, including the
6 entity or any other party to a plan or filed document; or

7 (C) the terms of, or actions taken under, an agreement to which the
8 entity is a party, or any other agreement or document.

9 (3) In this subsection, “filed document” means a document filed with the
10 [Secretary of State] under this [act].

11 (4) The following provisions of a plan or filed document may not be made
12 dependent on facts outside the plan or filed document:

13 (A) the name and address of any person required in a filed
14 document;

15 (B) the registered office of any entity required in a filed document;

16 (C) the registered agent of any entity required in a filed document;

17 (D) the number of authorized shares and designation of each class
18 or series of shares of a corporation;

19 (E) the effective date of a filed document; and

20 (F) any required statement in a filed document of the manner in
21 which that approval was given.

22 (5) If a provision of a filed document is made dependent on a fact
23 ascertainable outside of the filed document and that fact is not ascertainable by reference to a

1 source described in subsection (c)(2)(A) or a document that is a matter of public record, or if the
2 affected interest holders have not received notice of the fact from the entity, the entity shall file
3 with the [Secretary of State] articles of amendment setting forth the fact promptly after the fact
4 referred to is first ascertainable or thereafter changes.

5 **SECTION A1-2. FORMS.** The [Secretary of State] may prescribe and furnish on
6 request forms for documents required or permitted to be filed by this [act] but their use is not
7 mandatory.

8 **SECTION A1-3. FILING, SERVICE, AND COPYING FEES.**

9 (a) The [Secretary of State] shall collect a fee of \$____ each time process is served
10 on the [Secretary of State] under this [act]. The party to a proceeding causing service of process
11 may recover this fee as costs if the party prevails in the proceeding.

12 (b) The [Secretary of State] shall collect the following fees for copying and
13 certifying the copy of any document filed under this [act]:

14 (1) \$____ a page for copying; and

15 (2) \$____ for the certificate.

16 (c) The [Secretary of State] shall collect the following fees when the documents
17 described are delivered for filing:

18 (1) Statement of merger \$____

19 (2) Statement of abandonment of merger..... \$____

20 (3) Statement of interest exchange..... \$____

21 (4) Statement of abandonment of interest exchange..... \$____

22 (5) Statement of conversion \$____

23 (6) Statement of abandonment of conversion..... \$____

- 1 (7) Statement of domestication \$____
- 2 (8) Statement of abandonment of domestication..... \$____

3 **SECTION A1-4. EFFECTIVE TIME AND DATE OF DOCUMENT.** Except as

4 provided in Section A1-5, a document accepted for filing is effective:

- 5 (1) at the date and time of filing, as evidenced by the means used by the
- 6 [Secretary of State] for recording the date and time of filing;
- 7 (2) at the time specified in the document as its effective time on the date it
- 8 is filed;
- 9 (3) at a specified delayed effective time and date if permitted by this [act];
- 10 or
- 11 (4) if a delayed effective date but no time is specified, at the close of
- 12 business on the date specified.

13 **SECTION A1-5. CORRECTING FILED DOCUMENT.**

- 14 (a) A domestic or foreign entity may correct a document filed by the [Secretary of
- 15 State] if:
- 16 (1) the document contains an inaccuracy;
- 17 (2) the document was defectively signed; or
- 18 (3) the electronic transmission of the document to the [Secretary of State]
- 19 was defective.
- 20 (b) A document is corrected by filing with the [Secretary of State] a statement of
- 21 correction that:
- 22 (1) describes the document to be corrected and states its filing date or has
- 23 attached a copy of the document;

1 (2) specifies the inaccuracy or defect to be corrected; and

2 (3) corrects the inaccuracy or defect.

3 (c) A statement of correction is effective on the effective date of the document it
4 corrects except as to persons relying on the uncorrected document and adversely affected by the
5 correction. As to those persons, a statement of correction is effective when filed.

6 **SECTION A1-6. FILING DUTY OF [SECRETARY OF STATE].**

7 (a) A document delivered to the office of the [Secretary of State] for filing that
8 satisfies the requirements of Section A1-1 must be filed by the [Secretary of State].

9 (b) The [Secretary of State] files a document by recording it as filed on the date
10 and time of receipt. After filing a document, the [Secretary of State] shall deliver to the
11 domestic or foreign entity or its representative a copy of the document with an acknowledgement
12 of the date and time of filing.

13 (c) If the [Secretary of State] refuses to file a document, the [Secretary of State]
14 shall return the document to the domestic or foreign entity or its representative within five days
15 after the document was delivered, together with a brief, written explanation of the reason for the
16 refusal.

17 (d) The duty of the [Secretary of State] to file documents under this section is
18 ministerial. The filing or refusal to file a document does not:

19 (1) affect the validity or invalidity of the document in whole or in part;

20 (2) relate to the correctness or incorrectness of information contained in
21 the document; or

22 (3) create a presumption that the document is valid or invalid or that
23 information contained in the document is correct or incorrect.

1 **SECTION A1-7. APPEAL FROM REFUSAL TO FILE A DOCUMENT.**

2 (a) If the [Secretary of State] refuses to file a document delivered for filing, the
3 domestic or foreign entity that submitted the document for filing may appeal the refusal within
4 30 days after the return of the document to the [name or describe] court [of the county where the
5 entity's principal office (or, if none in this state, its registered office) is or will be located] [of
6 _____ county]. The appeal is commenced by petitioning the court to compel filing the
7 document and by attaching to the petition the document and the explanation of the [Secretary of
8 State] for the refusal to file.

9 (b) The court may summarily order the [Secretary of State] to file the document
10 or take other action the court considers appropriate.

11 (c) The court's final decision may be appealed as in other civil proceedings.

12 **SECTION A1-8. EVIDENTIARY EFFECT OF COPY OF FILED DOCUMENT.**

13 A certificate from the [Secretary of State], delivered with a copy of a document filed by the
14 [Secretary of State], conclusively establishes that the original document is on file with the
15 [Secretary of State].

16 **SECTION A1-9. PENALTY FOR SIGNING FALSE DOCUMENT.** A person
17 commits a [_____] misdemeanor [punishable by a fine of not to exceed \$____] if the person signs
18 a document the person knows is false in any material respect with intent that the document be
19 delivered to the [Secretary of State] for filing.

20 **SECTION A1-10. POWERS OF [SECRETARY OF STATE].** The [Secretary of
21 State] has the power reasonably necessary to perform the duties required by this [act].
22

1 **APPENDIX 2**

2 **LEGISLATIVE NOTE ON INTEGRATION OF**

3 **THIS ACT WITH EXISTING ENTITY LAWS**

4 **and**

5 **CONFORMING AMENDMENTS AND REPEALS**

6 **Legislative Note**

7 This appendix provides a guide for amendments, repeals, and additions that must be
8 made to existing statutes when the Act is enacted in a particular state. This is a complex task
9 because of the wide variation in current state statutes with respect to the types of entities that can
10 engage in one or more of the transactions authorized by the Act.
11

12 **1. Step One: Identify Existing Laws**

13
14 The first step that must be taken is to identify all of the existing statutory provisions that
15 allow for same-species (all of the entities involved are the same type, e.g., a merger between two
16 corporations) and cross-species (more than one type of entity is involved in the transaction, e.g.,
17 a merger between a corporation and a partnership), mergers, interest exchanges, conversions,
18 and domestications for any kind of entity. An entity is defined in Section 102 to include all
19 types of partnerships (general partnerships, limited liability partnerships, limited partnerships,
20 and limited liability limited partnerships), limited liability companies, all types of corporations
21 (including non-profit corporations, close corporations in those states that have separate statutes
22 for close corporations, and professional corporations), business trusts, cooperatives, and
23 unincorporated nonprofit associations (at least in states that have the Uniform Unincorporated
24 Nonprofit Associations Act or have statutes that allow an unincorporated nonprofit organization
25 to hold property in its own name). Many states have statutes governing other types of business
26 organizations. Texas, for example, has special statutory provisions for real estate investment
27 trusts (in most other states, REITs would be considered a type of business trust). These special
28 types of entities should also be included in the review process.¹
29

30 **2. Step Two: Analyze Existing Laws**

31
32 The next step is to analyze the overall existing statutory framework for same-species and
33 cross-species transactions. This analysis will reveal that there are gaps in coverage for many of
34 the types of transactions covered by the Act, either directly or by default, even in those states
35 that have adopted Chapter 9 and 11 of the Model Business Corporation Act and the uniform
36 unincorporated organization acts.

¹ Entities that are classified as a governmental subdivision, agency, or instrumentality or a quasi-governmental instrumentality under a state's laws, are however excluded from the scope of the Act. See Section 102(11).

1 Every state will have provisions for mergers of corporations into other corporations but
2 not all states authorize interest exchanges between corporations (the corporate statutes generally
3 refer to these as share exchanges) and only a few states specifically authorize corporations to
4 enter into merger or interest exchange transactions with other types of organizations. Moreover,
5 very few existing corporate statutes have provisions for conversions of corporations into other
6 types of entities or authorize corporations to domesticate in another state.

7
8 The same-species and cross-species landscape with respect to unincorporated entities is
9 even less complete. The Uniform Partnership Act (1997) (RUPA), which has been adopted in 30
10 states (and in the District of Columbia, Puerto Rico and the Virgin Islands) only authorizes
11 mergers and conversions of general partnerships and limited partnerships. It does not allow
12 conversions into any other type of entity or mergers with any other type of entity; nor does it
13 authorize interest exchanges or domestication transactions. Several states that have adopted
14 RUPA have provisions allowing same-species and cross-species conversions and mergers of
15 general partnerships with not only limited partnerships but also with corporations and limited
16 liability companies; and a few RUPA states have expanded the list to include any business entity
17 (it is unclear in many of these states, however, whether these statutes apply to non-profit
18 entities). With the exception of Ohio, which authorizes mergers and consolidations of general
19 partnerships with other partnerships and “other domestic or foreign entities,” there are apparently
20 no same-species or cross-species provisions in the general partnership statutes of the
21 approximately one-half of the states that still have the 1914 Uniform Partnership Act.

22
23 The statutory framework for limited partnership same-species and cross-species
24 transactions is also quite varied. Most states have the Uniform Limited Partnership Act (1976
25 with 1985 Amendments). That Act has no provisions dealing with merger, interest exchange,
26 conversion, or domestication transactions. According to Volume 6A of Uniform Laws
27 Annotated (Supp. 2004), 19 states have adopted provisions authorizing limited partnerships to
28 merge with or convert into some other types of entities. Arizona, for example, only authorizes
29 limited partnerships to convert into general partnerships, but also authorizes limited partnerships
30 to merge with any other type of business entity. Some states allow conversions of limited
31 partnerships into limited liability companies and a few states expand the conversion list to
32 include corporations; most also allow mergers of limited partnerships into other limited
33 partnerships and some other types of entities. Several states appear to exclude non-profit
34 organizations, business trusts, and cooperatives from their cross-species list.

35
36 As of June 2004, the Uniform Limited Partnership Act (2001) has been adopted in
37 Hawaii, Iowa, Minnesota, and Illinois. It authorizes a conversion of a limited partnership into
38 any other type of organization, conversion of any other organization into a limited partnership,
39 and a merger of a limited partnership with any other type of organization. It does not, however,
40 have any specific provisions for interest exchange or domestication transactions.

41
42 Most limited liability company statutes have provisions authorizing mergers and
43 conversions, although the scope of coverage is quite varied. The Uniform Limited Liability
44 Company Act (1997) (ULLCA), which has been adopted in eight states and the Virgin Islands,
45 authorizes the conversion of a limited liability company into a general or limited partnership (but

1 not into a corporation or any other type of entity) and a merger of a limited liability company
2 with other limited liability companies or any “other domestic or foreign entities.” ULLCA does
3 not, however, have any provisions authorizing limited liability companies to enter into interest
4 exchange or domestication transactions. In the other 42 states there are substantial differences
5 from the ULLCA scheme with respect to same-species and cross-species transactions.
6

7 There are no same-species or cross-species provisions in the Uniform Unincorporated
8 Nonprofit Associations Act. Moreover, there are very few same-species or cross-species
9 provisions in statutes governing all the other types of entities that exist under state law. There
10 are some exceptions, however, such as the Delaware Business Trust Act which allows mergers
11 and conversions of business trusts into other entities, and the Minnesota statute which allows
12 farm cooperatives to convert into limited liability companies.
13

14 **3. Step Three: Prepare Amendments and Repeals**

15

16 Once the analysis of the existing same-species and cross-species statutes has been made,
17 decisions need to be made as to which ones should be amended or repealed and whether to add
18 additional provisions to these statutes. Under the Act, if the statute governing an entity has
19 same-species provisions, those provisions govern the transaction in question. The Act provides
20 default rules, however, if the other applicable entity statute has no same-species provisions for
21 the transaction in question. The Act also applies to cross-species transactions (but defaults to
22 applicable state entity law for approval requirements and the like). In deciding how to amend,
23 repeal or add to the existing entity statutes, achieving two goals should be paramount:
24

- 25 1. avoiding any potential inconsistency between the Act’s provisions and
26 similar provisions in the state’s entity statutes; and
27
- 28 2. making the interplay between the Act and the state’s various entity laws
29 relatively easy to navigate.
30

31 There are two ways a statute could achieve these goals.
32

33 **(a) Limit the Act to Cross-Species Transactions**

34

35 One method to achieve these goals would be to delete from any existing entity statutes
36 provisions that deal with cross-species transactions and add same-species merger, interest
37 exchange, and domestication provisions to every type of entity statute that does not currently
38 have these provisions. Thus all same-entity transactions would be governed by the state’s entity
39 statutes and all cross-species transactions would be governed by the Act. This approach will
40 require a large number of changes to existing entity statutes because same-species merger,
41 interest exchange, and domestication provisions would have to be added to all the state’s entity
42 statutes, including its unincorporated nonprofit, cooperative, and business trust statutes.
43

44 **(b) Limit Existing Laws to Same-Species Mergers**

45

1 A second method, which reduces somewhat the number of state entity laws that have to
2 be amended is, as follows:

- 3
4
5 1. Repeal any cross-species provisions from the state's corporation statutes.
6 The amendments necessary for this purpose in a state that has adopted the
7 Model Business Corporation Act and the Model Nonprofit Corporation
8 Act are found in Sections A2-1 and A2-2, respectively. In states whose
9 corporate codes do not have any cross-species merger provisions no
10 amendments to the state's corporate merger provisions will be necessary.
11 Most state also may not have interest exchange or domestication
12 provisions in their corporate codes. If that is the case, same-species share
13 exchange provisions do not need to be added to the corporate codes
14 because under the Act the requirements for approval of a merger and other
15 rights that a shareholder would have in a merger, for example, dissenters'
16 rights, apply. *See* Sections 203(a) (mergers) and 303(a) (interest
17 exchange).
18
- 19 2. Repeal any domestications provisions in the corporate statutes, unless the
20 state has domestication provisions in all of its entity statutes, which is very
21 unlikely to be the case, except possibly in Delaware. *See* Section A2-1(b)
22 (repeal of domestication provisions in the Model Business Corporation
23 Act). Under Section 503(a), the approval requirements for a merger apply
24 to a domestication, which is the rule in the Model Business Corporation
25 Act domestication provisions and, presumably, in all other existing state
26 entity domestication provisions.
27
- 28 3. Amend all the merger, interest exchange, conversion, and domestication
29 provisions in the state's other entity statutes by stripping out all of the
30 cross-species provisions in the merger provisions, and by repealing any
31 interest exchange, conversion, and domestication provisions. The
32 appropriate amendments for states that have adopted the Uniform
33 Partnership Act (1997), the Uniform Limited Partnership Act (2001), the
34 Uniform Limited Liability Company Act (1996) or the ABA Prototype
35 Limited Liability Company Act are found in Sections A2-3, A2-4, A2-5,
36 and A2-6, respectively.
37

38 Finally, this appendix suggests that a reference to this Act should be placed in the state's
39 entity statutes specifying the transactions that are governed by the Act. As an alternative to the
40 statutory references proposed in this appendix, legislative notes could be used in those states that
41 follow that practice. A note would be placed in the corporate statutes at the end of the merger
42 provisions (which also include share exchange provisions) and domestication provisions stating
43 that the Act is the primary statute that applies to transactions involving a corporation and another
44 form of entity and also is the primary statute for a corporate domestication transaction. For other
45 entities which have merger provisions, the legislative notes would appear at the end of those

provisions stating the Act is the primary statute for any cross-species merger involving that type of entity and also is the primary statute governing both same-species and cross-species interest exchange and domestication transactions where that type of entity is a party. Finally, if there are no merger provisions for a particular type of entity, a legislative note should be placed at the end of the statute stating that the Act is the statute that governs merger, interest exchange, conversion, and domestication transactions where that type of entity is involved.

Conforming Amendments and Repeals

Introductory Comment

Sections A2-1 through A2-6 set forth the conforming amendments and repeals to the existing model, prototype, and uniform organic laws described above. Deletions are enclosed in **[brackets]** and additions are underlined.

SECTION A2-1. MODEL BUSINESS CORPORATION ACT.

(a) Section 1.40(6A) (“domestic unincorporated entity”), (7B) (“eligible entity”), (7C) (“eligible interests”), (9B) (“filing entity”), (10A) (“foreign nonprofit corporation”), (10B) (“foreign unincorporated entity”), (13A) (“interest”), (13B) (“interest holder”), (14A) (“membership”), (14B) (“nonfiling entity”), (14C) (“nonprofit corporation”), (15A) (“organic document”), (15B) (“organic law”), (15C) (“owner liability”), (17A) (“private organic document”), (17B) (“public organic document”), and (24A) (“unincorporated entity”) of the [Model Business Corporation Act] are repealed.

(b) Chapter 9 of the [Model Business Corporation Act] is repealed.

(c) Sections 11.01, 11.02, 11.03, 11.04, 11.06, 11.07, 11.08 and 13.02 of the [Model Business Corporation Act] are amended as follows:

§ 11.01. Definitions.

As used in this chapter:

(a.1) “Acquired corporation” means the domestic or foreign corporation whose shares will be acquired in a share exchange.

(a.2) “Acquiring corporation” means the domestic or foreign corporation that acquires shares in a share exchange.

(a) “Merger” means a business combination pursuant to section 11.02.

1 (b) “Party to a merger” or “party to a share exchange” means any domestic or foreign
2 corporation **[or eligible entity]** that will:

3 (1) merge under a plan of merger;

4 (2) acquire shares **[or eligible interests]** of another corporation **[or an eligible**
5 **entity]** in a share exchange; or

6 (3) have all of its shares **[or eligible interests]** or all of one or more classes or
7 series of its shares **[or eligible interests]** acquired in a share exchange.

8 (c) “Share exchange” means a business combination pursuant to section 11.03.

9 (d) “Survivor” in a merger means the corporation **[or eligible entity]** into which one or
10 more other corporations **[or eligible entities]** are merged. A survivor of a merger may preexist
11 the merger or be created by the merger.

12 § 11.02. Merger.

13 (a) **[One]** By complying with this chapter:

14 (1) one or more domestic corporations may merge with one or more domestic or
15 foreign corporations **[or other entities pursuant to a plan of merger]** into a domestic or
16 foreign corporation; and

17 (2) two or more foreign corporations may be parties to a merger in which the
18 survivor is a domestic corporation.

19 (b) A foreign corporation[, **or a foreign other entity,**] may be a party to a merger [with
20 a domestic corporation] under this chapter, or may be [created by the terms of the plan of
21 merger, only] the survivor in such a merger, if the merger is permitted by the laws under which
22 the corporation **[or other entity]** is organized **[or by which it is governed]**.

23 **[(b.1) If the organic law of a domestic other entity does not provide procedures for**
24 **the approval of a merger, a plan of merger may be adopted and approved, the merger**
25 **effectuated, and appraisal rights exercised in accordance with the procedures in this**
26 **chapter and chapter 13. For the purposes of applying this chapter and chapter 13:**

27 (1) **the other entity, its interest holders, interests and organic documents**
28 **taken together shall be deemed to be a domestic business corporation, shareholders, shares**
29 **and articles of incorporation, respectively and vice versa as the context may require; and**

30 (2) **if the business and affairs of the other entity are managed by a group of**
31 **persons that is not identical to the interest holders, that group shall be deemed to be the**
32 **board of directors.] (Repealed.)**

33 (c) The plan of merger must include:

34 (1) the name of each corporation **[or other entity]** that will merge and the name
35 of the corporation **[or other entity]** that will be the survivor of the merger;

36 (2) the terms and conditions of the merger;

37 (3) the manner and basis of converting the shares of each merging corporation
38 **[and interests of each merging other entity]** into shares or other securities, **[interests,]**
39 obligations, rights to acquire shares[, or other securities **[or interests]**, cash, other property, or
40 any combination of the foregoing;

41 (4) the articles of incorporation of any corporation[, **or the organic documents**
42 **of any other entity,**] to be created by the merger, or if a new corporation **[or other entity]** is not
43 to be created by the merger, any amendments to the survivor’s articles of incorporation **[or**
44 **organic documents]**.

1 (d) Terms of a plan of merger may be made dependent on facts objectively ascertainable
2 outside the plan in accordance with section 1.20(k).

3 (e) The plan of merger may also include a provision that the plan may be amended
4 **[prior to filing articles of merger, but if the shareholders of a domestic corporation that is a**
5 **party to the merger are required or permitted to vote on the plan, the plan must provide**
6 **that subsequent to approval of the plan by such shareholders the plan may not be amended**
7 **to change:]** by the directors or shareholders of a domestic corporation, except that the
8 shareholders who were entitled to vote on the plan shall be entitled to vote on any amendment of
9 the plan that will change:

10 (1) the amount or kind of shares or other securities, **[interests,]** obligations,
11 rights to acquire shares[,], or other securities **[or interests]**, cash, or other property to be received
12 under the plan by the shareholders of **[or owners of interests in]** any party to the merger;

13 (2) the articles of incorporation of any corporation[, **or the organic documents**
14 **of any other entity,**] that will survive or be created as a result of the merger, except for changes
15 permitted by section 10.05 **[or by comparable provisions of the organic laws of any such**
16 **foreign corporation or domestic or foreign other entity];** or

17 (3) any of the other terms or conditions of the plan if the change would adversely
18 affect such shareholders in any material respect.

19 (f) A merger in which a business corporation and another form of entity are parties is
20 governed by [the Model Entity Transactions Act].

21 § 11.03. Share exchange.

22 (a) Through a share exchange:

23 (1) a domestic corporation may acquire all of the shares of one or more classes or
24 series of shares of another domestic or foreign corporation[, **or all of the interests of one or**
25 **more classes or series of interests of a domestic or foreign other entity,**] in exchange for
26 shares or other securities, **[interests,]** obligations, rights to acquire shares or other securities,
27 cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange,
28 or

29 (2) all of the shares of one or more classes or series of shares of a domestic
30 corporation may be acquired by another domestic or foreign corporation **[or other entity,]** in
31 exchange for shares or other securities, **[interests,]** obligations, rights to acquire shares or other
32 securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share
33 exchange.

34 (b) A foreign corporation[, **or a foreign other entity,**] may be a party to a share
35 exchange only if the share exchange is permitted by the laws under which the corporation **[or**
36 **other entity]** is organized **[or by which it is governed].**

37 **[(b.1) If the organic law of a domestic other entity does not provide procedures for**
38 **the approval of a share exchange, a plan of share exchange may be adopted and approved,**
39 **and the share exchange effectuated, in accordance with the procedures, if any, for a**
40 **merger. If the organic law of a domestic other entity does not provide procedures for the**
41 **approval of either a share exchange or a merger, a plan of share exchange may be adopted**
42 **and approved, the share exchange effectuated, and appraisal rights exercised, in**
43 **accordance with the procedures in this chapter and chapter 13. For the purposes of**
44 **applying this chapter and chapter 13:**

1 (1) the other entity, its interest holders, interests and public organic
2 document, if any, shall be deemed to be a domestic business corporation, shareholders,
3 shares and articles of incorporation, respectively and vice versa as the context may require;
4 and

5 (2) if the affairs of the other entity are managed by a group of persons that is
6 not identical to the interest holders, that group shall be deemed to be the board of
7 directors.] (Repealed.)

8 (c) The plan of share exchange must include:

9 (1) the name of ~~[each]~~ the acquired corporation ~~[or other entity whose shares~~
10 ~~or interests will be acquired]~~ and the name of the acquiring corporation ~~[or other entity that~~
11 ~~will acquire those shares or interests];~~

12 (2) the terms and conditions of the share exchange;

13 (3) the manner and basis of exchanging shares of ~~[a]~~ the acquired corporation ~~[or~~
14 ~~interests in an other entity whose shares or interests will be acquired]~~ under the share
15 exchange into shares or other securities, ~~[interests,]~~ obligations, rights to acquire shares[, or
16 other securities, ~~[or interests,]~~ cash, other property, or any combination of the foregoing.

17 (d) Terms of a plan of share exchange may be made dependent on facts objectively
18 ascertainable outside the plan in accordance with section 1.20(k).

19 (e) The plan of share exchange may also include a provision that the plan may be
20 amended ~~[prior to filing articles of share exchange, but if the shareholders of a domestic~~
21 ~~corporation that is a party to the share exchange are required or permitted to vote on the~~
22 ~~plan, the plan must provide that subsequent to approval of the plan by such shareholders~~
23 ~~the plan may not be amended to change:]~~ by the directors or shareholders of a domestic
24 acquired corporation, except that the shareholders who were entitled to vote on the plan shall be
25 entitled to vote on any amendment of the plan that will change:

26 (1) the amount or kind of shares or other securities, ~~[interests,]~~ obligations,
27 rights to acquire shares[, or other securities ~~[or interests]~~, cash, or other property to be issued
28 by the corporation or to be received under the plan by the shareholders of ~~[or owners of~~
29 ~~interests in any party to the share exchange]~~ the acquired corporation; or

30 (2) any of the other terms or conditions of the plan if the change would adversely
31 affect such shareholders in any material respect.

32 (f) Section 11.03 does not limit the power of a domestic corporation to acquire shares of
33 another corporation ~~[or interests in another entity]~~ in a transaction other than a share exchange.

34 (g) A share exchange or interest exchange in which a business corporation and another
35 form of entity are parties is governed by [the Model Entity Transactions Act].

36 § 11.04. Action on a plan of merger or share exchange.

37 In the case of a domestic corporation that is a party to a merger or share exchange:

38 (a) The plan of merger or share exchange must be adopted by the board of directors.

39 (b) Except as provided in subsection (g) and in section 11.05, after adopting the plan of
40 merger or share exchange the board of directors must submit the plan to the shareholders for
41 their approval. The board of directors must also transmit to the shareholders a recommendation
42 that the shareholders approve the plan, unless the board of directors makes a determination that
43 because of conflicts of interest or other special circumstances it should not make such a
44 recommendation, in which case the board of directors must transmit to the shareholders the basis
45 for that determination.

1 (c) The board of directors may condition its submission of the plan of merger or share
2 exchange to the shareholders on any basis.

3 (d) If the plan of merger or share exchange is required to be approved by the
4 shareholders, and if the approval is to be given at a meeting, the corporation must notify each
5 shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is
6 to be submitted for approval. The notice must state that the purpose, or one of the purposes, of
7 the meeting is to consider the plan and must contain or be accompanied by a copy or summary of
8 the plan. **[If the corporation is to be merged into an existing corporation or other entity,**
9 **the]** The notice shall also include or be accompanied by a copy or summary of the articles of
10 incorporation **[or organizational documents of that corporation or other entity. If the**
11 **corporation is to be merged into a corporation or other entity that is to be created pursuant**
12 **to the merger, the notice shall include or be accompanied by a copy or a summary of the**
13 **articles of incorporation or organizational documents of the new corporation or other**
14 **entity.]** of the survivor.

15 (e) Unless the articles of incorporation, or the board of directors acting pursuant to
16 subsection (c), requires a greater vote or a greater number of votes to be present, approval of the
17 plan of merger or share exchange requires the approval of the shareholders at a meeting at which
18 a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and,
19 if any class or series of shares is entitled to vote as a separate group on the plan of merger or
20 share exchange, the approval of each such separate voting group at a meeting at which a quorum
21 of the voting group consisting of at least a majority of the votes entitled to be cast on the merger
22 or share exchange by that voting group is present.

23 (f) Separate voting by voting groups is required:

24 (1) on a plan of merger, by each class or series of shares that:

25 (i) are to be converted under the plan of merger into other securities,
26 **[interests,]** obligations, rights to acquire shares[,]
27 or other securities **[or interests]**, cash, other
28 property, or any combination of the foregoing; or

29 (ii) would be entitled to vote as a separate group on a provision in the
30 plan that, if contained in a proposed amendment to articles of incorporation, would require
31 action by separate voting groups under section 10.04;

32 (2) on a plan of share exchange, by each class or series of shares included in the
33 exchange, with each class or series constituting a separate voting group; and

34 (3) on a plan of merger or share exchange, if the voting group is entitled under
35 the articles of incorporation to vote as a voting group to approve a plan of merger or share
36 exchange.

37 (g) Unless the articles of incorporation otherwise provide, approval by the corporation's
38 shareholders of a plan of merger or share exchange is not required if:

39 (1) the corporation will survive the merger or is the acquiring corporation in a
40 share exchange;

41 (2) except for amendments permitted by section 10.05, its articles of
42 incorporation will not be changed;

43 (3) each shareholder of the corporation whose shares were outstanding
44 immediately before the effective date of the merger or share exchange will hold the same
45 number of shares, with identical preferences, limitations, and relative rights, immediately after
the effective date of **[change]** the merger or share exchange; and

1 (4) the issuance in the merger or share exchange of shares or other securities
2 convertible into or rights exercisable for shares does not require a vote under section 6.21(f).

3 **[(h) If as a result of a merger or share exchange one or more shareholders of a**
4 **domestic corporation would become subject to owner liability for the debts, obligations or**
5 **liabilities of any other person or entity, approval of the plan of merger or share exchange**
6 **shall require the execution, by each such shareholder, of a separate written consent to**
7 **become subject to such owner liability.] (Repealed.)**

8 § 11.06. Articles of merger or share exchange.

9 (a) After a plan of merger or a plan of share exchange involving a domestic acquired
10 corporation has been adopted and approved as required by this Act, articles of merger or share
11 exchange shall be executed on behalf of each party to the merger or the acquired corporation in
12 the share exchange by any officer or other duly authorized representative. The articles shall set
13 forth:

14 (1) the names of the parties to the merger or share exchange;

15 (2) if the articles of incorporation of the survivor of a merger are amended, or if a
16 new corporation is created as a result of a merger, the amendments to the survivor's articles of
17 incorporation or the articles of incorporation of the new corporation;

18 (3) if the plan of merger or share exchange required approval by the shareholders
19 of a domestic corporation that was a party to the merger or share exchange, a statement that the
20 plan was duly approved by the shareholders and, if voting by any separate voting group was
21 required, by each such separate voting group, in the manner required by this Act and the articles
22 of incorporation;

23 (4) if the plan of merger or share exchange did not require approval by the
24 shareholders of a domestic corporation that was a party to the merger or share exchange, a
25 statement to that effect; and

26 (5) as to each foreign corporation **[and each other entity]** that was a party to the
27 merger or share exchange, a statement that the participation of the foreign corporation **[or other**
28 **entity]** was duly authorized as required by the **[organic law of the corporation or other entity]**
29 laws of the foreign jurisdiction.

30 (b) Articles of merger or share exchange shall be delivered to the secretary of state for
31 filing by the survivor of the merger or the **[acquiring]** acquiring corporation in a share
32 exchange, and shall take effect at the effective time provided in section 1.23. **[Articles of**
33 **merger or share exchange filed under this section may be combined with any filing**
34 **required under the organic law of any domestic eligible entity involved in the transaction if**
35 **the combined filing satisfies the requirements of both this section and the other organic**
36 **law.]**

37 § 11.07. Effect of merger or share exchange.

38 (a) When a merger becomes effective:

39 (1) the corporation **[or eligible entity]** that is designated in the plan of merger as
40 the survivor continues or comes into existence, as the case may be;

41 (2) the separate existence of every corporation **[or eligible entity]** that is merged
42 into the survivor ceases;

43 (3) all property owned by, and every contract right possessed by, each
44 corporation **[or eligible entity]** that merges into the survivor is vested in the survivor without
45 reversion or impairment;

1 (4) all liabilities of each corporation **[or eligible entity]** that is merged into the
2 survivor are vested in the survivor;

3 (5) the name of the survivor may, but need not be, substituted in any pending
4 proceeding for the name of any party to the merger whose separate existence ceased in the
5 merger;

6 (6) the articles of incorporation **[or organic documents]** of the survivor are
7 amended to the extent provided in the plan of merger;

8 (7) the articles of incorporation **[or organic documents]** of a survivor that is
9 created by the merger become effective; and

10 (8) the shares of each corporation that is a party to the merger[, **and the interests**
11 **in an eligible entity that is a party to a merger,**] that are to be converted under the plan of
12 merger into shares or other securities, **[eligible interests,]** obligations, rights to acquire
13 **[securities,]** shares or other securities, **[or eligible interests,]** cash, other property, or any
14 combination of the foregoing, are converted, and the former holders of such shares **[or eligible**
15 **interests]** are entitled only to the rights provided to them in the plan of merger or to any rights
16 they may have under chapter 13 **[or the organic law of the eligible entity]**.

17 (b) When a share exchange becomes effective, the shares of each domestic corporation
18 that are to be exchanged for shares or other securities, **[interests,]** obligations, rights to acquire
19 shares or other securities, cash, other property, or any combination of the foregoing, are entitled
20 only to the rights provided to them in the plan or share exchange or to any rights they may have
21 under chapter 13.

22 **[(c) A person who becomes subject to owner liability for some or all of the debts,**
23 **obligations or liabilities of any entity as a result of a merger or share exchange shall have**
24 **owner liability only to the extent provided in the organic law of the entity and only for**
25 **those debts, obligations and liabilities that arise after the effective time of the articles of**
26 **merger or share exchange.] (Repealed.)**

27 (d) Upon a merger becoming effective, a foreign corporation[, **or a foreign eligible**
28 **entity,]** that is the survivor of the merger is deemed to:

29 (1) appoint the secretary of state as its agent for service of process in a
30 proceeding to enforce the rights of shareholders of each domestic corporation that is a party to
31 the merger who exercise appraisal rights, and

32 (2) agree that it will promptly pay the amount, if any, to which such shareholders
33 are entitled under chapter 13.

34 **[(e) The effect of a merger or share exchange on the owner liability of a person who**
35 **had owner liability for some or all of the debts, obligations or liabilities of a party to the**
36 **merger or share exchange shall be as follows:**

37 (1) The merger or share exchange does not discharge any owner liability
38 under the organic law of the entity in which the person was a shareholder or interest
39 holder to the extent any such owner liability arose before the effective time of the articles of
40 merger or share exchange.

41 (2) The person shall not have owner liability under the organic law of the
42 entity in which the person was a shareholder or interest holder prior to the merger or
43 share exchange for any debt, obligation or liability that arises after the effective time of the
44 articles of merger or share exchange.

1 **(3) The provisions of the organic law of any entity for which the person had**
2 **owner liability before the merger or share exchange shall continue to apply to the collection**
3 **or discharge of any owner liability preserved by paragraph (1), as if the merger or share**
4 **exchange had not occurred.**

5 **(4) The person shall have whatever rights of contribution from other**
6 **persons are provided by the organic law of the entity for which the person had owner**
7 **liability with respect to any owner liability preserved by paragraph (1), as if the merger or**
8 **share exchange had not occurred.] (Repealed.)**

9 § 11.08. Abandonment of a merger or share exchange.

10 (a) Unless otherwise provided in a plan of merger or share exchange or in the laws under
11 which a foreign corporation **[or a domestic or foreign other entity]** that is a party to a merger
12 or a share exchange is organized **[or by which it is governed]**, after the plan has been adopted
13 and approved as required by this chapter, and at any time before the merger or share exchange
14 has become effective, it may be abandoned by any party thereto without action by the party's
15 shareholders **[or owners of interests]**, in accordance with any procedures set forth in the plan of
16 merger or share exchange or, if no such procedures are set forth in the plan, in the manner
17 determined by the board of directors **[of a corporation, or the managers of an other entity]**,
18 subject to any contractual rights of other parties to the merger or share exchange.

19 (b) If a merger or share exchange is abandoned under subsection (a) after articles of
20 merger or share exchange have been filed with the secretary of state but before the merger or
21 share exchange has become effective, a statement that the merger or share exchange has been
22 abandoned in accordance with this section, executed on behalf of a party to the merger or share
23 exchange by an officer or other duly authorized representative, shall be delivered to the secretary
24 of state for filing prior to the effective date of the merger or share exchange. Upon filing, the
25 statement shall take effect and the merger or share exchange shall be deemed abandoned and
26 shall not become effective.

27 § 13.02. Right to appraisal.

28 (a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value
29 of that shareholder's shares, in the event of any of the following corporate actions:

30 * * *

31 (2) consummation of a share exchange **[to] in** which the corporation is **[a party**
32 **as the corporation whose shares will be] the acquired corporation** if the shareholder is entitled
33 to vote on the exchange, except that appraisal rights shall not be available to any shareholder of
34 the corporation with respect to any class or series of shares of the corporation that is not
35 exchanged;

36 * * *

37 (5) any other amendment to the articles of incorporation, merger, share exchange
38 or disposition of assets to the extent provided by the articles of incorporation, bylaws or a
39 resolution of the board of directors; or

40 (6) consummation of a domestication if the shareholder does not receive shares
41 in the foreign corporation resulting from the domestication that have terms as favorable to the
42 shareholder in all material respects, and represent at least the same percentage interest of the
43 total voting rights of the outstanding shares of the corporation, as the shares held by the
44 shareholder before the domestication[;].

45 **[(7) consummation of a conversion of the corporation to nonprofit status**

1 pursuant to subchapter 9C; or

2 (8) consummation of a conversion of the corporation to a form of other
3 entity pursuant to subchapter 9E.]

4 (b) Notwithstanding subsection (a), the availability of appraisal rights under subsection
5 (a)(1), (2), (3), (4), (6) and (8)] and (6) shall be limited in accordance with the following
6 provisions:

7 * * *

8 (d) Sections 15.21 (automatic withdrawal upon certain conversions), 15.22 (withdrawal
9 upon conversion to a nonfiling entity) and 15.23 (relating to transfer of authority) of the [Model
10 Business Corporation Act] are repealed.

11
12 **SECTION A2-2. MODEL NONPROFIT CORPORATION ACT.**

13 Sections 11.01, 11.02, and 11.06 of the [Model Nonprofit Corporation Act], are amended
14 as follows:

15 § 11.01. Approval of plan of merger.

16 (a) Subject to the limitations set forth in section 11.02, one or more nonprofit
17 corporations may merge **[into a business or]** with one or more nonprofit [corporation]
18 corporations, if the plan of merger is approved or provided in section 11.03.

19 * * *

20 (d) A merger in which a nonprofit corporation and another form of entity are parties is
21 governed by [the Model Entity Transactions Act].

22 § 11.02. Limitations on mergers by public benefit or religious corporations.

23 (a) Without the prior approval of [insert name of appropriate court] in a proceeding in
24 which the attorney general has been given written notice, a public benefit or religious
25 corporation may merge only with:

26 * * *

27 (3) a wholly-owned foreign or domestic **[business or]** mutual benefit
28 corporation, provided the public benefit or religious corporation is the surviving corporation and
29 continues to be a public benefit or religious corporation after the merger; or

30 (4) a **[business or]** mutual benefit corporation, provided that:

31 (i) on or prior to the effective date of the merger, assets with a value equal
32 to the greater of the fair market value of the net tangible and intangible assets (including
33 goodwill) of the public benefit corporation or the fair market value of the public benefit
34 corporation if it were to be operated as a business concern are transferred or conveyed to one or
35 more persons who would have received its assets under section 14.06(a)(5) and (6) had it
36 dissolved;

37 (ii) it shall return, transfer or convey any assets held by it upon condition
38 requiring return, transfer or conveyance, which condition occurs by reason of the merger, in
39 accordance with such condition; and

(iii) the merger is approved by a majority of directors of the public benefit or religious corporation who are not and will not become members **[or shareholders]** in or officers, employees, agents or consultants of the surviving corporation.

* * *

§ 11.06. Merger with foreign corporation.

(a) Except as provided in section 11.02, one or more foreign **[business or]** nonprofit corporations may merge with one or more domestic nonprofit corporations if:

* * *

(b) Upon the merger taking effect, the surviving foreign **[business or]** nonprofit corporation is deemed to have irrevocably appointed the secretary of state as its agent for service or process in any proceeding brought against it.

SECTION A2-3. UNIFORM PARTNERSHIP ACT.

(a) Sections 101, 401, and 502 of the [Uniform Partnership Act (1997)] are amended as follows:

§ 101. Definitions.

In this [Act]:

* * *

(3.1) “Domestic partnership” means a partnership whose internal relations are governed by the laws of this State.

* * *

(4.1) “Foreign partnership” means a partnership other than a domestic partnership.

(5) “Limited liability partnership” or “domestic limited liability partnership” means a partnership that has filed a statement of qualification under Section 1001 and does not have a similar statement in effect in any other jurisdiction.

* * *

(13) “Surviving partnership” means a domestic or foreign partnership into which one or more domestic or foreign partnerships are merged. A surviving partnership may preexist the merger or be created by the merger.

* * *

§ 401. Partner’s rights and duties.

* * *

(i) [A] Except as provided in [Article] 9 or [the Model Entity Transactions Act], a person may become a partner only with the consent of all of the partners.

* * *

§ 502. Partner’s transferable interest in partnership.

[The] Except as provided in [Article] 9 or [the Model Entity Transactions Act], only transferable interest of a partner in the partnership is the partner’s share of the profits and losses of the partnership and the partner’s right to receive distributions. The interest of a partner, whether or not transferable, is personal property.

(b) Sections 901 (definitions), 902 (conversion of partnership to limited partnership), 903 (conversion of limited partnership to partnership), and 904 (effect of conversion; entity unchanged) of the [Uniform Partnership Act (1997)] are repealed.

(c) Sections 905, 906, 907, and 908 of the [Uniform Partnership Act (1997)] are amended as follows:

§ 905. Merger of partnerships.

(a) Pursuant to a plan of merger approved as provided in subsection (c), a partnership may be merged with one or more partnerships **[or limited partnerships]**.

(b) The plan of merger must set forth:

(1) the name of each partnership **[or limited partnership]** that is a party to the merger;

(2) the name of the surviving **[entity]** partnership into which the other partnerships **[or limited partnerships]** will merge;

(3) **[whether the surviving entity is a partnership or a limited partnership and the status of each partner;**

(4)] the terms and conditions of the merger;

[(5)] (4) the manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving **[entity]** partnership, or into money or other property in whole or part; and

[(6)] (5) the street address of the surviving **[entity's]** partnership's chief executive office.

(c) The plan of merger must be approved[:

(1) in the case of a partnership that is a party to the merger,] by all of the partners, or a number or percentage specified for merger in the partnership agreement[; **and**

(2) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the State or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement].

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger takes effect on the later of:

(1) **[the approval of the plan of merger by all parties to the merger, as provided in subsection (c);] (Repealed.)**

(2) the filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(3) any effective date specified in the plan of merger.

(f) A merger in which a partnership and another form of entity are parties is governed by [the Model Entity Transactions Act].

§ 906. Effect of merger.

1 (a) When a merger takes effect:
2 (1) the separate existence of every partnership **[or limited partnership]** that is a
3 party to the merger, other than the surviving **[entity] partnership**, ceases;
4 (2) all property owned by each of the merged partnerships **[or limited**
5 **partnerships]** vests in the surviving **[entity] partnership**;
6 (3) all obligations of every partnership **[or limited partnership]** that is a party to
7 the merger **[become]** are the obligations of the surviving **[entity] partnership**; **[and]**
8 (4) an action or proceeding pending against a partnership **[or limited**
9 **partnership]** that is a party to the merger may be continued as if the merger had not occurred, or
10 the surviving **[entity] partnership** may be substituted as a party to the action or proceeding¹;
11 and
12 (5) if the plan of merger provides for a person to become a partner in a surviving
13 domestic partnership, the person becomes a partner without the need for the consent that would
14 otherwise be required by Section 401(I).
15 (b) The [Secretary of State] of this State is the agent for service of process in an action or
16 proceeding against a surviving foreign partnership **[or limited partnership]** to enforce an
17 obligation of a domestic partnership **[or limited partnership]** that is a party to a merger. The
18 surviving **[entity] partnership** shall promptly notify the [Secretary of State] of the mailing
19 address of its chief executive office and of any change of address. Upon receipt of process, the
20 [Secretary of State] shall mail a copy of the process to the surviving foreign partnership **[or**
21 **limited partnership]**.
22 (c) A partner of the surviving partnership **[or limited partnership]** is liable for:
23 (1) all obligations of a party to the merger for which the partner was personally
24 liable before the merger;
25 (2) all other obligations of the surviving **[entity] partnership** incurred before the
26 merger by a party to the merger, but those obligations may be satisfied only out of property of
27 the **[entity] partnership**; and
28 (3) except as otherwise provided in Section 306, all obligations of the surviving
29 **[entity] partnership** incurred after the merger takes effect², **but those obligations may be**
30 **satisfied only out of property of the entity if the partner is a limited partner]**.
31 (d) [If] Except as provided in Section 306, if the obligations incurred before the merger
32 by a party to the merger are not satisfied out of the property of the surviving partnership [or
33 limited partnership], the general partners of that party immediately before the effective date of
34 the merger shall contribute the amount necessary to satisfy that party's obligations to the
35 surviving [entity] partnership, in the manner provided in Section 807 [or in the [Limited
36 Partnership Act] of the jurisdiction in which the party was formed, as the case may be,] as
37 if the merged party were dissolved.
38 (e) A partner of a party to a merger who **[does not become]** is not a partner of the
39 surviving partnership **[or limited partnership]** is dissociated from the **[entity,] partnership** of
40 which that partner was a partner³, as of the date the merger takes effect. **[The surviving entity**
41 **shall cause the partner's interest in the entity to be purchased under Section 701 or**
42 **another statute specifically applicable to that partner's interest with respect to a merger].**
43 **[The surviving entity]** A surviving domestic partnership is bound under Section 702 by an act
44 of a general partner dissociated under this subsection, and the partner is liable under Section 703
45 for transactions entered into by the surviving **[entity] partnership** after the merger takes effect.

§ 907. Statement of merger.

(a) After a merger, the surviving partnership **[or limited partnership]** may file a statement that **[one or more partnerships or limited partnerships]** the parties to the merger have merged into the surviving **[entity]** partnership.

(b) A statement of merger must contain:

(1) the name of each partnership **[or limited partnership]** that is a party to the merger;

(2) the name of the surviving **[entity]** partnership into which the other partnerships **[or limited partnership]** were merged; and

(3) the street address of the surviving **[entity's]** partnership's chief executive office and of an office in this State, if any[; and

(4) whether the surviving entity is a partnership or a limited partnership].

(c) Except as otherwise provided in subsection (d), for the purposes of Section 302, property of the surviving partnership **[or limited partnership which]** that before the merger was held in the name of another party to the merger is property held in the name of the surviving **[entity]** partnership upon filing a statement of merger.

(d) For the purposes of Section 302, real property of the surviving partnership **[or limited partnership which]** that before the merger was held in the name of another party to the merger is property held in the name of the surviving **[entity]** partnership upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

(e) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to Section 105(c), stating the name of a partnership **[or limited partnership]** that is a party to the merger in whose name property was held before the merger and the name of the surviving **[entity]** partnership, but not containing all of the other information required by subsection (b), operates with respect to the partnerships **[or limited partnerships]** named to the extent provided in subsections (c) and (d).

§ 908. Nonexclusive.

This [article] is not exclusive. Partnerships **[or limited partnerships]** may be converted or merged in any other manner provided or permitted by law.

SECTION A2-4. UNIFORM LIMITED PARTNERSHIP ACT.

(a) Sections 102, 103, 110, 111, 201, 202, 204, 601, 603, 606 and 701 of the [Uniform Limited Partnership Act (2001)] are amended as follows:

§ 102. Definitions.

In this [Act]:

* * *

(11) “Limited partnership[,],” (except in the phrases “foreign limited partnership” and “foreign limited liability limited partnership[,],”) or “domestic limited partnership” means an entity, having one or more general partners and one or more limited partners, which is formed under this [Act] by two or more persons or becomes subject to this [Act] under [Article] 11 or

1 Section 1206(a) or (b). The **[term includes]** terms include a limited liability limited partnership.

2 * * *

3 § 103. Knowledge and notice.

4 * * *

5 (d) A person has notice of:

6 * * *

7 (4) a limited partnership's conversion or domestication under **[[Article] 11]** [the
8 Model Entity Transactions Act], 90 days after the effective date of the **[articles]** statement of
9 conversion or domestication; [or]

10 (5) a merger under [Article] 11, 90 days after the effective date of the articles of
11 merger[.]; and

12 (6) a merger or interest exchange under [the Model Entity Transactions Act], 90
13 days after the effective date of the statement of merger or interest exchange.

14 * * *

15 § 110. Effect of partnership agreement; nonwaivable provisions.

16 * * *

17 (b) The partnership agreement may not:

18 * * *

19 (12) restrict the right of a partner:

20 (A) under Section 1110(a) to approve a merger **[or conversion]; or**

21 (B) under [the Model Entity Transactions Act] to approve a merger,
22 interest exchange, conversion, or domestication;

23 (13) restrict the right of a general partner under Section 1110(b) to consent to an
24 amendment to the certificate of limited partnership which deletes a statement that the limited
25 partnership is a limited liability limited partnership; or

26 **[(13)] (14)** restrict rights under this [Act] of a person other than a partner or a
27 transferee.

28 § 111. Required information.

29 A limited partnership shall maintain at its designated office the following information:

30 * * *

31 (3) a copy of any **[filed]** articles of **[conversion or]** merger filed under [Article]
32 11 and of any statement of merger, interest exchange, conversion or domestication filed under
33 [the Model Entity Transactions Act];

34 * * *

35 § 201. Formation of limited partnership; certificate of limited partnership.

36 * * *

37 (d) Subject to subsection (b), if any provision of a partnership agreement is inconsistent
38 with the filed certificate of limited partnership, or with a filed statement of dissociation,
39 termination, or change, or with filed articles of **[conversion or]** merger, or with a statement of
40 merger, interest exchange, conversion, or domestication filed under [the Model Entity
41 Transactions Act];

42 (1) the partnership agreement prevails as to partners and transferees; and

43 (2) the filed **[certificate of limited partnership, statement of dissociation,**
44 **termination, or change, or articles of conversion or merger prevail]** document prevails as to
45 persons, other than partners and transferees, that reasonably rely on the filed record to their

1 detriment.

2 § 202. Amendment or restatement of certificate.

3 (a) In order to amend its certificate of limited partnership, a limited partnership shall
4 deliver to the [Secretary of State] for filing an amendment **[or, pursuant to [Article] 11,**
5 **articles of merger]** stating:

6 * * *

7 (g) A certificate of limited partnership may also be amended by filing articles of merger
8 under [Article] 11 or a statement of merger, interest exchange, conversion, or domestication
9 under [the Model Entity Transactions Act].

10 § 204. Signing of records.

11 (a) Each record delivered to the [Secretary of State] for filing pursuant to this [Act] must
12 be signed in the following manner:

13 * * *

14 **[(8) Articles of conversion must be signed by each general partner listed in the**
15 **certificate of limited partnership.] (Repealed.)**

16 (9) Articles of merger must be signed as provided in Section 1108(a).

17 * * *

18 (c) Each record delivered to the [Secretary of State] for filing pursuant to [the Model
19 Entity Transactions Act] must be signed by each general partner listed in the certificate of
20 limited partnership.

21 § 601. Dissociation as limited partner.

22 * * *

23 (b) A person is dissociated from a limited partnership as a limited partner upon the
24 occurrence of any of the following events:

25 * * *

26 (10) the limited partnership's participation in a merger **[or conversion]** under
27 [Article] 11, if the limited partnership;

28 (A) is not the **[converted or]** surviving entity; or

29 (B) is the **[converted or]** surviving entity but, as a result of the
30 **[conversion or]** merger, the person ceases to be a limited partner[.];

31 (11) the limited partnership's participation in a transaction under the [Model Entity
32 Transactions Act], if the limited partnership:

33 (A) does not survive the transaction; or

34 (B) does survive the transaction, but as a result of the transaction, the person
35 ceases to be a limited partner.

36 § 603. Dissociation as general partner.

37 A person is dissociated from a limited partnership as a general partner upon the
38 occurrence of any of the following events:

39 * * *

40 (11) the limited partnership's participation in a merger **[or conversion]** under
41 [Article] 11, if the limited partnership;

42 (A) is not the **[converted or]** surviving entity; or

43 (B) is the **[converted or]** surviving entity but, as a result of the
44 **[conversion or]** merger, the person ceases to be a general partner[.];

45 (12) the limited partnership's participation in a transaction under the [Model

Entity Transactions Act], if the limited partnership:

(A) does not survive the transaction; or

(B) does survive the transaction, but as a result of the transaction, the person ceases to be a general partner.

§ 606. Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner.

(a) After a person is dissociated as a general partner and before the limited partnership is dissolved, **[converted under [Article] 11, or]** merged out of existence under [Article 11] or [the Model Entity Transactions Act], or otherwise ceases to exist in the form of a limited partnership as a result of a transaction under [the Model Entity Transactions Act], the limited partnership is bound by an act of the person only if:

* * *

§ 701. Partner's transferable interest.

[The] Except as provided in [Article] 11 or [the Model Entity Transactions Act], the only interest of a partner which is transferable is the partner's transferable interest. [A transferable] The interest of a partner, whether or not transferable, is personal property.

(b) The title of Article 11 of the [Uniform Limited Partnership Act (2001)] is amended as follows:

[Article] 11. **[Conversion and]** Merger

(c) Section 1101 of the [Uniform Limited Partnership Act (2001)] is amended as follows:

§ 1101. Definitions.

In this [article]:

(1) "Constituent limited partnership" means a **[constituent organization that is a]** domestic or foreign limited partnership that is a party to a merger.

[(2) "Constituent organization" means an organization that is party to a merger.

(3) "Converted organization" means the organization into which a converting organization converts pursuant to Sections 1102 through 1105.

(4) "Converting limited partnership" means a converting organization that is a limited partnership.

(5) "Converting organization" means an organization that converts into another organization pursuant to Section 1102.

(6) "General partner" means a general partner of a limited partnership.]

[(7)] (2) "Governing statute" of [an organization] a domestic or foreign limited partnership means the statute that governs the [organization's] partnership's internal affairs.

[(8)] (3) "Organization" means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other entity having a governing statute. The term

includes domestic and foreign entities regardless of whether organized for profit.

[(9)] (4) "Organizational documents" means:

(A) for a domestic or foreign general partnership, its partnership agreement;

(B) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(C) for a domestic or foreign limited liability company, its articles of organization and operating agreement, or comparable records as provided in its governing statute;

(D) for a business trust, its agreement of trust and declaration of trust;

(E) for a domestic or foreign for profit corporation, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

(F) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

[(10) "Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership.]

[(11)] (5) "Personal liability" means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(A) by the organization's governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(B) by the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, liabilities, and obligations of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

[(12)] (6) "Surviving **[organization]** limited partnership" means **[an organization]** a domestic or foreign limited partnership into which one or more other **[organizations]** domestic or foreign limited partnerships are merged. A surviving **[organization]** limited partnership may preexist the merger or be created by the merger.

(d) Sections 1102 (conversion), 1103 (action on plan of conversion by converting limited partnership), 1104 (filings required for conversion; effective date), and 1105 (effect of conversion) of the [Uniform Limited Partnership Act (2001)] are repealed.

(e) Sections 1106, 1108, 1109, 1110, 1111 and 1112 of the [Uniform Limited Partnership Act (2001)] are amended as follows:

§ 1106. Merger.

(a) A limited partnership may merge with one or more other **[constituent**

1 **organizations]** domestic or foreign limited partnerships and two or more foreign limited
2 partnerships may merge into a domestic limited partnership pursuant to this section and Sections
3 1107 through 1109 and a plan of merger, if:

4 (1) the governing statute of each of the other **[organizations]** constituent limited
5 partnerships authorizes the merger; and

6 **[(2) the merger is not prohibited by the law of a jurisdiction that enacted**
7 **any of those governing statutes; and**

8 **(3)]** (2) each of the other **[organizations]** constituent limited partnerships
9 complies with its governing statute in effecting the merger.

10 (b) A plan of merger must be in a record and must include:

11 (1) the name **[and form]** of each constituent **[organization]** limited partnership;

12 (2) the name **[and form]** of the surviving **[organization]** limited partnership and,
13 if the surviving **[organization]** limited partnership is to be created by the merger, a statement to
14 that effect;

15 (3) the terms and conditions of the merger, including the manner and basis for
16 converting the interests in each constituent **[organization]** limited partnership into any
17 combination of money, interests in the surviving **[organization]** limited partnership, interests in
18 any other organization, and other consideration;

19 (4) if the surviving **[organization]** limited partnership is to be created by the
20 merger, the **[surviving organization's organizational documents]** certificate of limited
21 partnership and partnership agreement of the surviving limited partnership; and

22 (5) if the surviving **[organization]** limited partnership is not to be created by the
23 merger, any amendments to be made by the merger to the **[surviving organization's**
24 **organizational documents]** certificate of limited partnership and partnership agreement of the
25 surviving limited partnership.

26 **(c)** A merger in which a limited partnership and another form of entity are parties is
27 governed by [the Model Entity Transactions Act].

28 § 1108. Filings required for merger; effective date.

29 (a) After each constituent **[organization]** limited partnership has approved a merger,
30 articles of merger must be signed on behalf of:

31 (1) each preexisting **[constituent]** domestic limited partnership, by each general
32 partner listed in the certificate of limited partnership; and

33 (2) each **[other]** preexisting **[constituent organization]** foreign limited
34 partnership, by an authorized representative.

35 (b) The articles of merger must include:

36 (1) the name **[and form]** of each constituent **[organization]** limited partnership
37 and the jurisdiction of its governing statute;

38 (2) the name **[and form]** of the surviving **[organization]** limited partnership, the
39 jurisdiction of its governing statute, and, if the surviving [organization] limited partnership is
40 created by the merger, a statement to that effect;

41 (3) the date the merger is effective under the governing statute of the surviving
42 **[organization]** limited partnership;

43 (4) if the surviving **[organization]** limited partnership is to be created by the
44 merger: (A) if it will be a limited partnership, the limited partnership's] its certificate of
45 limited partnership[; or (B) if it will be an organization other than a limited partnership, the

1 **organizational document that creates the organization];**

2 (5) if the surviving **[organization]** limited partnership preexists the merger, any
3 amendments provided for in the plan of merger **[for the organizational document that created**
4 **the organization]** to its certificate of limited partnership;

5 (6) a statement as to each constituent **[organization]** limited partnership that the
6 merger was approved as required by the **[organization's]** limited partnership's governing
7 statute;

8 (7) if the surviving **[organization]** limited partnership is a foreign **[entity]**
9 limited partnership not authorized to transact business in this State, the street and mailing
10 address of an office which the [Secretary of State] may use for the purposes of Section 1109(b);
11 and

12 (8) any additional information required by the governing statute of any
13 constituent **[organization]** limited partnership.

14 (c) Each constituent limited partnership shall deliver the articles of merger for filing in
15 the [office of the Secretary of State].

16 (d) A merger becomes effective under this [article]: **(1) if the surviving organization**
17 **is a limited partnership,** upon the later of:

18 **[(i)]** (1) compliance with subsection (c); or

19 **[(ii)]** (2) subject to Section 206(c), as specified in the articles of merger; **or (2) if**
20 **the surviving organization is not a limited partnership, as provided by the governing**
21 **statute of the surviving organization].**

22 § 1109. Effect of merger.

23 (a) When a merger becomes effective:

24 (1) the surviving **[organization]** limited partnership continues or comes into
25 existence;

26 (2) each constituent **[organization]** limited partnership that merges into the
27 surviving **[organization]** limited partnership ceases to exist as a separate entity;

28 (3) all property owned by each constituent **[organization]** limited partnership
29 that ceases to exist vests in the surviving **[organization]** limited partnership;

30 (4) all debts, liabilities, and other obligations of each constituent **[organization]**
31 limited partnership that ceases to exist **[continue as]** are the obligations of the surviving
32 **[organization]** limited partnership;

33 (5) an action or proceeding pending by or against any constituent **[organization]**
34 limited partnership that ceases to exist may be continued as if the merger had not occurred;

35 (6) except as prohibited by other law, all of the rights, privileges, immunities,
36 powers, and purposes of each constituent **[organization]** limited partnership that ceases to exist
37 vest in the surviving **[organization]** limited partnership;

38 (7) except as otherwise provided in the plan of merger, the terms and conditions
39 of the plan of merger take effect; **[and]**

40 (8) except as otherwise agreed, if a constituent limited partnership ceases to exist,
41 the merger does not dissolve the limited partnership for the purposes of [Article] 8;

42 (9) if the surviving **[organization]** limited partnership is created by the merger[:
43 **(A) if it is a limited partnership, the,** its certificate of limited partnership becomes effective;
44 **[or (B) if it is an organization other than a limited partnership, the organizational**
45 **document that creates the organization becomes effective;]** and

1 (10) if the surviving **[organization]** limited partnership preexists the merger, any
2 amendments provided for in the articles of merger **[for the organizational document that**
3 **created the organization]** to its certificate of limited partnership and partnership agreement
4 become effective.

5 (b) A surviving **[organization]** limited partnership that is a foreign **[entity]** limited
6 partnership consents to the jurisdiction of the courts of this State to enforce any obligation owed
7 by a constituent **[organization]** limited partnership, if before the conversion the constituent
8 **[organization]** limited partnership was subject to suit in this State on that obligation. A
9 surviving **[organization]** limited partnership that is a foreign **[entity]** limited partnership and not
10 authorized to transact business in this State appoints the [Secretary of State] as its agent for
11 service of process for the purposes of enforcing an obligation under this subsection. Service on
12 the [Secretary of State] under this subsection is made in the same manner and with the same
13 consequences as in Section 117(c) and (d).

14 § 1110. Restrictions on approval of **[conversions and]** mergers and on relinquishing LLLP
15 status.

16 (a) If a partner of a **[converting or]** constituent limited partnership will have personal
17 liability with respect to **[a converted or surviving organization]** any organization as a result of
18 a merger, approval and amendment of a plan of **[conversion or]** merger are ineffective without
19 the consent of that partner, unless:

20 (1) the limited partnership's partnership agreement provides for the approval of
21 the **[conversion or]** merger with the consent of less than all the partners; and

22 (2) that partner has consented to that provision of the partnership agreement.

23 * * *

24 § 1111. Liability of general partner after **[conversion or]** merger.

25 (a) A **[conversion or]** merger under this article does not discharge any liability under
26 Sections 404 and 607 of a person that was a general partner in or dissociated as a general partner
27 from a **[converting or]** constituent limited partnership, but:

28 (1) the provisions of this [Act] pertaining to the collection or discharge of that
29 liability continue to apply to that liability;

30 (2) for the purposes of applying those provisions, the **[converted or]** surviving
31 **[organization]** limited partnership is deemed to be the **[converting or]** constituent limited
32 partnership; and

33 (3) if a person is required to pay any amount under this subsection:

34 (A) the person has a right of contribution from each other person that was
35 liable as a general partner under Section 404 when the obligation was incurred and has not been
36 released from the obligation under Section 607; and

37 (B) the contribution due from each of those persons is in proportion to the
38 right to receive distributions in the capacity of general partner in effect for each of those persons
39 when the obligation was incurred.

40 (b) In addition to any other liability provided by law:

41 (1) a person that immediately before a **[conversion or]** merger became effective
42 was a general partner in a **[converting or]** constituent limited partnership that was not a limited
43 liability limited partnership is personally liable for each obligation of the **[converted or]**
44 surviving **[organization]** limited partnership arising from a transaction with a third party after
45 the **[conversion or]** merger becomes effective, if at the time the third party enters into the

1 transaction, the third party:

2 (A) does not have notice of the **[conversion or]** merger; and

3 (B) reasonably believes that:

4 (i) the **[converted or]** surviving business is the **[converting or]**
5 constituent limited partnership;

6 (ii) the **[converting or]** constituent limited partnership is not a
7 limited liability limited partnership; and

8 (iii) the person is a general partner in the **[converting or]**
9 constituent limited partnership; and

10 (2) a person that was dissociated as a general partner from a **[converting or]**
11 constituent limited partnership before the **[conversion or]** merger became effective is personally
12 liable for each obligation of the **[converted or]** surviving **[organization] limited partnership**
13 arising from a transaction with a third party after the **[conversion or]** merger becomes effective,
14 if:

15 (A) immediately before the **[conversion or]** merger became effective the
16 **[converting or]** surviving limited partnership was **[a]** not a limited liability limited partnership;
17 and

18 (B) at the time the third party enters into the transaction less than two
19 years have passed since the person dissociated as a general partner and the third party:

20 (i) does not have notice of the dissociation;

21 (ii) does not have notice of the **[conversion or]** merger; and

22 (iii) reasonably believes that the **[converted or]** surviving
23 **[organization] limited partnership** is the **[converting or]** constituent limited partnership, the
24 **[converting or]** constituent limited partnership is not a limited liability limited partnership, and
25 the person is a general partner in the **[converting or]** constituent limited partnership.

26 § 1112. Power of general partners and persons dissociated as general partners to bind
27 **[organization] limited partnership** after **[conversion or]** merger.

28 (a) An act of a person that immediately before a **[conversion or]** merger became
29 effective was a general partner in a **[converting or]** constituent limited partnership binds the
30 **[converted or]** surviving **[organization] limited partnership** after the **[conversion or]** merger
31 becomes effective, if:

32 (1) before the **[conversion or]** merger became effective, the act would have
33 bound the **[converting or]** constituent limited partnership under Section 402; and

34 (2) at the time the third party enters into the transaction, the third party:

35 (A) does not have notice of the **[conversion or]** merger; and

36 (B) reasonably believes that the **[converted or]** surviving business is the
37 **[converting or]** constituent limited partnership and that the person is a general partner in the
38 **[converting or]** constituent limited partnership.

39 (b) An act of a person that before a **[conversion or]** merger became effective was
40 dissociated as a general partner from a **[converting or]** constituent limited partnership binds the
41 **[converted or]** surviving **[organization] limited partnership** after the **[conversion or]** merger
42 becomes effective, if:

43 (1) before the **[conversion or]** merger became effective, the act would have
44 bound the **[converting or]** constituent limited partnership under Section 402 if the person had
45 been a general partner; and

(2) at the time the third party enters into the transaction, less than two years have passed since the person dissociated as a general partner and the third party:

(A) does not have notice of the dissociation;

(B) does not have notice of the **[conversion or]** merger; and

(C) reasonably believes that the **[converted or]** surviving **[organization]** limited partnership is the **[converting or]** constituent limited partnership and that the person is a general partner in the **[converting or]** constituent limited partnership.

(c) If a person having knowledge of the **[conversion or]** merger causes a **[converted or]** surviving **[organization]** limited partnership to incur an obligation under subsection (a) or (b), the person is liable:

(1) to the **[converted or]** surviving **[organization]** limited partnership for any damage caused to the **[organization]** surviving limited partnership arising from the obligation; and

(2) if another person is liable for the obligation, to that other person for any damage caused to that other person arising from that liability.

(f) Section 1113 ([article] not exclusive) of the [Uniform Limited Partnership Act (2001)] is repealed.

Comment

In addition to making the amendments described in the introductory comment to Appendix 2, the foregoing amendments to the Uniform Limited Partnership Act (2001) also make clear that limited partnerships may be parties to triangular mergers in which an entity that is not a limited partnership and is not a party to the merger provides the merger consideration.

SECTION A2-5. UNIFORM LIMITED LIABILITY COMPANY ACT.

(a) Sections 101, 404, and 601 of the [Uniform Limited Liability Company Act] are amended as follows:

§ 101. Definitions.

In this [Act]:

* * *

(9) “Limited liability company” or “domestic limited liability company” means a limited liability company organized under this [Act].

* * *

§ 404. Management of limited liability company.

* * *

(c) The only matters of a member or manager-managed company’s business requiring the consent of all of the members are:

* * *

1 (11) **[the consent of members to merge]** a merger with another [entity]
2 domestic or foreign limited liability company under Section 904(c)(1) or with any other form of
3 entity under [the Model Entity Transactions Act]; **[and]**

4 (12) an interest exchange in which the company is the acquired entity or a
5 conversion or domestication of the company under [the Model Entity Transactions Act]; and

6 * * *

7 § 601. Events causing member's dissociation.

8 A member is dissociated from a limited liability company upon the occurrence of any of
9 the following events:

10 * * *

11 (10) in the case of a member that is an estate or is acting as a member by virtue
12 of being a personal representative of an estate, distribution of the estate's entire rights to receive
13 distributions from the company, but not merely the substitution of a successor personal
14 representative; **[or]**

15 (11) termination of the existence of a member if the member is not an individual,
16 estate, or trust other than a business trust; or

17 (12) the participation of the limited liability company in a transaction under [the
18 Model Entity Transaction Act], if the company:

19
20 (A) does not survive the transaction; or

21 (B) does survive the transaction, but as a result of the transaction, the
22 person ceases to be a member.

23 (b) Sections 901 (definitions), 902 (conversion of partnership or limited partnership to
24 limited liability company), and 903 (effect of conversion; entity unchanged) of the [Uniform
25 Limited Liability Company Act] are repealed.

26 (c) Sections 904, 905 and 906 of the [Uniform Limited Liability Company Act] are
27 amended as follows:

28 § 904. Merger of **[entities]** limited liability companies.

29 (a) Pursuant to a plan of merger approved under subsection (c), a domestic limited
30 liability company may be merged with or into one or more domestic limited liability
31 companies[, or foreign limited liability companies[, **corporations, foreign corporations,**
32 **partnerships, foreign partnerships, limited partnerships, foreign limited partnerships, or**
33 **other domestic or foreign entities]**, and two or more foreign limited liability companies may be
34 merged into a domestic limited liability company that is created in the merger.

35 (b) A plan of merger must set forth:

36 (1) the name of each **[entity]** domestic or foreign limited liability company that
37 is a party to the merger;

1 (2) the name of the surviving **[entity]** domestic or foreign limited liability
2 company into which the other **[entities]** parties will merge, which may be created in the merger;

3 (3) **[the type of organization of the surviving entity;]** (Repealed.)

4 (4) the terms and conditions of the merger;

5 (5) the manner and basis for converting the interests of each limited liability
6 company that is a party to the merger into interests or obligations of the surviving **[entity]**
7 limited liability company, interests or obligations of any other entity, or into money or other
8 property in whole or in part~~;~~ **and**].

9 **[(6) the street address of the surviving entity's principal place of business.]**

10 (c) A plan of merger must be approved:

11 (1) in the case of a domestic limited liability company that is a party to the
12 merger, by all of the members or by a number or percentage of members specified in the
13 operating agreement; and

14 (2) in the case of a foreign limited liability company that is a party to the merger,
15 by the vote required for approval of a merger by the law of the State or foreign jurisdiction in
16 which the foreign limited liability company is organized~~;~~

17 **(3) in the case of a partnership or domestic limited partnership that is a**
18 **party to the merger, by the vote required for approval of a conversion under Section**
19 **902(b); and**

20 **(4) in the case of any other entities that are parties to the merger, by the vote**
21 **required for approval of a merger by the law of this State or of the State or foreign**
22 **jurisdiction in which the entity is organized and, in the absence of such a requirement, by**
23 **all the owners of interests in the entity].**

24 (d) After a plan of merger is approved and before the merger takes effect, the plan may
25 be amended or abandoned as provided in the plan.

26 (e) The merger is effective upon the filing of the articles of merger with the [Secretary of
27 State], or at such later date as the articles may provide.

28 (f) A merger in which a limited liability company and another form of entity are parties
29 is governed by [the Model Entity Transactions Act].

30 § 905. Articles of merger.

31 (a) After approval of the plan of merger under Section 904(c), unless the merger is
32 abandoned under Section 904(d), articles of merger must be signed on behalf of each domestic
33 or foreign limited liability company **[and other entity]** that is a party to the merger and
34 delivered to the [Secretary of State] for filing. The articles must set forth:

35 (1) the name and jurisdiction of **[formation or]** organization of each of the
36 domestic or foreign limited liability companies **[and other entities that are parties]** that is a
37 party to the merger;

38 (2) for each domestic limited liability company that is to merge, the date its
39 articles of organization were filed with the [Secretary of State];

40 (3) that a plan of merger has been approved **[and signed]** by each domestic or
41 foreign limited liability company **[and other entity]** that is to merge;

42 (4) the name and address of the surviving domestic or foreign limited liability
43 company **[or other surviving entity];**

44 (5) the effective date of the merger;

45 (6) if a domestic limited liability company is the surviving **[entity]** limited

1 liability company, such changes in its articles of organization as are necessary by reason of the
2 merger;

3 (7) if a party to **[a]** the merger is a foreign limited liability company, the
4 jurisdiction and date of filing of its initial articles of organization and the date when its
5 application for authority was filed by the [Secretary of State] or, if an application has not been
6 filed, a statement to that effect; and

7 (8) if the surviving entity is not a domestic limited liability company, an
8 agreement that the surviving **[entity]** limited liability company may be served with process in
9 this State and is subject to liability in any action or proceeding for the enforcement of any
10 liability or obligation of any limited liability company previously subject to suit in this State
11 which is to merge, and for the enforcement, as provided in this [Act], of the right of members of
12 any limited liability company to receive payment for their interest against the surviving entity.

13 (b) If a foreign limited liability company is the surviving **[entity of a merger]** limited
14 liability company, it may not do business in this State until an application for that authority is
15 filed with the [Secretary of State].

16 (c) The surviving limited liability company **[or other entity]** shall furnish a copy of the
17 plan of merger, on request and without cost, to any member of any domestic limited liability
18 company **[or any person holding an interest in any other entity]** that is to merge.

19 (d) Articles of merger operate as an amendment to **[the]** a surviving domestic limited
20 liability company's articles of organization.
21 § 906. Effect of merger.

22 (a) When a merger takes effect:

23 (1) the separate existence of each **[limited liability company and other entity**
24 **that is a]** party to the merger, other than the surviving **[entity]** domestic or foreign limited
25 liability company, terminates;

26 (2) all property owned by each **[of the limited liability companies and other**
27 **entities that are]** party to the merger vests in the surviving **[entity]** domestic or foreign limited
28 liability company;

29 (3) all debts, liabilities, and other obligations of each **[limited liability company**
30 **and other entity that is]** party to the merger **[become]** are the obligations of the surviving
31 **[entity]** domestic or foreign limited liability company;

32 (4) an action or proceeding pending by or against a **[limited liability company**
33 **or other]** party to **[a]** the merger may be continued as if the merger had not occurred or the
34 surviving **[entity]** domestic or foreign limited liability company may be substituted as a party to
35 the action or proceeding; and

36 (5) except as prohibited by other law, all the rights, privileges, immunities,
37 powers, and purposes of every limited liability company **[and other entity]** that is a party to **[a]**
38 the merger vest in the surviving **[entity]** domestic or foreign limited liability company.

39 (b) The [Secretary of State] is an agent for service of process in an action or proceeding
40 against **[the]** a surviving foreign **[entity]** limited liability company to enforce an obligation of
41 any party to a merger if the surviving foreign **[entity]** limited liability company fails to appoint
42 or maintain an agent designated for service of process in this State or the agent for service of
43 process cannot with reasonable diligence be found at the designated office. Upon receipt of
44 process, the [Secretary of State] shall send a copy of the process by registered or certified mail,
45 return receipt requested, to the surviving **[entity]** foreign limited liability company at the address

set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) the date the company receives the process, notice, or demand;
- (2) the date shown on the return receipt, if signed on behalf of the company; or
- (3) five days after its deposit in the mail, if mailed postpaid **[and correctly**

addressed].

(c) **[A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.]**
(Repealed.)

(d) Unless otherwise agreed, a merger of a limited liability company that is not the surviving **[entity] limited liability company** in the merger does not require the limited liability company to wind up its business under this [Act] or pay its liabilities and distribute its assets pursuant to this [Act].

(e) Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving **[entity] limited liability company** in the merger.

(d) Section 907 ([article] not exclusive) of the [Uniform Limited Liability Company Act] is repealed.

Comment

In addition to making the amendments described in the introductory comment to Appendix 2, the foregoing amendments to the Uniform Limited Liability Company Act also make clear that (i) limited liability companies may be parties to triangular mergers in which an entity that is not a limited liability company and is not a party to the merger provides the merger consideration, (ii) limited liability companies may be parties to consolidations in which the surviving limited liability company is created in the transaction, and (iii) the survivor of a merger of limited liability companies may be either a domestic or foreign limited liability company (see § 101(9) which limits the term “limited liability company” to domestic limited liability companies).

SECTION A2-6. PROTOTYPE LIMITED LIABILITY COMPANY ACT.

Sections 1201, 1202, 1203 and 1204 of the [Prototype Limited Liability Company Act] are amended as follows:

§ 1201. Merger or consolidation.

(A) Unless otherwise provided in writing in an operating agreement, **[and subject to any law applicable to business entities other than limited liability companies,]** one or more limited liability companies may merge or consolidate with or into one or more other **[business entities] limited liability companies,** with the limited liability company **[or other business entity]** as the merger or consolidation agreement shall provide being the surviving or resulting limited liability company **[or other business entity]**.

1 (B) Rights or securities of or interests in a **[business entity]** limited liability company
2 that is a party to the merger or consolidation may be exchanged for or converted into cash,
3 property, obligations, rights or securities of or interests in the surviving or resulting **[business**
4 **entity]** limited liability company or of any other **[business entity]** person.

5 (C) **[As used in this article 12, “business entity” OR “business entities” shall mean**
6 **domestic and foreign limited liability companies and corporations.]** A merger in which a
7 limited liability company and another form of entity are parties is governed by [the Model Entity
8 Transactions Act].

9 § 1202. Approval of merger or consolidation.

10 (A) Unless otherwise provided in writing in an operating agreement, a limited liability
11 company that is a party to a proposed merger or consolidation shall approve the merger or
12 consolidation agreement by the consent of more than one half by number of the members.

13 (B) Each **[corporation and]** foreign limited liability company that is a party to a
14 proposed merger or consolidation shall approve the merger or consolidation in the manner and
15 by the vote required by the laws applicable to **[such business entity]** it.

16 (C) Each **[business entity]** domestic limited liability company that is a party to the
17 merger or consolidation shall have such rights to abandon the merger or consolidation as are
18 provided for in the merger or consolidation agreement **[or in the laws applicable to the**
19 **business entity]**.

20 § 1203. Articles of merger or consolidation.

21 (A) The **[business entity]** limited liability company surviving or resulting from the
22 merger or consolidation shall deliver to the Secretary of State articles of merger or consolidation
23 executed by each constituent **[entity]** limited liability company setting forth:

24 (1) The name and jurisdiction of **[formation or]** organization of each **[business**
25 **entity which]** limited liability company that is to **[merger]** merge or consolidate;

26 (2) That an agreement of merger or consolidation has been approved and
27 executed by each **[business entity which]** limited liability company that is a party to the merger
28 or consolidation;

29 (3) The name of the surviving or resulting **[business entity]** limited liability
30 company;

31 (4) The future effective date of the merger or consolidation (which shall be a date
32 or time certain) if it is not to be effective upon the filing of the articles of merger or
33 consolidation;

34 (5) That the agreement of merger or consolidation is on file at a place of business
35 of the surviving or resulting **[business entity]** limited liability company, and the address of that
36 place of business;

37 (6) That a copy of the agreement of merger or consolidation will be furnished by
38 the surviving or resulting **[business entity]** limited liability company, on request and without
39 cost, to any person holding an interest in any **[business entity which]** limited liability company
40 that is to merge or consolidate; and

41 (7) If the surviving or resulting **[entity]** limited liability company is not a
42 **[business entity organized under the laws of this state]** domestic limited liability company, a
43 statement that such surviving or resulting **[business entity]** limited liability company:

44 (i) Agrees that it may be served with process in this state in any
45 proceeding for enforcement of any obligation of any **[business entity]** domestic limited liability

1 company party to the merger or consolidation [that was organized under the laws of this state,
2 **as well as for enforcement of any obligation of the surviving business entity or the new**
3 **business entity arising from the merger or consolidation];** and

4 (ii) Appoints the Secretary of State as its agent for service of process in
5 any such proceeding, and the surviving **[business entity or the new business entity]** or resulting
6 limited liability company shall specify the address to which a copy of the process shall be mailed
7 to it by the Secretary of State.

8 * * *

9 (D) **[Articles of merger or consolidation shall constitute articles of dissolution for a**
10 **limited liability company which is not the surviving or resulting business entity in the**
11 **merger or consolidation.]** (Repealed.)

12 (E) An agreement of merger or consolidation approved in accordance with § 1202 may
13 effect any amendment to an operating agreement or effect the adoption of a new operating
14 agreement for a limited liability company if it is the surviving or resulting limited liability
15 company in the merger or consolidation. An approved agreement of merger or consolidation
16 may also provide that the operating agreement of any constituent limited liability company to the
17 merger or consolidation (including a limited liability company formed for the purpose of
18 consummating a merger or consolidation) shall be the operating agreement of the surviving or
19 resulting limited liability company. Any amendment to an operating agreement or adoption of a
20 new operating agreement made pursuant to this subsection (E) shall be effective at the effective
21 time or date of the merger or consolidation. **[The provisions of this subsection shall not be**
22 **construed to limit the accomplishment of a merger or of any of the matters referred to**
23 **herein by any other means provided for in an operating agreement or other agreement or**
24 **as otherwise permitted by law.]**

25 § 1204. Effects of merger or consolidation.

26 A merger or consolidation has the following effects:

27 (A) The **[business entities]** limited liability companies that are parties to the merger or
28 consolidation agreement shall be a single **[entity]** limited liability company, which, in the case
29 of a merger shall be the **[entity]** limited liability company designated in the plan of merger as the
30 surviving **[entity]** limited liability company, and, in the case of a consolidation, shall be the
31 **[new entity]** resulting limited liability company provided for in the plan of consolidation;

32 (B) Each party to the merger or consolidation agreement, except the surviving **[entity or**
33 **the new entity]** or resulting limited liability company, shall cease to exist;

34 (C) The surviving **[entity or the new entity]** or resulting limited liability company shall
35 thereupon and thereafter possess all the rights, privileges, immunities, and powers of each
36 constituent **[entity]** limited liability company and shall be subject to all the restrictions,
37 disabilities, and duties of each of such constituent **[entities to the extent such rights, privileges,**
38 **immunities, powers, franchises, restrictions, disabilities, and duties are applicable to the**
39 **type of business entity that is the surviving entity or the new entity]** limited liability
40 companies;

41 (D) All property, real, personal and mixed, and all debts due on whatever account,
42 including promises to make capital contributions and subscriptions for **[shares]** interests, and all
43 other choses in action, and all and every other interest of or belonging to or due to each of the
44 constituent **[entities]** limited liability companies shall be vested in the surviving **[entity or the**
45 **new entity]** or resulting limited liability company without further act or deed;

1 (E) The title to all real estate and any interest therein, vested in any **[such constituent**
2 **entity]** constituent limited liability company shall not revert or be in any way impaired by reason
3 of such merger or consolidation;

4 (F) The surviving **[entity or the new entity]** or resulting limited liability company shall
5 thenceforth be liable for all liabilities and obligations of each of the constituent **[entities]** limited
6 liability companies so merged or consolidated, and any claim existing or action or proceeding
7 pending by or against any such constituent **[entity]** limited liability company may be prosecuted
8 as if such merger or consolidation had not taken place, or the surviving **[entity or the new**
9 **entity]** or resulting limited liability company may be substituted in the action;

10 (G) Neither the rights of creditors nor any liens on the property of any constituent
11 **[entity]** limited liability company shall be impaired by the merger or consolidation;

12 (H) The interests in a limited liability company **[or shares or other interests in a**
13 **corporation]** that are to be converted or exchanged into interests, **[shares or]** other securities,
14 cash, obligations or other property under the terms of the merger or consolidation agreement are
15 so converted, and the former holders thereof are entitled only to the rights provided in the merger
16 or consolidation agreement or the rights otherwise provided by law.
17
18
19