

D R A F T

FOR DISCUSSION ONLY

HARMONIZED
UNIFORM STATUTORY TRUST ENTITY ACT
(Amendments to Uniform Statutory Trust Entity Act)

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For March 4 – 6, 2011 Drafting Committee Meeting on
Harmonization of Business Entity Acts

Without Comments but with Reporters' Notes

Strike and Score Version

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

February 21, 2011

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HARMONIZED UNIFORM STATUTORY TRUST ENTITY ACT

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Introductory Reporters' Note

The proposed revisions to the text of the act set forth in this document have been prepared as part of a project that has two purposes: (i) to harmonize the language of all of the unincorporated entity laws, and (ii) to revise the language of each of those acts in a manner that permits their integration into a single code of entity laws.

The Reporters' Notes in this document are limited to explaining the source of certain of the proposed changes. Following the approval of the changes in this document by the Conference, the Reporters' Notes will be replaced with more usual comments that explain the provisions of the act.

The harmonization process has involved the revision of the following acts, some of which are referred to in the Reporters' Notes by the abbreviations listed below:

HUB	Business Organizations Act
META	Model Entity Transactions Act
MORAA	Model Registered Agents Act
UPA	Uniform Partnership Act (1997)
ULPA	Uniform Limited Partnership Act (2001)
ULLCA	Uniform Limited Liability Company Act (2006)
USTEA	Uniform Statutory Trust Entity Act
Coop Act	Uniform Limited Cooperative Association Act
UUNAA	Uniform Unincorporated Nonprofit Association Act (2008)

Changes to the currently effective text of the act are shown by ~~striking through text to be deleted~~ and underlining text to be added. Black type is used to show changes that adopt language from the HUB, META, or MORAA, or are merely relocations of current language or corrections to cross references. Changes that adopt language from other unincorporated entity acts are shown in blue type. Changes that do not have a source in one of the existing unincorporated entity acts are shown in red type. Often a "red" change made to one act will be replicated in other acts as a matter of harmonization. These replications are shown in black when the "red" change is made in the HUB, META, or MORAA, and are shown in blue when the "red" change is made in one of the other acts.

Harmonization and USTEА

Harmonizing USTEА requires special sensitivity, because USTEА seeks to be simultaneously an act based on trust principles and a business entity statute. See USTEА § 105 ("The law of this state pertaining to common-law trusts supplements this [act].") and Prefatory Note (referring to the "[i]ncreasing use of the statutory trust as a mode of business organization").

Although USTEА is the Conference's newest entity statute (with some clear improvements over earlier acts), RUPA, ULPA, and ULLCA comprise the core of the

46 Conference's approach to unincorporated entities. These statutes reflect substantial policy
47 decisions made by the Conference over the past two decades.
48

49 Because, with proper drafting of the trust documents, an USTEA statutory trust can
50 function interchangeably with partnerships, limited partnerships, and limited liability companies,
51 the harmonization question is of critical importance. Absent a distinguishing policy reason, it
52 makes no sense for the Conference to take a particular policy decision in HRUPA, HULPA, and
53 HULLCA, and then abandon that position in HUSTEA. Moreover, the recent (and already
54 notorious) case of Olmstead v. F.T.C., 44 So.3d 76 (Fl. 2010) illustrates the danger of courts
55 interpreting one statute involving one type of unincorporated entity in terms of language added
56 or omitted in another statute involving another type of unincorporated entity.
57

58 Either of two reasons justifies choosing USTEA's approach over RUPA-ULPA-
59 RULLCA core: (i) USTEA has a better approach, applicable across the board; or (ii) a clear,
60 articulated policy reason exists for USTEA having a unique approach.
61

62 In the view of the Chair, Vice Chair, and Co-Reporters for the Harmonization project
63 (who jointly prepared this draft), many of USTEA's unusual provisions fit one or the other of the
64 two reasons. When the first reason applies, other acts are being harmonized to USTEA. When
65 the second reason applies, the other acts are not being harmonized with USTEA. When neither
66 reason seems to apply, this draft chooses harmonization.
67

68 **HARMONIZED UNIFORM STATUTORY TRUST ENTITY ACT**

69
70 **[ARTICLE] 1**

71 **GENERAL PROVISIONS**

72 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Uniform Statutory
73 Trust Entity Act.

74 **SECTION 102. DEFINITIONS.** In this [act]:
75

76 (1) “Beneficial owner” means the owner of a beneficial interest in a statutory trust, series
77 of a statutory trust, or foreign statutory trust.

78 (2) “Certificate of trust” means the record filed by the [Secretary of State] under
79 certificate required by Section 201. The term includes the ~~record~~ certificate as amended or
80 restated.

81 (3) “Common-law trust” means a fiduciary relationship with respect to property arising
82 from a manifestation of intent to create that relationship and subjecting the person that holds title
83 to the property to duties to deal with the property for the benefit of charity or for one or more
84 persons, at least one of which is not the sole trustee, whether the purpose of the trust is donative
85 or commercial. The term includes the type of trust known at common law as a “business trust”,
86 “Massachusetts trust”, or “Massachusetts business trust”.

87 ~~(4) “Designated office” means:~~

88 ~~(A) for a statutory trust, the street address that it is required to designate under~~
89 ~~Section 201(b)(2); or~~

90 ~~(B) for a foreign statutory trust, its principal office.~~

91 (4) “Contribution”, except in the phrase “right of contribution”, means a benefit provided
92 by a person to a statutory trust to become a beneficial owner or in the person’s capacity as a

93 beneficial owner.

94 (5) “Distribution” means a transfer of money or other property from a statutory trust on
95 account of a beneficial interest. The term:

96 (A) includes:

97 (i) a redemption or other purchase by a statutory trust of a beneficial
98 interest; and

99 (ii) a transfer to a beneficial owner in return for the beneficial owner’s
100 relinquishment of any right to participate as a beneficial owner in the management or conduct of
101 the statutory trust’s activities; or have access to records or other information concerning the
102 trust’s activities; and

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

106 ~~(5)~~ (6) “Foreign statutory trust” means a trust that is formed under the laws of a
107 jurisdiction other than this state which would be a statutory trust if formed under the laws of this
108 state.

109 ~~(6)~~ (7) “Governing instrument” means the trust instrument and certificate of trust.

110 ~~(7)~~ (8) “Jurisdiction”, used to refer to a political entity, means the United States, a state, a
111 foreign country, or a subdivision of a foreign country.

112 ~~(8)~~ (9) “Person” means an individual, corporation, statutory trust, estate, partnership,
113 limited liability company, association, joint venture, public corporation, government or
114 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

115 ~~The term does not include a common law trust.~~ “Person” means an individual, business
116 corporation, nonprofit corporation, partnership, limited partnership, limited liability company,
117 [general cooperative association,] limited cooperative association, unincorporated nonprofit
118 association, statutory trust, business trust, common-law business trust, estate, trust, association,
119 joint venture, public corporation, government or governmental subdivision, agency, or
120 instrumentality, or any other legal or commercial entity.

121 (10) “Principal office” means the principal executive office of a statutory trust or foreign
122 statutory trust, whether or not the office is located in this state.

123 ~~(9)~~ (11) “Property” means all property, ~~whether~~ real, personal, or mixed, or tangible or
124 intangible, or any right or interest therein.

125 ~~(10) “Qualified foreign statutory trust” means a foreign statutory trust that is registered~~
126 ~~to do business in this state pursuant to a certificate of registration filed by the [Secretary of~~
127 ~~State].~~

128 ~~(11)~~ (12) “Record”, used as a noun, means information that is inscribed on a tangible
129 medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

130 (13) “Registered agent” means an agent of a statutory trust or foreign statutory trust
131 which is authorized to receive service of any process, notice, or demand required or permitted by
132 law to be served on the trust.

133 ~~(10)~~ (14) “Qualified Registered foreign statutory trust” means a foreign statutory trust
134 that is registered to do business in this state pursuant to a certificate statement of registration
135 filed by the [Secretary of State].

136 ~~(12)~~ (15) “Related party”, with respect to a party that is a trustee, officer, employee,
137 manager, or beneficial owner, means:

138 (A) the spouse of the party;
139 (B) a child, parent, sibling, grandchild, or grandparent of the party, or the spouse
140 of one of them;
141 (C) an individual having the same residence as the party;
142 (D) a trust or estate of which a related party described in subparagraph (A), (B),
143 or (C) is a substantial beneficiary;
144 (E) a trust, estate, legally incapacitated individual, conservatee, or minor for
145 which the party is a fiduciary; or
146 (F) a person that directly or indirectly controls, is controlled by, or is under
147 common control with, the party.

148 ~~(13)~~ (16) “Series trust” means a statutory trust that has one or more series created under
149 Section 401.

150 ~~(14)~~ (17) “Sign” means, with the present intent to authenticate or adopt a record:

151 (A) to execute or adopt a tangible symbol; or
152 (B) to attach to or logically associate with the record an electronic symbol, sound,
153 or process.

154 ~~(15)~~ (18) “State” means a state of the United States, the District of Columbia, Puerto
155 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
156 jurisdiction of the United States.

157 ~~(16)~~ (19) “Statutory trust”, except in the phrase “foreign statutory trust”, means an entity
158 formed under this [act].

159 ~~(17) “Trust” includes a common-law trust, statutory trust, and foreign statutory trust.~~

160 (20) “Transfer” includes:

(A) an assignment;

(B) a conveyance;

(C) a sale;

(D) a lease;

(E) an encumbrance, including by mortgaging or granting a security interest;

(F) a gift;

(G) and transfer by operation of law.

~~(48)~~ (21) “Trust instrument” means a record other than the certificate of trust which provides for the governance of the affairs of a statutory trust and the conduct of its business. The term includes a trust agreement, a declaration of trust, and bylaws.

~~(49)~~ (21) “Trustee” means a person designated, appointed, or elected as a trustee of a statutory trust or foreign statutory trust in accordance with the governing instrument or applicable law.

Reporters’ Notes

Changes shown in blue are to conform to HULLCA.

We note that USTEА does not contain a definition of “beneficial interest”. We believe it inappropriate to provide a definition that parallels the partnership/LLC concept of “transferable interest” because:

- a “beneficial interest” is not necessarily limited to economic rights;
- the “transferable interest” construct:
 - reflects the bifurcated nature of an ownership interest in a partnership or limited liability company; and
 - functions as part of the built-in, statutory transfer restrictions in partnership and LLC statutes.

We assume that USTEА’s drafters intentionally left “beneficial interest” undefined, and as just indicated, harmonization does not require a different result.

Section 101(1) – The proposed addition (“series of a statutory trust”) appears appropriate unless every owner of an interest in a series is necessarily also an owner of a beneficial interest in the trust itself.

193 *Former Section 101(4)[principal office]* – This term has been deleted to harmonize with
194 the HUB and the other spokes.

195
196 *Subsection (101)(6) [distribution]* – This definition is as important for what it excludes as
197 for what it includes.

198
199 *Subsection 101(7)[jurisdiction]* – This is the HUB definition but does not currently
200 appear in HULLCA, HULPA, and HUPA. Suggest conform those acts to USTEPA on this point.

201
202 *Subsection 101(13) [registered agent]* – added, as in most other spokes, to facilitate
203 HUB-related revisions to the Act.

204
205 *Subsection 101(14) [registered foreign statutory trust]* – revisions to facilitate HUB-
206 related revisions to the Act.

207
208 *Former Section 101(17)[trust]* – the term seems never to appear just by itself.

209
210 **SECTION 103. GOVERNING INSTRUMENT.**

211 (a) Except as otherwise provided in subsection (b) or Section 104, the governing
212 instrument governs:

213 (1) the management, affairs, and conduct of the business of a statutory trust; and
214 (2) the rights, interests, duties, obligations, and powers of, and the relations
215 among, the trustees, the beneficial owners, and the statutory trust, ~~and other persons~~.

216 (b) To the extent the governing instrument does not otherwise provide for a matter
217 described in subsection (a), this [act] governs the matter.

218 (c) The governing instrument may include one or more instruments, agreements,
219 declarations, bylaws, or other records and refer to or incorporate any record.

220 (d) The governing instrument may be amended with the approval of all the beneficial
221 owners.

222 (e) Subject to Section 104, without limiting the terms that may be included in a governing
223 instrument, the governing instrument may:

224 (1) provide the means by which beneficial ownership is determined and

225 evidenced;

226 (2) limit a beneficial owner's right to transfer its beneficial interest;

227 (3) provide for one or more series under [Article] 4;

228 (4) to the extent that voting rights are granted under the governing instrument,

229 include terms relating to:

230 (A) notice of the date, time, place, or purpose of any meeting at which any

231 matter is to be voted on;

232 (B) waiver of notice;

233 (C) action by consent without a meeting;

234 (D) establishment of record dates;

235 (E) quorum requirements;

236 (F) voting:

237 (i) in person;

238 (ii) by proxy;

239 (iii) by any form of communication that creates a record,

240 telephone, or video conference; or

241 (iv) in any other manner; or

242 (G) any other matter with respect to the exercise of the right to vote;

243 (5) provide for the creation of one or more classes of trustees, beneficial owners,

244 or beneficial interests having separate rights, powers, or duties;

245 (6) provide for any action to be taken without the vote or approval of any

246 particular trustee or beneficial owner, or classes of trustees, beneficial owners, or beneficial

247 interests, including:

248 (A) amendment of the governing instrument;

249 (B) merger, interest exchange, conversion, or ~~reorganization~~

250 domestication;

251 (C) appointment of trustees;

252 (D) sale, lease, exchange, transfer, pledge, or other disposition of all or

253 any part of the property of the statutory trust or the property of any series thereof; and

254 (E) dissolution of the statutory trust;

255 (7) provide for the creation of a statutory trust, including the creation of a

256 statutory trust to which all or any part of the property, liabilities, profits, or losses of a statutory

257 trust may be transferred or exchanged, and for the conversion of beneficial interests in a statutory

258 trust, or series thereof, into beneficial interests in the new statutory trust or series thereof;

259 (8) provide for the appointment, election, or engagement of agents or

260 independent contractors of the statutory trust or delegates of the trustees, or agents, officers,

261 employees, managers, committees, or other persons that may manage the business and affairs of

262 the statutory trust, designate their titles, and specify their rights, powers, and duties;

263 (9) provide rights to any person, including a person that is not a party to the

264 governing instrument;

265 (10) subject to paragraph (11), specify the manner in which the governing

266 instrument may be amended, including, unless waived by all persons for whose benefit the

267 condition or requirement was intended:

268 (A) a condition that a person that is not a party to the instrument must

269 approve the amendment for it to be effective; and

270 (B) a requirement that the governing instrument may be amended only as

provided in the governing instrument or as otherwise permitted by law;

(11) provide that a person may comply with paragraph (10) by a representative authorized by the person orally, in a record, or by conduct;

(12) provide that a person becomes a beneficial owner, acquires a beneficial interest, and is bound by the governing instrument if the person complies with the conditions for becoming a beneficial owner set forth in the governing instrument, such as payment to the statutory trust or to a previous beneficial owner;

(13) provide that the statutory trust or the trustees, acting for the statutory trust, hold beneficial ownership of any income earned on securities held by the statutory trust that are issued by any business entity formed, organized, or existing under the laws of any jurisdiction;

(14) provide for the establishment of record dates; and

(15) grant to, or withhold from, a trustee or beneficial owner, or class of trustees or beneficial owners, the right to vote, separately or with any or all other trustees or beneficial owners, or class of trustees or beneficial owners, on any matter.

Reporters' Notes

Subsection (a) – At its most recent meeting, the Harmonization Committee decided that the reference to subsection (b) in the analogous HUPA, HULPA, and HULLCA provisions was circular. We should harmonize on this highly technical point, one way or the other

Subsection (a)(2) – reference to “other persons” deleted as overbroad – i.e., as appearing to apply to the rights of persons that are external to the statutory trust.

SECTION 104. MANDATORY RULES. The governing instrument may not:

(1) ~~vary the requirements of [Article] 2~~ vary any requirements or procedures pertaining to:

(A) records authorized or required to be delivered to the [secretary of state] for filing under this act; and

298 (B) registered agents;

299 (2) vary the ~~choice of governing~~ law applicable under Section 301;

300 (3) negate the exclusion of a predominantly donative purpose under Section 303;

301 (4) vary a statutory trust's capacity under Section 308 to sue and be sued in its own name;

302 ~~(4)~~ (5) vary the provisions pertaining to series trusts in Sections 401, 402(b), 403, and

303 404(c);

304 ~~(5)~~ (6) vary the standards of conduct for trustees under Section 505, but the governing

305 instrument may prescribe the standards by which good faith, best interests of the statutory trust,

306 and care that a person in a similar position would reasonably believe appropriate under similar

307 circumstances are determined, if the standards are not manifestly unreasonable;

308 ~~(6)~~ (7) vary the obligation under Section 506 to act in good faith if a trustee or other

309 person is not to be liable for relying on a term of the governing instrument, a record of the

310 statutory trust, or an opinion, report, or statement of another person, but the governing instrument

311 may prescribe the standards for assessing whether the reliance was in good faith, if the standards

312 are not manifestly unreasonable;

313 ~~(7)~~ (8) restrict the right of a trustee to information under Section 508, but the governing

314 instrument may prescribe the standards for assessing whether information is reasonably related to

315 the trustee's discharge of the trustee's duties as trustee, if the standards are not manifestly

316 unreasonable;

317 ~~(8)~~ (9) vary the prohibition under Section 509 of indemnification, advancement of

318 expenses, or exoneration for conduct involving bad faith, willful misconduct, or reckless

319 indifference;

320 ~~(9)~~ (10) vary the obligation of a trustee under Section 510(c) not to follow a direction that

is manifestly contrary to the terms of the governing instrument or would constitute a serious breach of fiduciary duty by the trustee;

~~(10) restrict the right of a judgment creditor of a beneficial owner to seek a charging order under Section 606;~~

(11) restrict the right of a beneficial owner to information under Section 608, but the governing instrument may prescribe the standards for assessing whether information is reasonably related to the beneficial owner's interest, if the standards are not manifestly unreasonable;

(12) restrict the right of a beneficial owner to bring an action under Section 609, but the governing instrument may subject the right to additional standards and restrictions, including a requirement that beneficial owners owning a specified amount or type of beneficial interest, including in a series trust an interest in the series, join in bringing the action, if the additional standards and restrictions are not manifestly unreasonable;

(13) vary the provisions pertaining to ~~conversion and~~ approve a merger, interest exchange, conversion or domestication under-in Sections 701, 704, 705, 708, and 709 723(a)(2), 733(a)(2), 734(a)(2) and 735(a)(2);

(14) vary the provisions pertaining to dissolution in Sections 801(1) and 802 through 808;

(15) vary the provisions relating to foreign statutory trusts in [Article] 9; ~~or~~

(16) vary the miscellaneous provisions in [Article] 10; or

(17) restrict the rights under this [act] of a person other than a trustee or beneficial owner.

Reporters' Notes

Subsection 104(1) – Previously, drafters have assumed that the “third party protection” (added below in new paragraph (17)) handled this issue. However, for certainty's sake, USTEA's approach seems safer. The language has been changed to avoid a negative implication re: other “Article 2-like” provisions that appear elsewhere in the Act.

347 *Former Subsection 104(10)* – The cross referenced section is proposed for deletion. See
348 Reporters’ Notes to Section 606.

349
350 *Subsection 104(17)* – This language originated (in slightly different form) in RUPA.

351
352 **SECTION 105. APPLICABILITY OF TRUST AND OTHER LAW.**

353 (a) The law of this state pertaining to common-law trusts supplements this [act].

354 However, a the governing instrument may supersede or modify application to the statutory trust
355 of any law of this state pertaining to common-law trusts.

356 (b) Unless displaced by particular provisions of this [act], the principles of law and equity
357 supplement this [act].limited partnership.

358 **Reporters' Notes**

359
360 *Subsection (b)* – A provision like this has been standard for the Conference’s
361 unincorporated acts since RUPA. Query, however, whether this standard language will create
362 mischief in light of Section 105(a).

363
364 **SECTION 106. RULE OF CONSTRUCTION.**

365 ~~(a) This [act] must be liberally construed to give maximum effect to the principle of~~
366 ~~freedom of contract and to the enforceability of governing instruments.~~

367 ~~(b)~~ The presumption that a civil statute in derogation of the common law is construed
368 strictly does not apply to this [act].

369 **Reporters’ Notes**

370
371 *Subsection (a)* – This provision is a symbol for and product of the strict contractarian
372 perspective, and the Conference has never previously accepted the provision. To the contrary,
373 RUPA has no such provision, and during the drafting of ULPA (2001) and Re-ULLCA the issue
374 was assiduously considered and the position rejected.

375 The provision is not necessary to the full functioning of the governing instrument (which
376 is not necessarily even a contract). Moreover, the provision can cause mischief – not only for the
377 unsophisticated, *see e.g.* Daniel S. Kleinberger, “Careful What You Wish For--Freedom of
378 Contract and the Necessity of Careful Scrivening,” XXIV PUBOGRAM 19 (October, 2006)
379 (Committee on Partnerships and Unincorporated Business Organizations of the ABA Business
380 Law Section), but also for the sophisticated. *See e.g. Fisk Ventures, LLC v. Segal*, No. Civ. A.
381 3017-CC, 2008 WL 1961156, at *8 (Del. Ch., May 7, 2008) (stating that “limited liability

companies...are creatures not of the state but of contract” – despite the LLC’s dependence on the state for its formal creation and, more importantly, the liability shield for the LLC’s members).

Given the statutory trust’s role as a business organization, it is impossible to discern a rationale for including the provision here and not in HUPA, HULPA, and HULCA. But harmonizing those statutes to this provision would reverse almost 30 years of Conference policy.

Subsection (b) – The Conference long ago stopped including this language in its Acts. However, the Comments to USTEA identify a special need: “Subsection (b) directs the courts not to apply to this act the canon of construction that statutes in derogation of the common law are to be strictly construed. The drafting committee included this provision because many of this act’s provisions are designed specifically to override one or more common-law trust principles that would otherwise be applicable to a statutory trust under Section 105. Such provisions deliberately derogate the common law of trusts and should be interpreted in accordance with that purpose.”

Reporters' Notes on the Absence of a Section on Knowledge and Notice

Unlike HUPA, HULPA, and HULLCA, USTEA does not define knowledge and notice. The omission is not problematic from a harmonization perspective, because USTEA does not contain the same type of provisions for constructive notice as do these other acts. However, we should consider a constructive notice provision relating to organic transactions (merger, etc.), either here or in the META-based provisions.

406 [ARTICLE] 2

407 FORMATION; CERTIFICATE OF TRUST AND OTHER FILINGS; ~~PROCESS~~

408 SECTION 201. FORMATION OF STATUTORY TRUST; CERTIFICATE OF
409 TRUST.

410 (a) ~~To~~ One or more persons may form a statutory trust; ~~a person must deliver by signing~~
411 ~~and delivering a certificate of trust~~ to the [Secretary of State] for filing a certificate of trust.

412 (b) A certificate of trust must state:

413 (1) the name of the statutory trust, which must comply with Section 207;

414 (2) ~~the street and mailing address of the designated office of the trust~~ the street
415 and mailing address of the trust's principal office;

416 (3) the name and street and mailing address ~~of the initial~~ within this state of the
417 registered agent ~~of the trust for service of process~~; and

418 (4) if the trust may have one or more series trusts, a statement to that effect.

419 (c) ~~A~~ Subject to Section 104, a certificate of trust may contain any term in addition to
420 those required by subsection (b).

421 (d) ~~Subject to Section 204(e)~~ TBD, a statutory trust is formed when a the certificate of
422 ~~trust that complies with subsection (b) is filed by the [Secretary of State]~~ has become effective. If
423 the certificate states a delayed effective date, a statutory is not formed if, before the certificate
424 takes effect, a statement of cancellation is signed and delivered to the [Secretary of State] for
425 filing and the [Secretary of State] files the certificate.

426 (e) ~~A~~ Subject to Section TBD [re: delayed effective date] a filed certificate of trust, a
427 filed statement of cancellation or change, or filed articles ~~of conversion or merger~~ under Article 7
428 prevail over inconsistent terms of a trust instrument.

429 **SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF**
430 **TRUST; ~~STATEMENT OF CORRECTION.~~**

431 (a) A certificate of trust may be amended or restated at any time.

432 ~~(a)~~ (b) To amend its certificate of trust, a statutory trust must deliver to the [Secretary of
433 State] for filing an amendment, ~~articles of conversion, or articles of merger~~ stating:

434 (1) the name of the trust;

435 (2) the date of filing of its ~~initial~~ certificate; and

436 (3) the changes the amendment makes to the certificate as most recently amended
437 or restated.

438 ~~(b)~~ (c) A trustee that knows ~~or has reason to know~~ that any information in a filed
439 certificate of trust was incorrect when the certificate was filed or has become ~~incorrect~~ inaccurate
440 owing to changed circumstances, the trustee shall promptly:

441 (1) cause the certificate to be amended; or

442 (2) if appropriate, deliver to the [Secretary of State] for filing a statement of
443 change under Section TBD or a statement of correction under Section TBD.

444 ~~(c) A restated certificate of trust must be delivered to the [Secretary of State] for filing in~~
445 ~~the same manner as an amendment.~~

446 **SECTION 203. SIGNING OF RECORDS TO BE DELIVERED FOR FILING TO**
447 **[SECRETARY OF STATE].**

448 (a) A record delivered by the statutory trust to the [Secretary of State] for filing pursuant
449 to this [act] must be signed by at least one of the trustees.

450 (b) Any person may sign by an attorney in fact any record filed pursuant to this [act].

451 **SECTION 204. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.**

452 (a) If a person required by this [act] to sign a record or deliver a record to the [Secretary
453 of State] for filing under [this act] does not do so, any other person that is aggrieved may petition
454 the [appropriate court] to order:

455 (1) the person to sign the record;

456 (2) the person to deliver the record to the [Secretary of State] for filing; or

457 (3) the [Secretary of State] to file the record unsigned.

458 (b) If a petitioner under subsection (a) is not the statutory trust or foreign statutory to
459 which the record pertains, the petitioner shall make the trust a party to the action.

460 (c) A record filed unsigned pursuant to subsection (a)(3) is effective without being
461 signed.

462 **~~SECTION 204. DELIVERY TO AND FILING OF RECORDS BY [SECRETARY~~**
463 **~~OF STATE]; EFFECTIVE TIME AND DATE.~~**

464 ~~(a) A record authorized or required to be delivered to the [Secretary of State] for filing~~
465 ~~under this [act] must be captioned to describe the subject of the record and be in a medium~~
466 ~~permitted by the [Secretary of State]. If all filing fees have been paid, unless the [Secretary of~~
467 ~~State] determines that the record does not comply with the filing requirements of this [act], the~~
468 ~~[Secretary of State] shall file the record and make available a copy of the filed record to the~~
469 ~~person on whose behalf the record was filed.~~

470 ~~(b) On request and payment of the required fee, the [Secretary of State] shall send to any~~
471 ~~person a certified copy of a record filed in the office of the [Secretary of State] pursuant to this~~
472 ~~[act].~~

~~(c) Except as otherwise provided in Sections 205 and 211, a record delivered to the [Secretary of State] for filing under this [act] may specify an effective time and a delayed effective date. Except as otherwise provided in this [act], a record filed by the [Secretary of State] is effective:~~

~~(1) if the record does not specify an effective time or delayed effective date, on the date and at the time the record is filed as evidenced by the [Secretary of State's] endorsement of the date and time on the record;~~

~~(2) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;~~

~~(3) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:~~

~~(A) the specified date; or~~

~~(B) the 90th day after the record is filed; or~~

~~(4) If the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:~~

~~(A) the specified date; or~~

~~(B) the 90th day after the record is filed.~~

SECTION 205. DELIVERY OF RECORD.

(a) Except as otherwise provided in this [act], permissible means of delivery of a record include delivery by hand, mail by the United States Postal Service, commercial delivery, and electronic transmission.

(b) Delivery to the [Secretary of State] is effective only when the record is received by the [Secretary of State].

496 **SECTION 206. FILING REQUIREMENTS.**

497 (a) To be filed by the [Secretary of State] pursuant to this [act], a record must be received
498 by the [Secretary of State] and must comply with this [act] and satisfy the following:

499 (1) The filing of the record must be required or permitted by this [act].

500 (2) The record must be physically delivered in written form unless and to the
501 extent the [Secretary of State] permits electronic delivery of records in other than written form.

502 (3) The words in the record must be in English, and numbers must be in Arabic or
503 Roman numerals, but the name of the entity need not be in English if written in English letters or
504 Arabic or Roman numerals.

505 (4) The record must be signed by a person authorized to sign the filing under
506 Section ____.

507 (5) The record must state the name and capacity, if any, of each person that signed
508 it but need not contain a seal, attestation, acknowledgment, or verification.

509 (b) If law other than this [act] prohibits the disclosure by the [Secretary of State] of
510 information contained in a record filed by the [Secretary of State], the [Secretary of State] shall
511 accept the filing if the filing otherwise complies with this section but the [Secretary of State] may
512 redact the information.

513 (c) When a record is delivered to the [Secretary of State] for filing, any fee required
514 under this [act] and any fee, tax, or penalty required to be paid under this [act] or law other than
515 this [act] must be paid in a manner permitted by the [Secretary of State] or by that law.

516 (d) The [Secretary of State] may require that a record delivered in written form be
517 accompanied by an identical or conformed copy.

518 **SECTION 207. EFFECTIVE TIME AND DATE.** Except as otherwise provided in

519 Section _____ and subject to Section _____, an entity filing is effective:

520 (1) on the date and at the time of its filing by the [Secretary of State];

521 (2) on the date of filing and at the time specified in the entity filing as its effective time, if
522 later than the time under paragraph (1);

523 (3) at a specified delayed effective time and date, which may not be more than 90 days
524 after the date of filing; or

525 (4) if a delayed effective date is specified as permitted by this [act], but no time is
526 specified, at 12:01 a.m. on the date specified.

527 **SECTION 208. WITHDRAWAL OF FILED RECORD BEFORE**
528 **EFFECTIVENESS.**

529 (a) Except as otherwise provided in Chapter _____, a filed record may be withdrawn before it
530 takes effect by delivering to the [Secretary of State] for filing a statement of withdrawal.

531 (b) A statement of withdrawal must:

532 (1) be signed on behalf of each person that signed the record being withdrawn,
533 except as otherwise agreed by those persons;

534 (2) identify the filed record to be withdrawn and the date of its filing; and

535 (3) if not signed on behalf of each person that signed the record being withdrawn,
536 state that the record is withdrawn in accordance with the agreement of all the persons who signed
537 the record.

538 (c) On filing by the [Secretary of State] of a statement of withdrawal, the action or

transaction evidenced by the original filed record does not take effect

SECTION ~~205~~ 209. CORRECTING FILED RECORD.

~~(a) If, at the time of filing, a record contained incorrect information or was defectively or erroneously signed, a statutory trust or qualified foreign statutory trust shall deliver to the [Secretary of State] for filing a statement of correction to correct the record.~~

~~(b) A statement of correction under subsection (a):~~

~~(1) may not state a delayed effective date;~~

~~(2) must describe the record to be corrected, including its filing date, or attach a copy of the record as filed;~~

~~(3) must specify the incorrect information and the reason it is incorrect or the manner in which the signing is defective or erroneous; and~~

~~(4) must correct the incorrect information or defective or erroneous signature.~~

~~(c) A statement of correction filed by the [Secretary of State] under subsection (a) is effective:~~

~~(1) except as otherwise provided in paragraph (2), retroactively as of the effective date of the record the statement corrects; or~~

~~(2) with respect to a person that relied on the uncorrected record and would be adversely affected by the correction, when filed.~~

(a) A person on whose behalf a filed record was delivered to the [Secretary of State] for filing may correct the record if:

(1) the record at the time of filing was inaccurate;

(2) the record was defectively signed; or

(3) the electronic transmission of the record to the [Secretary of State] was

562 defective.

563 (b) To correct a filed record, a person on whose behalf the record was delivered to the
564 [Secretary of State] must deliver to the [Secretary of State] for filing a statement of correction.

565 (c) A statement of correction:

566 (1) may not state a delayed effective date;

567 (2) must be signed on behalf of the person correcting the filed record;

568 (3) must identify the filed record to be corrected or have attached a copy and state
569 the date of its filing;

570 (4) must specify the inaccuracy or defect to be corrected; and

571 (5) must correct the inaccuracy or defect.

572 (d) A statement of correction is effective as of the effective date of the filed record that it
573 corrects except for purposes of Section 103(d) and persons relying on the uncorrected filed
574 record and adversely affected by the correction. For those purposes and persons, the statement
575 of correction is effective when filed.

576 **SECTION 210. DUTY OF [SECRETARY OF STATE] TO FILE; REVIEW OF**
577 **REFUSAL TO FILE; TRANSMISSION OF INFORMATION BY THE [SECRETARY OF**
578 **STATE].**

579 (a) The [Secretary of State] shall file a record delivered to the [Secretary of State] for
580 filing which satisfies this [act]. The duty of the [Secretary of State] under this section is
581 ministerial.

582 (b) When the [Secretary of State] files a record pursuant to this [act], the [Secretary of

State] shall record it as filed on the date and time of its delivery. After filing a record, the [Secretary of State] shall deliver a copy of the filing with an acknowledgment of the date and time of filing to the person on whose behalf the record was delivered for filing and, in the case of a statement of denial, also to the statutory trust to which the statement pertains.

(c) If the [Secretary of State] refuses to file a record pursuant to this [act], the [Secretary of State] shall return the record or notify the person that submitted the record not later than [15] business days after the record is delivered, together with a brief explanation in a record of the reason for the refusal.

(d) If the [Secretary of State] refuses to file a record pursuant to this act, the person that submitted the filing may seek review of the refusal by the [appropriate court] under the following procedures:

(1) The review proceeding is commenced by petitioning the court to compel filing of the record and by attaching to the petition the record and the explanation of the [Secretary of State] of the refusal to file.

(2) The court may summarily order the [Secretary of State] to file the record or take other action the court considers appropriate.

(3) The final decision of the court may be appealed as in other civil proceedings.

(e) The filing of or refusal to file a record pursuant to this [act] does not:

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

(2) affect the correctness or incorrectness of information contained in the filing; or

(3) create a presumption that the filing is valid or invalid or that information

604 contained in the filing is correct or incorrect.

605 (f) Except as provided by Section _____ or by law other than this [act], the [Secretary of
606 State] may deliver any record to a person by delivering it to the person that submitted it, to the
607 address of the person's registered agent, to the principal office of the person, or to another
608 address the person provides to the [Secretary of State] for delivery.

609 **SECTION 211. LIABILITY FOR INACCURATE INFORMATION IN FILED**
610 **RECORD.**

611 (a) If a record delivered to the [Secretary of State] for filing under this [act] and filed by
612 the [Secretary of State] contains inaccurate information, a person that suffers a loss by reliance
613 on the information may recover damages for the loss from a person that signed the record, or
614 caused another to sign it on the person's behalf, and knew the information to be inaccurate at the
615 time the record was signed.

616 (b) An individual who signs a record authorized or required to be filed under this [act]
617 affirms under penalty of perjury that the information stated in the record is accurate.

618 **SECTION ~~206~~ 212. CERTIFICATE OF GOOD STANDING OR**
619 **REGISTRATION.**

620 ~~(a) The [Secretary of State], on request and payment of the required fee, shall furnish to~~
621 ~~the person making the request a certificate of good standing for a statutory trust if the records~~
622 ~~filed with the [Secretary of State] show that:~~

- 623 ~~(1) the [Secretary of State] has filed a certificate of trust;~~
624 ~~(2) all fees, taxes, and penalties due under this [act] or other law to the [Secretary~~
625 ~~of State] have been paid;~~
626 ~~(3) the most recent [annual] [biennial] report of the trust required by Section 213~~

627 has been filed by the [Secretary of State];

628 (4) ~~a statement of cancellation or dissolution has not been filed by the [Secretary~~
629 ~~of State]; and~~

630 (5) ~~the [Secretary of State] has not filed a notice of administrative dissolution~~
631 ~~under Section 806 or, if the [Secretary of State] has filed such a notice, that the [Secretary of~~
632 ~~State] has filed a declaration of reinstatement under Section 807.~~

633 ~~(b) A certificate of good standing must state:~~

634 ~~(1) the name of the trust;~~

635 ~~(2) that the trust was formed under the laws of this state and the date of~~
636 ~~formation; and~~

637 ~~(3) that subsection (a) has been satisfied.~~

638 ~~(c) Subject to any qualification stated in the certificate, a certificate of good standing~~
639 ~~issued by the [Secretary of State] is conclusive evidence that the statutory trust is in good~~
640 ~~standing as of the date the certificate is issued.~~

641 (a) On request of any person, the [Secretary of State] shall issue a certificate of good
642 standing for a statutory trust or a certificate of registration for a registered foreign statutory trust.

643 (b) A certificate under subsection (a) must state:

644 (1) the statutory trust's name or the registered foreign statutory trust's name used
645 in this state;

646 (2) that a certificate of formation pertaining to the statutory trust is effective under
647 the law of this state and the effective date of that certificate, or that the registered foreign
648 statutory trust is registered to do business in this state;

649 (3) that all fees, taxes, interest, and penalties owed to this state by the statutory
650 trust or the registered foreign statutory and collected through the [Secretary of State] have been
651 paid, if:

652 (A) payment is reflected in the records of the [Secretary of State]; and

653 (B) nonpayment affects the good standing or registration of the statutory
654 trust or foreign statutory trust;

655 (4) that the most recent annual report required by Section ____ has been delivered
656 for filing to the [Secretary of State]; and

657 (5) that, with respect to a statutory trust, no statement of dissolution, statement of
658 termination, or declaration of dissolution has been filed and no proceeding is pending under
659 Section ____.

660 (c) Subject to any qualification stated in the certificate, a certificate issued by the
661 [Secretary of State] under subsection (a) may be relied upon as conclusive evidence of the facts
662 stated in the certificate.

663 **SECTION ~~207~~ 213. NAME OF STATUTORY TRUST.**

664 ~~(b)~~ (a) The name of a statutory trust may contain the words “company”, “association”,
665 “club”, “foundation”, “fund”, “institute”, “society”, “union”, “syndicate”, “limited”, or “trust”,
666 or words or abbreviations of similar import, and may contain the name of a beneficial owner, a
667 trustee, or any other person.

668 ~~(a)~~ (b) Except as otherwise provided in subsections (c) and (d), the name of a statutory
669 trust must be distinguishable ~~in~~ on the records of the [Secretary of State] from any:

670 (1) the name of any a person that is not an individual and that is already

671 incorporated, organized, ~~formed~~, or authorized to ~~do business~~ transact in this state; and

672 (2) any name reserved under Section 208 ~~214~~ [or other state laws allowing the
673 reservation or registration of business names, including fictitious or assumed name statutes].; and

674 (3) assumed name registered under [this state's assumed name statute].

675 (c) ~~A person may apply to the [Secretary of State] to use a name that does not comply~~
676 ~~with subsection (a). The [Secretary of State] shall authorize use of the name applied for if, as to a~~
677 ~~conflicting name:~~

678 ~~(1) the present user, registrant, or owner of the conflicting name consents in a~~
679 ~~signed record to the use and submits an undertaking in a form satisfactory to the [Secretary of~~
680 ~~State] to dissolve or to change the conflicting name to a name that complies with subsection (a)~~
681 ~~and is distinguishable in the records of the [Secretary of State] from the name applied for;~~

682 ~~(2) the applicant delivers to the [Secretary of State] a certified copy of the final~~
683 ~~judgment of a court of competent jurisdiction establishing the applicant's right to use in this state~~
684 ~~the name applied for; or~~

685 ~~(3) the applicant delivers to the [Secretary of State] proof satisfactory to the~~
686 ~~[Secretary of State] that the present user, registrant, or owner of the conflicting name:~~

687 ~~(A) has merged with the applicant;~~

688 ~~(B) has been converted into the applicant; or~~

689 ~~(C) has transferred substantially all of its property, including the~~
690 ~~conflicting name, to the applicant.~~

691 (c) Subsection (b) does not apply if the other entity or the person for which the name is
692 reserved or registered consents in a record to the use of the name and submits an undertaking in a
693 form satisfactory to the [Secretary of State] to change its name to a name that is distinguishable

on the records of the [Secretary of State] from any name in any category of names in subsection (a).

(d) Subject to Section 906, this section applies to any foreign statutory trust that does business in this state, has a certificate of registration to do business in this state, or has applied for a certificate of registration. Except as otherwise provided in subsection (e), in determining whether a name is the same as or not distinguishable on the records of the [Secretary of State] from the name of another entity, words, phrases, or abbreviations indicating the type of entity, such as “corporation”, “corp.”, “incorporated”, “Inc.”, “professional corporation”, “PC”, “professional association”, “PA”, “Limited”, “Ltd.”, “limited partnership”, “limited liability partnership”, “LLP”, “registered limited liability partnership”, “RLLP”, “limited liability limited partnership”, “LLLLP”, “registered limited liability limited partnership”, “RLLLLP”, “limited liability company”, or “LLC”, may not be taken into account.

(e) The holder of a name under subsection (b) may consent in a record to the use of a name that is not distinguishable on the records of the [Secretary of State] from its name except for the addition of a word, phrase, or abbreviation indicating the type of entity described in subsection (d). In such a case, the holder need not change its name pursuant to subsection (b).

(f) An entity name may not contain the words [insert prohibited words or words that may be used only with approval by the appropriate state agency].

(g) Subject to Section _____, this section applies to a foreign statutory trust transacting business in this state which has or has applied for a foreign registration statement.

SECTION ~~208~~ 214. RESERVATION OF NAME.

(a) ~~The exclusive right to the use of a name that complies with Section 207 213 may be reserved by:~~

717 (1) a person intending to form a statutory trust under this [act] and to adopt the
718 name;
719 (2) a statutory trust or a qualified foreign statutory trust intending to adopt the
720 name;
721 (3) a foreign statutory trust intending to obtain a certificate of registration to do
722 business in this state and adopt the name;
723 (4) a person intending to organize a foreign statutory trust and intending to have it
724 obtain a certificate of registration to do business in this state and adopt the name;
725 (5) a foreign statutory trust formed under the name; or
726 (6) a foreign statutory trust formed under a name that does not comply with
727 Section 207, but the name reserved under this paragraph may differ from the foreign statutory
728 trust's name only to the extent necessary to comply with Section 207.
729 (b) A person may apply to reserve a name under subsection (a) by delivering to the
730 [Secretary of State] for filing an application that states the name to be reserved and the paragraph
731 of subsection (a) that applies. If the [Secretary of State] finds that the name is available for use
732 by the applicant, the [Secretary of State] shall file a statement of name reservation and thereby
733 reserve the name for the exclusive use of the applicant for a 120-day period.
734 (c) A person that has reserved a name pursuant to subsection (b) may reserve the same
735 name for additional 120-day periods. A person having a current reservation for a name may not
736 apply for an additional 120-day period for the same name until 90 days have elapsed under the
737 current reservation.
738 (d) A person that has reserved a name under this section may deliver to the [Secretary of
739 State] for filing:

(1) ~~a notice of transfer that states the reserved name, the name and street and mailing address of some other person to which the reservation is to be transferred, and the paragraph of subsection (a) that applies to the person; or~~

(2) ~~a notice of termination of the person's reservation.~~

(a) A person may reserve the exclusive use of the name of a statutory trust, including a fictitious or assumed name for a foreign statutory trust whose name is not available, by delivering an application to the [Secretary of State] for filing. The application must state the name and address of the applicant and the name proposed to be reserved. If the [Secretary of State] finds that the name applied for is available, the [Secretary of State] shall reserve the name for the applicant's exclusive use for a [120]-day period.

(b) The owner of a name reserved for a statutory trust may transfer the reservation to another person by delivering to the [Secretary of State] for filing a signed notice in a record of the transfer which states the name and address of the transferee.

SECTION ~~209~~ 215. REGISTERED AGENT FOR SERVICE OF PROCESS.

(a) ~~A~~ Each statutory trust ~~or a qualified~~ and each foreign statutory trust that is registered under Section _____ to do business in this state shall designate and maintain ~~in this state an a~~ a registered agent for service of process in this state. The designation of a registered agent pursuant to this subsection is an affirmation of fact by the statutory trust or foreign statutory trust that the agent has consented to serve.

(b) ~~An~~ A registered agent for service of process of a statutory trust or qualified foreign statutory trust must be an individual who is a resident of this state or a person incorporated, organized, formed, or authorized to do business in this state which maintains an office have a place of business in this state.

(c) The duties of a registered agent are:

(1) to forward to the statutory trust or foreign statutory trust at the address most recently supplied to the agent by the trust any process, notice, or demand pertaining to the trust which is served on or received by the agent; and

(2) if the registered agent resigns, to provide the notice required by Section _____ to the trust at the address most recently supplied to the agent by the trust.

**SECTION ~~210~~ 216. CHANGE OF ~~DESIGNATED OFFICE OR REGISTERED~~
~~AGENT FOR SERVICE OF PROCESS~~ OR ADDRESS FOR REGISTERED AGENT. A**
statutory trust or ~~qualified~~ foreign statutory trust may change its registered agent for service of
~~process, or~~ the address of its registered agent for service of process, or its designated office by
delivering to the [Secretary of State] for filing a statement of change ~~containing~~ which states:

(1) the name of the trust; and

(2) ~~the street and mailing address of the current designated office of the trust; the~~
information that is to be in effect as a result of the filing of the statement of change.

(3) ~~if the designated office is to be changed, the street and mailing address of the new~~
~~designated office;~~

(4) ~~the name and street and mailing address of the current agent of the trust for service of~~
~~process; and~~

(5) ~~if the current agent for service of process or an address of the agent is to be changed,~~
~~the new information.~~

**SECTION ~~211~~ 217. RESIGNATION OF REGISTERED AGENT ~~FOR SERVICE~~
~~OF PROCESS~~.**

(a) ~~To resign as an agent for service of process~~ A registered agent may resign as agent for

of a statutory trust or ~~qualified foreign statutory trust, the agent must deliver~~ by delivering to the [Secretary of State] for filing a statement of resignation ~~containing~~ that states:

(1) the name of the trust;

(2) the name of the agent; and

(3) ~~a statement that the agent resigns as agent for service of process~~ that the agent resigns from serving as registered agent for the trust; and

(4) the address of the trust to which the agent will send the notice required by subsection (c).

(b) ~~A resigning agent shall transmit a copy of a statement of resignation to the designated office of the statutory trust or qualified foreign statutory trust and a copy to the principal office if the address of the office appears in the records of the [Secretary of State] and is different from the address of the designated office. A statement of resignation takes effect on the earlier of the 31st day after the day on which it is filed by the [Secretary of State] or the designation of a new registered agent for the statutory trust or foreign statutory trust.~~

(c) ~~An agency for service of process terminates on the 31st day after the [Secretary of State] files the statement of resignation under subsection (a). A registered agent promptly shall furnish the statutory trust or foreign statutory trust notice in a record of the date on which a statement of resignation was filed.~~

(d) When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter tendered to it as agent for the statutory trust or foreign statutory trust. The resignation does not affect any contractual rights the trust has against the agent or that the agent has against the trust.

(e) A registered agent may resign with respect to a statutory trust or foreign statutory trust

809 whether or not the trust is in good standing.

810 **SECTION 218. CHANGE OF NAME OR ADDRESS BY REGISTERED AGENT.**

811 (a) If a registered agent changes its name or address, the agent may deliver to the
812 [Secretary of State] for filing a statement of change signed by the agent which states:

813 (1) The name of the statutory trust represented by the registered agent.

814 (2) The name of the agent as currently shown in the records of the [Secretary of
815 State] for the trust.

816 (3) If the name of the agent has changed, its new name.

817 (4) If the address of the agent has changed, its new address.

818 (b) A statement of change under this section takes effect upon its filing by the [Secretary
819 of State].

820 (c) A registered agent shall promptly furnish notice to the represented statutory trust of
821 the filing of the statement of change and the changes made by the statement.

822 **SECTION ~~212~~ 219. SERVICE OF PROCESS, NOTICE, OR DEMAND.**

823 ~~(a) An agent for service of process appointed by a statutory trust or qualified foreign~~
824 ~~statutory trust is an agent of the trust for service of any process, notice, or demand required or~~
825 ~~permitted by law to be served on the trust.~~

826 ~~(b) If a statutory trust or qualified foreign statutory trust no longer has a registered agent,~~
827 ~~or if its registered agent cannot with reasonable diligence be served, the trust may be served by~~
828 ~~registered or certified mail, return receipt requested, at its principal office in accordance with any~~
829 ~~applicable rules and procedures. Service is effected under this subsection at the earliest of:~~

830 ~~(1) the date the agent for the statutory trust or qualified foreign statutory trust~~
831 ~~receives the process, notice, or demand;~~

~~(2) the date shown on the return receipt, if signed on behalf of the trust; or~~

~~(3) five days after the process, notice, or demand is deposited with the United States Postal Service, if correctly addressed and with sufficient postage.~~

~~(c) If process, notice, or demand cannot be served on a statutory trust or qualified foreign statutory trust pursuant to subsection (b), service may be made by handing a copy to the manager, clerk, or other individual in charge of any regular place of business or activity of the trust if the individual served is not a plaintiff in the action.~~

~~(d) This section does not affect the right to serve process, notice, or demand in any other manner provided by law.~~

(a) A statutory trust or foreign statutory trust may be served with any process, notice, or demand required or permitted by law by serving its registered agent.

(b) If a statutory trust or foreign statutory trust no longer has a registered agent, or if its registered agent cannot with reasonable diligence be served, the trust may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the trust at its principal office in accordance with any applicable judicial rules and procedures. Service is effected under this subsection on the earliest of:

(1) the date the trust receives the mail or delivery by a similar commercial delivery service;

(2) the date shown on the return receipt, if signed on behalf of the trust; or

(3) five days after its deposit with the United States Postal Service, or similar commercial delivery service, if correctly addressed and with sufficient postage or payment.

(c) If process, notice, or demand cannot be served on a statutory trust or statutory trust pursuant to subsection (a) or (b), service may be made by handing a copy to the individual in

855 charge of any regular place of business or activity of the trust if the individual served is not a
856 plaintiff in the action.

857 (d) Service of process, notice, or demand on a registered agent must be in a written
858 record.

859 (e) Service of process, notice, or demand may be made by other means under law other
860 than this [act].

861 **SECTION ~~213~~ 220. [ANNUAL] [BIENNIAL] REPORT FOR [SECRETARY OF**
862 **STATE].**

863 ~~(a) A statutory trust or qualified foreign statutory trust must deliver to the [Secretary of~~
864 ~~State] for filing [an annual] [a biennial] report that contains the name of the trust and:~~

865 ~~(1) for a statutory trust:~~

866 ~~(A) the street and mailing address of its designated office; and~~

867 ~~(B) the name and street and mailing address of its agent for service of~~

868 ~~process; or~~

869 ~~(2) for a qualified foreign statutory trust:~~

870 ~~(A) any alternate name adopted under Section 906;~~

871 ~~(B) the name of the state or other jurisdiction of formation of the trust;~~

872 ~~(C) the street and mailing address of its principal office and, if the laws of~~

873 ~~the jurisdiction of formation of the trust require it to maintain an office in that jurisdiction, the~~

874 ~~street and mailing address of that office; and~~

875 ~~(D) the name and street and mailing address of its agent for service of~~

876 ~~process in this state.~~

877 ~~(b) Information in [an annual] [a biennial] report under this section must be current as of~~

the date the report is delivered to the [Secretary of State] for filing.

~~(c) The first [annual] [biennial] report under this section must be delivered to the [Secretary of State] after [January 1] and before [April 1] of the year following the calendar year in which a statutory trust was formed or a qualified foreign statutory trust was authorized to do business in this state. The report must be delivered to the [Secretary of State] after [January 1] and before [April 1] of each subsequent [second] calendar year.~~

~~(d) If [an annual] [a biennial] report under this section does not contain the information required in subsection (a), the [Secretary of State] shall notify the trust promptly and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) and is delivered to the [Secretary of State] not later than the 30th day after the date of the notice, the report is timely delivered.~~

~~(e) If [an annual] [a biennial] report under this section contains an address of a designated office or the name or address of an agent for service of process which differs from the information shown in the records of the [Secretary of State] immediately before the filing, the differing information in the report is deemed a statement of change under Section 210.~~

(a) Each statutory trust and foreign statutory trust registered to do business in this state shall deliver to the [Secretary of State] for filing a [an annual] [biennial] report that states:

(1) the name of the trust;

(2) the name and street and mailing addresses of its registered agent in this state;

(3) the street and mailing addresses of its principal office; and

(4) the name of at least one trustee;

(5) in the case of a foreign statutory trust, the state or other jurisdiction under

whose law the company is formed and any alternate name adopted under Section _____.

(b) Information in the [annual] [biennial] report must be current as of the date the report is signed by the statutory trust or foreign statutory trust.

(c) The first [annual] [biennial] report must be delivered to the [Secretary of State] after [January 1] and before [April 1] of the year following the calendar year in which a statutory trust was created or a foreign statutory trust registered to do business in this state. Subsequent [annual][biennial] reports must be delivered to the [Secretary of State] after [January 1] and before [April 1] of each [second] calendar year thereafter

(d) If an annual report under this section does not contain the information required in by subsection (a), the [Secretary of State] shall promptly notify the reporting statutory trust or foreign statutory trust in a record and return the report to the trust for correction.

(e) If an annual report under this section contains the name or address of a registered agent which differs from the information shown in the records of the [Secretary of State] immediately before the [annual] [biennial] report becomes effective, the differing information in the [annual] [biennial] report is considered a statement of change under Section ____.

Reporters' Notes

Subsection (a)(4) – This requirement was also added to HULLCA, with this explanation: “Originally added at the December 2010 “Plumbing Subcommittee” meeting and subsequently modified for clarity, these provisions reflect a compromise between ULLCA’s approach (bare bones certificate) and the HUB’s requirement that filing entities disclose all the governors (which in the case of a member-managed LLC would be all the members). The discussion at the Subcommittee was influenced by concern about pending federal legislation requiring disclosure of beneficial owners.

924 [ARTICLE] 3

925 GOVERNING LAW; AUTHORIZATION; DURATION; POWERS

926 SECTION 301. GOVERNING LAW. The law of this state governs:

927 (1) the internal affairs of a statutory trust;

928 (2) the liability of a beneficial owner as beneficial owner and a trustee as trustee for a
929 ~~debt, obligation, or other liability~~ the debts, obligations, or other liabilities of a statutory trust or a
930 series thereof; and

931 (3) the enforceability of a debt, obligation, or other liability of:

932 (A) the statutory trust ~~or a series thereof~~ against the property of ~~the trust or~~ any
933 series thereof; ~~and~~

934 (B) a series trust against the property of the statutory trust or any other series
935 thereof.

936 Reporters' Notes

937
938 *Paragraph (1)* - Query whether to add a reference to series?

939
940 *Paragraph (3)* – The change is to make certain that the language applies only to the
941 question of internal shields. For example, the original language could be read to apply to: “the
942 enforceability of a debt, obligation, or other liability of the statutory trust ...against the property
943 of the trust” That reading might seem to indicate that the enforceability *vel non* of a trust
944 obligation is necessarily settled by the law of the state of formation.

945
946 SECTION 302. STATUTORY TRUST AS ENTITY. A statutory trust is an entity
947 separate from its trustees and beneficial owners.

948 SECTION 303. PERMISSIBLE PURPOSES.

949 (a) Except as otherwise provided in subsection (b), a statutory trust may have any lawful
950 purpose, regardless of whether for profit.

951 (b) A statutory trust may not have a predominantly donative purpose.

952 **Reporters' Notes**

953 *Subsection (a)* – A statutory trust may have a predominantly donative purpose, but need it
954 have a profit-making or business purpose? For example, may a statutory trust could a lakeshore
955 cabin, used by the beneficial owners of the trust? If so, the added language makes the point clear
956 beyond peradventure. (The concern for greater certainty comes from issues in the LLC realm,
957 which are perhaps inapposite here.)

958
959 **~~SECTION 304. STATUTORY TRUST SOLELY LIABLE FOR DEBT,~~**
960 **~~OBLIGATION, OR OTHER LIABILITY OF STATUTORY TRUST~~ LIABILITY OF**
961 **TRUSTEES AND BENEFICIAL OWNERS.**

962 (a) A debt, obligation, or other liability of a statutory trust or series thereof is solely a the
963 debt, obligation, or other liability of the trust or series thereof. A beneficial owner or trustee,
964 ~~agent of the trust, or agent of the trustee~~ is not personally liable, directly or indirectly, by way of
965 contribution or otherwise, for a debt, obligation, or other liability of the trust or series thereof
966 solely by reason of being or acting as a trustee or beneficial owner, ~~agent of the trust, or agent of~~
967 ~~the trustee.~~

968 (b) Except as otherwise provided in [Article] 4, property of a statutory trust held in the
969 name of the trust or by the trustee in the trustee's capacity as trustee is subject to attachment and
970 execution to satisfy a debt, obligation, or other liability of the trust.

971 (c) The failure of a statutory trust to observe any formalities relating to the exercise of its
972 powers or management of its activities is not a ground for imposing liability on any trustee or
973 beneficial owner of a statutory trust for any debt, obligation, or other liability of the trust.

974 **Reporters' Notes**

975 *Subsection (b)* – Does the same rule apply to property of a series?

976
977 *Subsection (c)* – The proposed addition is for harmonization purposes. The language
978 originated in RULLCA but is being added to RUPA (re: LLPs), HULPA, and even the limited
979 cooperative act.
980

SECTION 305. NO CREDITOR RIGHTS IN TRUST PROPERTY. A creditor of a beneficial owner or trustee may not obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of a statutory trust or any series thereof.

SECTION 306. DURATION.

(a) A statutory trust has perpetual duration.

(b) A statutory trust, or any series thereof, may not be terminated or revoked except in accordance with this [act] or the terms of the governing instrument.

(c) The death, incapacity, dissolution, termination, or bankruptcy of a beneficial owner or trustee does not result in the termination or dissolution of a statutory trust or any series thereof.

(d) A statutory trust or any series thereof does not terminate because the same person is the sole trustee and sole beneficial owner.

SECTION 307. POWER TO HOLD PROPERTY; TITLE TO TRUST

PROPERTY. A statutory trust may hold or take title to property in its own name, or in the name of a trustee in the trustee's capacity as trustee, whether in an active, passive, or custodial capacity.

SECTION 308. POWER TO SUE AND BE SUED. A statutory trust may sue and be sued in its own name.

999 **[ARTICLE 4]**

1000 **SERIES TRUSTS**

1001 **SECTION 401. STATUTORY TRUST HAVING SERIES.**

1002 (a) The governing instrument may provide for the creation by the statutory trust of one or
1003 more series with respect to specified property of the statutory trust if:

1004 (1) records are maintained for the series which reasonably identify the property of
1005 the series, including by specific listing, category, type, quantity, or computational or allocational
1006 formula or procedure, such as a percentage or share of any property, or by any other method by
1007 which the identity of the property of the series is objectively determinable; and

1008 (2) notice that the trust may have one or more series is set forth in the certificate
1009 of trust as required by Section 201(b)(4).

1010 (b) A series of a statutory trust is not an entity separate from the statutory trust.

1011 (c) A series of a statutory trust may have a separate purpose from the trust or any other
1012 series thereof if the purpose of the series is lawful and not a predominantly donative purpose.

1013 **SECTION 402. LIABILITY OF SERIES TRUST.**

1014 (a) In a series trust:

1015 (1) a debt, obligation, or other liability incurred or otherwise existing with respect
1016 to the property of a particular series is enforceable against the property of the series only, and not
1017 against the property of the trust generally or any other series thereof; and

1018 (2) a debt, obligation, or other liability incurred or otherwise existing with respect
1019 to the trust generally or the property of any other series thereof is not enforceable against the
1020 property of the series.

1021 (b) The association, disassociation, or reassociation of property of a statutory trust or a

series thereof to or with the trust or a series thereof, including by conversion or merger under [Article] 7, is deemed to be a transfer between separate persons under [Uniform Fraudulent Transfers Act or other state fraudulent transfer statute].

SECTION 403. DUTIES OF TRUSTEE IN SERIES TRUST. If there is at least one trustee of a series trust that, in discharging its duties, is obligated to consider the interests of the trust and all series thereof, the governing instrument may provide that one or more other trustees, in discharging their duties, may consider only the interests of the trust or one or more series thereof.

SECTION 404. DISSOLUTION OF SERIES.

(a) A series of a series trust may be dissolved or its property distributed without causing the dissolution of the trust or any other series thereof.

(b) A series of a series trust is dissolved, and its activities must be wound up, on the occurrence of an event or circumstance that the governing instrument states causes dissolution of the series or upon the dissolution of the trust.

(c) On dissolution of a series of a series trust, the persons that under the governing instrument are responsible for winding up the affairs of the series may cause the trust to take all actions permitted under Section 803 and shall take actions with respect to the claims and obligations of the series as provided in Sections 803 through 805.

(d) A person, including a trustee, that under the governing instrument is responsible for winding up the affairs of a series of a series trust is not liable to the creditors of the dissolved series by reason of the person's actions in winding up the series.

1044 [ARTICLE 5]

1045 TRUSTEES AND TRUST MANAGEMENT

1046 SECTION 501. MANAGEMENT OF STATUTORY TRUST. The business and
1047 affairs of a statutory trust ~~must be~~ are managed by or under the authority of its trustees.

1048 SECTION 502. TRUSTEE POWERS. A trustee may exercise:

- 1049 (1) powers conferred by the governing instrument;
- 1050 (2) except as limited by the governing instrument, any other powers necessary or
1051 convenient to carry out the business and affairs of the statutory trust; and
- 1052 (3) other powers conferred by this [act].

1053 SECTION 503. ACTION BY TRUSTEES. On any matter that is to be acted on by
1054 trustees, the following rules apply:

- 1055 (1) The trustees act by majority of the trustees.
- 1056 (2) The trustees may act without a meeting, without previous notice, and without a vote,
1057 if the minimum number of trustees necessary to authorize or take the action at a meeting at
1058 which all trustees entitled to vote thereon were present and voted consent in a signed record.
1059 However, prompt notice of the action must be given to those trustees that did not consent.

- 1060 (3) A trustee may vote in person or by proxy, but, if by proxy, the proxy must be in a
1061 signed record.

1062 SECTION 504. PROTECTION OF PERSON DEALING WITH TRUSTEE.

1063 (a) A person that in good faith assists a trustee, or in good faith and for value deals with a
1064 trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's
1065 power, is protected from liability as if the trustee properly exercised the power.

1066 (b) A person that in good faith deals with a trustee need not inquire into the extent of a

1067 trustee's power or the propriety of the exercise of the power.

1068 (c) A person that in good faith delivers property to a trustee need not ensure its proper
1069 use.

1070 (d) A person that in good faith and without knowledge that the trusteeship has terminated
1071 assists a former trustee as if the former trustee were still a trustee, or in good faith and for value
1072 deals with a former trustee as if the former trustee were still a trustee is protected from liability
1073 as if the former trustee were still a trustee.

1074 **Reporters' Notes**

1075 Subsection (a) considers both a person assisting and one dealing with a trustee. In
1076 contrast, subsection (b) refers only to a person dealing with the trustee. The difference between
1077 the subsections makes sense in light of the comment: "Subsection (b) therefore overrides the
1078 application to a statutory trust under Section 105 of the outmoded common-law rule that third
1079 parties that deal with the trustee are charged with constructive notice of the trust's governing
1080 instrument and its contents." However, the difference could be read as implying a negative (i.e.
1081 those the opposite of subsection (b) applies to those who assist). Is that implication intended?
1082

1083 **Reporters' Notes Concerning Standard of Conduct**

1084
1085 As the USTEА Comments explain, the USTEА drafting committee made a conscious
1086 decision to: (i) depart from the Delaware Act [but conform with reported Delaware practice] by
1087 codifying fiduciary duties; and (ii) follow a corporate model with regard to those duties. This
1088 approach may well be correct, but, from the perspective of harmonization, it is worth considering
1089 whether USTEА should use the same language as will be used in HULLCA, HULPA, and
1090 HUPA.

1091
1092 To facilitate discussion of this question, this draft first reproduces the USTEА, § 505 and
1093 then shows changes that would harmonize this section to HULLCA, HULPA, and HUPA. If the
1094 harmonizing approach is adopted, conforming changes will be required for Sections 104 and
1095 507.

1096
1097 **[USTEA PROVISION]**

1098 **SECTION 505. STANDARDS OF CONDUCT FOR TRUSTEES.**

1099 (a) Subject to Section 403, in exercising the powers of trusteeship, a trustee shall act in
1100 good faith and in a manner the trustee reasonably believes to be in the best interests of the

1101 statutory trust.

1102 (b) A trustee shall discharge its duties with the care that a person in a similar position
1103 would reasonably believe appropriate under similar circumstances.

1104 **[HARMONIZATION ALTERNATIVE]**

1105 **SECTION 505. STANDARDS OF CONDUCT FOR TRUSTEES.**

1106 (a) ~~Subject to Section 403, in exercising the powers of trusteeship, a trustee shall act in~~
1107 ~~good faith and in a manner the trustee reasonably believes to be in the best interests of the~~
1108 ~~statutory trust.~~ A trustee owes to the trust and the beneficial owners the duties of loyalty and care
1109 stated in subsections (b) and (c).

1110 (b) ~~A trustee shall discharge its duties with the care that a person in a similar position~~
1111 ~~would reasonably believe appropriate under similar circumstances.~~ The fiduciary duty of loyalty
1112 of a trustee includes the duties:

1113 (1) to account to the trust and to hold as trustee for it any property, profit, or
1114 benefit derived by the trustee:

1115 (A) in the conduct or winding up of the trust's activities;

1116 (B) from a use by the trustee of the trust's property; or

1117 (C) from the appropriation of a trust opportunity;

1118 (2) to refrain from dealing with the trust in the conduct or winding up of the
1119 trust's activities as or on behalf of a person having an interest adverse to the trust; and

1120 (3) to refrain from competing with the trust in the conduct of the trust's activities
1121 before the dissolution of the trust.

1122 (c) A trustee's duty of care to the trust and the beneficial owners in the conduct and

winding up of the trust's business is to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A trustee shall discharge the duties under this [act] or under the trust instrument and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(e) A trustee does not violate a duty or obligation under this [act] or under the trust instrument merely because the trustee's conduct furthers the trustee's own interest.

(f) All of the beneficial owners of a trust may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(g) It is a defense to a claim under subsection (b)(2) and any comparable claim in equity or at common law that the transaction was fair to the statutory trust.

(h) If, as permitted by subsection (f), or the trust instrument, a trustee enters into a transaction with a statutory trust that otherwise would be prohibited by subsection (b)(2), the trustee's rights and obligations arising from the transaction are the same as those of a person not a trustee.

(i) A beneficial owner does not have any duty to the statutory trust or to any other beneficial owner solely by reason of being a beneficial owner.

SECTION 506. GOOD-FAITH RELIANCE. A trustee, officer, employee, manager, or committee of a statutory trust, or other person designated pursuant to Section 103(e)(8), is not liable to the trust or to a beneficial owner for breach of ~~any~~ a duty under this [act], including a fiduciary duty, to the extent the breach results from good-faith reliance on:

(1) a term of the governing instrument;

(2) a record of the statutory trust; or

(3) an opinion, report, or statement of another person that the person to which the

1146 opinion, report, or statement is made or delivered reasonably believes is within the other person's
1147 professional or expert competence and is made or delivered to the trustee, officer, employee,
1148 manager, or committee of a statutory trust, or other person designated pursuant to Section
1149 103(e)(8).

1150 **Reporters' Notes**

1151 The change is intended to make clear that, as a default rule, good faith reliance is not a
1152 defense to a breach of contract claim. Certainly the trust instrument can create that protection for
1153 the trustee, but to provide that protection as a default rule would be seriously at odds with other
1154 contract-based Conference products.

1155
1156 **SECTION 507. INTERESTED TRANSACTIONS.**

1157 (a) In this section, "covered party" means a trustee, officer, employee, or manager of a
1158 statutory trust, or a related party of a trustee, officer, employee, manager, or other person
1159 designated pursuant to Section 103(e)(8).

1160 (b) Subject to subsection (c), a covered party may lend money to, borrow money from,
1161 act as a surety, guarantor, or endorser for, guarantee or assume an obligation of, provide
1162 collateral for, or do other business with the statutory trust and, subject to law other than this [act],
1163 has the same rights and obligations with respect to those matters as a person that is not a covered
1164 party.

1165 (c) A transaction described in subsection (b) is voidable by the statutory trust unless the
1166 covered party shows that the transaction is fair to the trust.

1167 **Reporters' Notes**

1168 If the harmonized version of Section 505 is chosen, this Section will require revision.

1169
1170 **SECTION 508. TRUSTEE'S RIGHT TO INFORMATION.** A trustee has the right

1171 to receive from a statutory trust or another trustee information relating to the affairs of the trust
1172 which is reasonably related to the trustee's discharge of the trustee's duties as trustee. The trustee

may enforce this right by summary proceeding in the [appropriate court].

Reporters' Notes

HUPA, HULPA, HULLCA, and HULCA (limited cooperative) act each provide far more detailed rules concerning access of managers to information. The Harmonization Committee's assumption is that reasons exist not to harmonize.

SECTION 509. REIMBURSEMENT, INDEMNIFICATION, ADVANCEMENT, AND EXONERATION INSURANCE.

(a) A statutory trust shall reimburse a trustee for any payment made by the trustee in the course of the trustee's activities on behalf of the statutory trust, if the trustee complied with Sections 501, 505, and 610 in making the payment.

~~(a)~~ (b) A statutory trust ~~may~~ shall indemnify and hold harmless a trustee or beneficial owner, ~~or other person~~ with respect to any claim or demand against the person and any debt, obligation, or other liability incurred by the person by reason of the person's former or present capacity as a trustee or beneficial owner ~~relationship with the trust~~ if the claim, ~~or demand,~~ debt, obligation or other liability does not arise from the person's ~~bad faith, willful misconduct, or reckless indifference~~ breach of Section 501, 505, or 610.

~~(b)~~ (c) ~~Expenses, including reasonable attorney's fees and costs, incurred by a trustee, beneficial owner, or other person in connection with a claim or demand against the person by reason of the person's relationship to a statutory trust may be paid by the trust before the final disposition of the claim or demand, upon an undertaking by or on behalf of the person to repay the trust if the person is ultimately determined not to be entitled to be indemnified under subsection (a).~~ As a matter under Section 503(1), a statutory trust may advance reasonable expenses, including attorney's fees and costs, incurred by a trustee or beneficial owner in connection with a claim or demand against the person by reason of the person's former or

present capacity as a trustee or beneficial owner, if the person promises to repay the statutory trust if the person ultimately is determined not to be entitled to be indemnified under subsection (b).

~~(e)~~ (d) A term in the governing instrument relieving or exonerating a trustee from liability is unenforceable to the extent it relieves or exonerates the trustee from liability for conduct involving bad faith, willful misconduct, or reckless indifference.

(e) A statutory trust may purchase and maintain insurance on behalf of a trustee or beneficial owner of the trust against liability asserted against or incurred by the trustee or beneficial owner in that capacity or arising from that status even if, under Section 104(9), the trust instrument could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

Reporters' Notes

In general, this section has been harmonized to HULLCA (and HUPA and HULPA), after they had been improved by reference to the original language of this section.

Subsection (b) – For harmonization purposes, this change mandates indemnification as the default rule. Query the reason for having a different default in a statutory trust than in an LLC, limited partnership, or general partnership.

Subsection (c) – The introductory phrase (“As a matter under Section 503(1)”) is intended as the analog to the introductory phrase used in HULLCA (“As an activity in the ordinary course of its activities”).

Subsection (d) – Other acts have been harmonized to this provision.

SECTION 510. DIRECTION OF TRUSTEES.

(a) The governing instrument may authorize any person, including a beneficial owner, to direct a trustee or other person in the management of a statutory trust.

(b) The governing instrument may provide that neither the power to direct a trustee or other person nor the exercise of the power by any person, including a beneficial owner, causes

the person to be a trustee or imposes on the person duties, including fiduciary duties, or liabilities relating to these duties, to a statutory trust or beneficial owner.

(c) If the governing instrument confers on a person a power to direct actions by a trustee or other person, the trustee or other person shall act in accordance with an exercise of the power, unless the direction is manifestly contrary to the terms of the governing instrument or the trustee knows or has reason to know that following the direction would constitute a serious breach of fiduciary duty by the trustee.

SECTION 511. DELEGATION BY TRUSTEE.

(a) A trustee may delegate duties and powers. The trustee shall exercise the care a person in a similar position would reasonably believe appropriate under similar circumstances in:

- (1) selecting an agent;
- (2) establishing the scope and terms of the delegation; and
- (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) Subject to subsection (a), a trustee may delegate duties and powers to a co-trustee.

(c) In performing a delegated function, an agent of a trustee owes a duty to the statutory trust to exercise reasonable care to comply with the terms of the delegation.

(d) A trustee that complies with subsection (a) is not liable to a beneficial owner or to the statutory trust for an act or omission of the agent of the trustee to which a function was delegated.

(e) An agent of a trustee submits to the jurisdiction of the courts of this state by accepting a delegation of powers or duties from a trustee with respect to a claim related to the agency.

**SECTION 512. INDEPENDENT TRUSTEE IN REGISTERED INVESTMENT
COMPANY.**

(a) In this section, “affiliated person” and “interested person” have the meanings set forth in the Investment Company Act of 1940, [as amended,] 15 U.S.C. Section 80a-1 et seq. [or any successor statute] [and any regulations issued thereunder].

(b) If a statutory trust is registered as an investment company under the Investment Company Act of 1940, [as amended,] 15 U.S.C. Section 80a-1 et seq., [or any successor statute] [and any regulations issued thereunder,] a trustee is an independent trustee for all purposes under this [act] if the trustee is not an interested person of the trust. The receipt of compensation both for service as an independent trustee of the trust and for service as an independent trustee of one or more other investment companies managed by a single investment adviser or an affiliated person of an investment adviser, does not affect the status of the trustee as an independent trustee under this section.

1266 [ARTICLE] 6

1267 ~~BENEFICIARIES AND BENEFICIAL RIGHTS OWNERS~~

1268 SECTION 601. BENEFICIAL INTEREST.

1269 (a) A beneficial interest in a statutory trust is freely transferable.

1270 (b) A beneficial interest in a statutory trust is personal property ~~regardless of the nature~~
1271 ~~of the property of the trust.~~

1272 (c) A beneficial interest in a statutory trust is not an interest in specific property of the
1273 statutory trust.

1274 (d) A beneficial owner does not have a preemptive right to subscribe to any additional
1275 issue of beneficial interests or any other interest of a statutory trust.

1276 (e) A beneficial interest may be evidenced by a certificate of the interest issued by the
1277 statutory trust in a record, and, subject to this section, the interest represented by the certificate
1278 may be transferred by a transfer of the certificate.

1279 (f) A statutory trust need not give effect to a transferee of a beneficial owner's rights
1280 under this section until the trust has notice of the transfer.

1281 Reporters' Notes

1282
1283 *Subsection (b)* – language deleted as unnecessary and as raising questions in other acts
1284 (which do not include the language).

1285
1286 *Subsections (e) and (f)* – included for the sake of harmonization, unless a trust-related
1287 reason indicates to the contrary.

1288
1289 SECTION 602. VOTING OR CONSENT BY BENEFICIAL OWNERS. On any
1290 matter that is to be acted on by beneficial owners, the following rules apply:

1291 (1) The beneficial owners act by majority of the beneficial interests.

1292 (2) The beneficial owners may take the action without a meeting, without notice, and

without a vote, if beneficial owners having at least the minimum number of votes necessary to authorize or take the action at a meeting at which all beneficial owners entitled to vote thereon were present and voted consent in a signed record. However, prompt notice of the action must be given to those beneficial owners that did not consent.

(3) A beneficial owner may vote in person or by proxy, but if by proxy, the proxy must be contained in a signed record.

SECTION 603. FORM OF AND LIABILITY FOR CONTRIBUTIONS
~~CONTRIBUTION BY BENEFICIAL OWNER.~~

~~(a) A contribution of a beneficial owner to a statutory trust may be in cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services.~~ A contribution may consist of tangible or intangible property or other benefit to a statutory trust, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.

(b) A person may become a beneficial owner of a statutory trust and may receive a beneficial interest in a statutory trust without making a contribution or being obligated to make a contribution to the trust.

~~(b) (c) A beneficial owner is liable to the statutory trust for failure to perform an obligation to contribute cash or property or to perform services, even if the beneficial owner is unable to perform because of death, disability, or any other reason. If a beneficial owner does not make the required contribution of cash, property, or services, the beneficial owner is obligated, at the option of the trust, to contribute cash equal to that part of the value of the contribution that has not been made. This obligation is in addition to any other right, including the right to specific performance, that the trust has against the beneficial owner under the governing instrument or~~

1316 ~~applicable law.~~ A person's obligation to contribute money or other property or other benefit to,
1317 or to perform services for, a statutory trust is not excused by the person's death, disability, or
1318 other inability to perform personally.

1319 (d) If a person does not make a promised contribution, the person is obligated at the
1320 option of the statutory trust to contribute money equal to the value of the part of the contribution
1321 which has not been made.

1322 ~~(c)~~ (e) The governing instrument may provide that a beneficial owner that fails to make a
1323 required contribution, or comply with the terms and conditions of the governing instrument, is
1324 subject to ~~specified penalties for or~~ consequences of the failure, including:

1325 (1) reduction or elimination of the defaulting beneficial owner's proportionate
1326 interest in the statutory trust or series thereof;

1327 (2) subordination of the defaulting beneficial owner's beneficial interest to that of
1328 nondefaulting beneficial owners;

1329 (3) forced sale ~~or forfeiture~~ of the defaulting beneficial owner's beneficial
1330 interest;

1331 (4) imposition of an obligation to repay a loan to the statutory trust by another
1332 beneficial owner of the amount necessary to meet the defaulting beneficial owner's commitment;

1333 (5) redemption or sale of the defaulting beneficial owner's beneficial interest at a
1334 value fixed by appraisal or by formula; and

1335 (6) specific performance of an obligation under the governing instrument.

1336 **Reporters' Notes**

1337
1338 The deletions are consistent with Conference policy. No other entity act sanctions
1339 penalties or forfeitures. "Equity abhors a forfeiture," and the common law of contracts does not
1340 permit penalties (although some academics have criticized that approach and asserted that the
1341 common law's antipathy is more formal than real). Moreover, from the perspective of

1342 harmonization, if these words remain in USTEPA, they should be added to HULLCA, HULPA,
1343 and HUPA.

1344
1345 **SECTION 604. ~~DISTRIBUTION TO BENEFICIAL OWNER~~ RIGHT TO**

1346 **DISTRIBUTIONS BEFORE DISSOLUTION.**

1347 (a) ~~When~~ Any distributions made by a statutory trust before its dissolution and winding
1348 up must be in proportion to the beneficial interests. If a beneficial owner becomes entitled to
1349 receive a distribution, ~~with respect to the distribution,~~ the beneficial owner has the status of, and
1350 is entitled to all remedies available to, a creditor of the statutory trust with respect to the
1351 distribution.

1352 (b) A beneficial owner has a right to a distribution before the dissolution and winding up
1353 of a statutory trust only if the trust decides to make an interim distribution. A beneficial owner
1354 does not have a right to demand or receive a distribution from the trust in any form other than
1355 money.

1356 (c) Subject to Section 803(b), the trust may distribute an asset in kind only if each part of
1357 the asset is fungible with each other part and each beneficial owner receives a percentage of the
1358 asset equal in value to the beneficial owner's share of the ~~distribution~~ distributions.

1359 **Reporters' Notes**

1360
1361 *Subsection (a)* – For harmonization purposes, the new first sentence creates a default rule.

1362
1363 **SECTION 605. REDEMPTION OF BENEFICIAL INTEREST.** A statutory trust
1364 may acquire, by purchase, redemption, or otherwise, any beneficial interest in the trust or series
1365 thereof. A beneficial interest acquired under this section is canceled.

1366 **~~SECTION 606. CHARGING ORDER.~~**

1367 ~~(a) If a beneficial interest is not freely transferable by a beneficial owner so that the~~
1368 ~~transferee has all rights of the transferor, a judgment creditor of a beneficial owner may satisfy~~

~~the judgment against the beneficial owner's beneficial interest only as provided in this section.~~

~~(b) On application by a judgment creditor of a beneficial owner, the [appropriate court]~~

~~may issue a charging order against the beneficial owner's right to distributions from the trust for~~

~~the unsatisfied part of the judgment and:~~

~~(1) appoint a receiver of the distributions subject to the charging order, with the~~

~~power to enforce the beneficial owner's right to a distribution; and~~

~~(2) make other orders necessary to give effect to the charging order.~~

~~(c) A charging order issued under subsection (b) is a lien on the beneficial owner's right~~

~~to distributions and requires the statutory trust to pay over to the judgment creditor any~~

~~distribution that would otherwise be paid to the beneficial owner until the judgment has been~~

~~satisfied.~~

~~(d) A statutory trust or beneficial owner that is not subject to a charging order issued~~

~~under subsection (b) may pay to the judgment creditor the full amount due under the judgment~~

~~lien and thereby succeed to the rights of the judgment creditor, including the charging order.~~

~~(e) This [act] does not deprive a beneficial owner or a transferee of the beneficial interest of any~~

~~exemption applicable to the beneficial interest.~~

Reporters' Notes

The charging order is a remedy that functions to protect the “pick your partner” principle of partnership and LLC law. As an entity whose interests are freely transferable, a statutory trust resembles a corporation rather a partnership or LLC. It would be virtually* unprecedented to allow an entity to impose transfer restrictions by private agreement and then protect those private arrangements with the charging order. To do so would put the Conference at odds with literally hundreds of cases (that, rightly or wrongly, consistently subject private transfer restrictions to strict scrutiny). Moreover, the charging order has become controversial as an unfair barrier to legitimate creditors. Particularly in light of that controversy, it is the wrong time for the Conference to seek radically to change the law.

* Nevada is the lone exception. Nev. Rev. Stat. § 78.746.

1398 **SECTION 606. RESTRICTIONS ON TRANSFER OF BENEFICIAL INTERESTS.**

1399 (a) The governing instrument may impose restrictions for any reasonable purpose on the
1400 transfer of beneficial interests of a statutory trust. A restriction does not affect beneficial interests
1401 issued before the restriction was adopted unless the holders of the beneficial interests are parties
1402 to the governing instrument or voted in favor of the restriction.

1403 (b) A restriction under subsection (a) on the transfer of beneficial interests is valid and
1404 enforceable against the holder if the restriction is noted conspicuously on the front or back of the
1405 certificate. Unless so noted, a restriction is not enforceable against a person without knowledge
1406 of the restriction.

1407 (c) A restriction on the transfer of beneficial interests may:

1408 (1) obligate the beneficial owner first to offer the statutory trust or other persons
1409 (separately, consecutively, or simultaneously) an opportunity to acquire the restricted beneficial
1410 interests;

1411 (2) obligate the statutory trust or other persons (separately, consecutively, or
1412 simultaneously) to acquire the restricted beneficial interests;

1413 (3) require the statutory trust, the holders of any class or series trust, or another
1414 person to approve the transfer of the restricted beneficial interests, if the requirement is not
1415 manifestly unreasonable; and

1416 (4) prohibit the transfer of the restricted beneficial interests to designated persons
1417 or classes of persons, if the prohibition is not manifestly unreasonable.

1418 **Reporters' Notes**

1419 This section is designed to resemble MBCA § 6.27.

1420 **SECTION 607. TRANSACTION WITH BENEFICIAL OWNER.** Subject to

1421 Section 507, a beneficial owner or related party of a beneficial owner may lend money to,
1422 borrow money from, act as a surety, guarantor, or endorser for, guarantee or assume an
1423 obligation of, provide collateral for, or do other business with the statutory trust and, subject to
1424 law other than this [act], has the same rights and obligations with respect to those matters as a
1425 person that is not a beneficial owner.

1426 **Reporters' Notes**

1427 Even if the harmonized approach is adopted for Section 505, this section should remain
1428 essentially as is.

1429
1430 **SECTION 608. BENEFICIAL OWNER'S RIGHT TO INFORMATION. A**

1431 beneficial owner has the right to receive from the statutory trust or a trustee information relating
1432 to the affairs of a statutory trust which is reasonably related to the beneficial owner's interest.

1433 The beneficial owner may enforce this right by summary proceeding in the [appropriate court].

1434 **Reporters' Notes**

1435 HUPA, HULPA, HULLCA, and HULCA (limited cooperative) act each provide far more
1436 detailed rules concerning access of equity owners to information. (Note, e.g., the absence of a
1437 requirement of a proper purpose; the absence of express authority for the trustee to impose
1438 restrictions independent of the governing instrument). The Harmonization Committee's
1439 assumption is that reasons exist not to harmonize.

1440
1441 **SECTION 609. DIRECT ACTION BY BENEFICIAL OWNER.**

1442 (a) ~~A beneficial owner may maintain a direct action against a statutory trust to redress an~~
1443 ~~injury sustained by, or to enforce a duty owed to, the beneficial owner if the beneficial owner can~~
1444 ~~prevail without showing an injury or breach of duty to the trust. Subject to subsection (b), a~~
1445 beneficial owner may maintain a direct action against another beneficial owner, a trustee, or the
1446 statutory trust to enforce the beneficial owner's rights and otherwise protect the beneficial
1447 owner's interests, including rights and interests under the governing instrument or this [act] or
1448 arising independently of the beneficial owner relationship.

1449 (b) A beneficial owner maintaining a direct action under this section must plead and
1450 prove an actual or threatened injury that is not solely the result of an injury suffered or threatened
1451 to be suffered by the statutory trust.

1452 **Reporters' Notes**

1453
1454 The substituted language conforms to Conference precedent and with the lion's share of
1455 case law. Until 2004, Delaware used the "special injury" approach, but in Tooley the court
1456 joined the majority and "disapprove[d]" of that approach. Tooley v. Donaldson, Lufkin, &
1457 Jenrette, Inc., 845 A.2d 1031, 1035 (Del. 2004). The "duty owed" approach is the law in very
1458 few states and can lead to substantial confusion.

1459
1460 **SECTION 610. DERIVATIVE ACTION.** A beneficial owner may maintain a
1461 derivative action ~~to redress an injury sustained by, or~~ enforce a ~~duty owed to, right of~~ a statutory
1462 trust if:

1463 (1) the beneficial owner first makes a demand on the trustees, requesting that the
1464 trustees cause the trust to bring an action to redress the injury or enforce the right, and the
1465 trustees do not bring the action within a reasonable time; or

1466 (2) a demand would be futile.

1467 **SECTION 611. PROPER PLAINTIFF.** A derivative action ~~on behalf of a statutory~~
1468 ~~trust~~ may be maintained only by a person that is a beneficial owner at the time the action is
1469 commenced and:

1470 (1) that was a beneficial owner when the conduct giving rise to the action
1471 occurred; or

1472 (2) ~~acquired the~~ whose status as a beneficial owner devolved upon the person
1473 by operation of law or pursuant to the terms of the governing instrument from a person that was a
1474 beneficial owner at the time of the conduct.

1475 **SECTION 612. PLEADING.** In a derivative action ~~on behalf of the statutory trust~~, the

1476 complaint must state with particularity:

1477 (1) the date and content of the plaintiff's demand and the ~~trustees'~~ response to the
1478 demand by the trustees; or

1479 (2) why the demand should be excused as futile.

1480 **SECTION 613. SPECIAL LITIGATION COMMITTEE.**

1481 (a) If a statutory trust is named as or made a party in a derivative proceeding, the trust
1482 may appoint a special litigation committee to investigate the claims asserted in the proceeding
1483 and determine whether pursuing the action is in the best interests of the trust. If the trust
1484 appoints a special litigation committee, on motion by the committee made in the name of the
1485 trust, except for good cause shown, the court shall stay discovery for the time reasonably
1486 necessary to permit the committee to make its investigation. This subsection does not prevent
1487 the court from enforcing a person's right to information under Section 508 or 608, for good
1488 cause shown, granting extraordinary relief in the form of a temporary restraining order or
1489 preliminary injunction.

1490 (b) A special litigation committee may be composed of one or more disinterested and
1491 independent individuals, who may be trustees.

1492 (c) A special litigation committee may be appointed:

1493 (1) by a majority of the trustees not named as defendants or plaintiffs in the
1494 proceeding; and

1495 (2) if all trustees are named as defendants or plaintiffs in the proceeding, by a
1496 majority of the trustees named as defendants.

1497 (d) After appropriate investigation, a special litigation committee may determine that it is
1498 in the best interests of the statutory trust that the proceeding:

1499 (1) continue under the control of the plaintiff;
1500 (2) continue under the control of the committee;
1501 (3) be settled on terms approved by the committee; or
1502 (4) be dismissed.
1503 (e) After making a determination under subsection (d), a special litigation committee
1504 shall file with the court a statement of its determination and its report supporting its
1505 determination and shall serve each party with a copy of the determination and report. The court
1506 shall determine whether the members of the committee were disinterested and independent and
1507 whether the committee conducted its investigation and made its recommendation in good faith,
1508 independently, and with reasonable care, with the committee having the burden of proof. If the
1509 court finds that the members of the committee were disinterested and independent and that the
1510 committee acted in good faith, independently, and with reasonable care, the court shall enforce
1511 the determination of the committee. Otherwise, the court shall dissolve the stay of discovery
1512 entered under subsection (a) and allow the action to proceed under the direction of the plaintiff.

1513 **Reporters' Notes**

1514 This section is added: (i) for harmonization purposes [HULPA and HULLCA; HUPA
1515 does not provide for derivative suits]; (ii) because there is some suggestion in the LLC case law
1516 that an entity may not create an SLC absent statutory authority or an express provision in its
1517 operating agreement; and (iii) to adopt the Auerbach rule for assessing a report of an SLC.
1518 Auerbach v. Bennett, 393 N.E.2d 994 (N.Y. 1979). Auerbach is by far the majority rule.

1519 1520 **SECTION 614. PROCEEDS AND EXPENSES.**

1521 ~~(e)~~ (a) Except as otherwise provided in subsection ~~(f)~~ (b):
1522 (1) any proceeds or other benefits of a derivative action ~~on behalf of a statutory~~
1523 ~~trust~~, whether by judgment, compromise, or settlement, ~~are the property of~~ belong to the trust
1524 and not ~~of~~ to the plaintiff; and
1525 (2) if the plaintiff receives any proceeds ~~or other benefits~~, the plaintiff shall

1552 (1) in the case of a distribution as defined in Section 102(6), as of the earlier of
1553 the date:
1554 (A) money or other property is transferred or debt incurred by the trust;
1555 and
1556 (B) the person entitled to the distribution ceases to own the interest or
1557 rights being acquired by the trust in return for the distribution;
1558 (2) in the case of any other distribution of indebtedness, as of the date the
1559 indebtedness is distributed; and
1560 (3) in all other cases, as of the date:
1561 (A) the distribution is authorized, if the payment occurs within 120 days
1562 after that date; or
1563 (B) the payment is made, if the payment occurs more than 120 days after
1564 the distribution is authorized.
1565 (d) A statutory trust's indebtedness to a member or transferee incurred by reason of a
1566 distribution made in accordance with this section is at parity with the trust's indebtedness to its
1567 general, unsecured creditors, except to the extent subordinated by agreement.
1568 (e) A statutory trust's indebtedness, including indebtedness issued in connection with or
1569 as part of a distribution, is not a liability for purposes of subsection (a) if the terms of the
1570 indebtedness provide that payment of principal and interest are made only if and to the extent
1571 that payment of a distribution could be made under this section. If indebtedness is issued as a
1572 distribution, each payment of principal or interest is treated as a distribution, the effect of which
1573 is measured on the date the payment is actually made.
1574 (f) This section does not apply to distributions under Section 803.

Reporters' Notes

In their July 2, 2010 letter to Dean Haynsworth, Professors Langbein and Sitkoff explained the absence of clawback provisions as follows: “USTEA contains no provision for the recapture of distributions made while the entity is insolvent. Thus, in the absence of an applicable provision in the governing instrument, under Section 105 ordinary trust law will apply. *See, e.g.*, Austin W. Scott, William F. Fratcher & Mark L. Ascher, 4 Scott and Ascher on Trusts § 26.7 (5th ed. 2007).” With respect and for two reasons, the Harmonization Committee believes that this explanation does not justify treating USTEA differently than the other acts. Common law remedies also exist with respect to other entities – most notably the fraudulent transfer/conveyance laws, but the Conference policy has been to follow corporate law and provide a separate, statutory remedy when an entity act provides a liability shield for owners. Moreover, as Professors Langbein and Sitkoff note, “ordinary trust law” applies “*in the absence of an applicable provision in the governing instrument.*” (Emphasis added) Statutory clawback provisions are not subject to variation by the private agreement.

SECTION 616. LIABILITY FOR IMPROPER DISTRIBUTIONS.

(a) Except as otherwise provided in subsection (b), if a trustee of a statutory trust consents to a distribution made in violation of Section 615 and in consenting to the distribution fails to comply with Section 505, the trustee is personally liable to the trust for the amount of the distribution which exceeds the amount that could have been distributed without the violation of Section 505.

(b) To the extent the governing instrument of a statutory trust expressly relieves a trustee of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other trustees, the liability stated in subsection (a) applies to the other trustees and not the trustee that the governing instrument relieves of authority and responsibility.

(c) A person that receives a distribution knowing that the distribution to that person was made in violation of Section 615 is personally liable to the statutory trust but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 615.

1606 (d) A person against which an action is commenced because the person is liable under
1607 subsection (a) may:
1608 (1) implead any other person that is subject to liability under subsection (a) and
1609 seek to enforce a right of contribution from the person; and
1610 (2) implead any person that received a distribution in violation of subsection (c)
1611 and seek to enforce a right of contribution from the person in the amount the person received in
1612 violation of subsection (c).
1613 (e) An action under this section is barred if not commenced within two years after the
1614 distribution
1615

[ARTICLE] 7

~~CONVERSION AND MERGER, INTEREST EXCHANGE,~~

CONVERSION AND DOMESTICATION

~~SECTION 701. DEFINITIONS.~~ In this [article]:

(1) ~~“Constituent organization” means an organization that is party to a merger.~~

(2) ~~“Constituent statutory trust” means a constituent organization that is a statutory trust.~~

(3) ~~“Converted organization” means the organization into which a converting organization converts pursuant to Sections 702 through 705.~~

(4) ~~“Converting organization” means an organization that converts into another organization pursuant to Section 702.~~

(5) ~~“Converting statutory trust” means a converting organization that is a statutory trust.~~

(6) ~~“Governing law” means the law that governs an organization’s internal affairs.~~

(7) ~~“Organization” means a common law trust that does not have a predominantly donative purpose; general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; corporation; or foreign statutory trust. The term includes a domestic or foreign organization whether or not organized for profit.~~

(8) ~~“Organizational documents” means the records that create an 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.~~

(9) ~~“Surviving organization” means an organization into which one or more other organizations are merged, whether the surviving organization preexisted the merger or was created by the merger.~~

1639 **~~SECTION 702. CONVERSION.~~**

1640 ~~(a) An organization other than a statutory trust may convert to a statutory trust, and a~~
1641 ~~statutory trust may convert to another organization pursuant to this section and Sections 703~~
1642 ~~through 705 and a plan of conversion, if:~~

1643 ~~(1) the conversion is not prohibited by the governing law of the other~~
1644 ~~organization; and~~

1645 ~~(2) the other organization complies with its governing law in effecting the~~
1646 ~~conversion.~~

1647 ~~(b) A plan of conversion must be in a record and must include:~~

1648 ~~(1) the name and form of the organization before conversion;~~

1649 ~~(2) the name and form of the organization after conversion;~~

1650 ~~(3) the terms and conditions of the conversion, including the manner of and basis~~
1651 ~~for converting interests in the converting organization into any combination of money, interests~~
1652 ~~in the converted organization, and other consideration; and~~

1653 ~~(4) the organizational documents of the converted organization.~~

1654 **~~SECTION 703. ACTION ON PLAN OF CONVERSION BY CONVERTING~~**
1655 **~~STATUTORY TRUST.~~**

1656 ~~(a) A plan of conversion must be consented to by all trustees and all beneficial owners of~~
1657 ~~a converting statutory trust.~~

1658 ~~(b) A converting statutory trust may amend a plan of conversion or abandon the planned~~
1659 ~~conversion:~~

1660 ~~(1) as provided in the plan; and~~

1661 ~~(2) except as prohibited by the plan, by the same consent as was required to~~

1662 approve the plan.

1663 **~~SECTION 704. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE.~~**

1664 ~~(a) After a conversion is approved:~~

1665 ~~(1) a converting statutory trust shall deliver to the [Secretary of State] for filing~~
1666 ~~articles of conversion, which must include:~~

1667 ~~(A) a statement that the trust has been converted into another~~
1668 ~~organization;~~

1669 ~~(B) the name and form of the converting organization and the jurisdiction~~
1670 ~~of its governing law;~~

1671 ~~(C) a statement that the conversion was approved as required by this [act];~~

1672 ~~(D) a statement that the conversion is not prohibited by the governing law~~
1673 ~~of the converted organization; and~~

1674 ~~(E) if the converted organization is a foreign organization not authorized~~
1675 ~~to do business in this state, the street and mailing address of an office that the [Secretary of State]~~
1676 ~~may use for the purposes of Section 705(c); and~~

1677 ~~(2) if the converting organization is not a statutory trust, the converting~~
1678 ~~organization shall deliver to the [Secretary of State] for filing a certificate of trust, which must~~
1679 ~~include, in addition to the information required by Section 201:~~

1680 ~~(A) a statement that the trust was converted from another organization;~~

1681 ~~(B) the name and form of the converting organization and the jurisdiction~~
1682 ~~of its governing law; and~~

1683 ~~(C) a statement that the conversion was approved in a manner that~~
1684 ~~complied with the organization's governing law.~~

~~(b) A conversion becomes effective when the certificate of conversion is effective as provided in Section 204(e).~~

~~SECTION 705. EFFECT OF CONVERSION.~~

~~(a) An organization that has been converted pursuant to this [article] is for all purposes the same organization that existed before the conversion.~~

~~(b) When a conversion under this [article] takes effect:~~

~~(1) all property owned by the converting organization remains vested in the converted organization;~~

~~(2) all debts, obligations, and other liabilities of the converting organization, including those existing with respect to the property of a series thereof, continue as debts, obligations, or other liabilities of the converted organization limited to the property of any series thereof as provided for by the plan of conversion and the governing law of the converted organization;~~

~~(3) an action or proceeding pending by or against the converting organization continues as if the conversion had not occurred;~~

~~(4) except as prohibited by law other than this [act], the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;~~

~~(5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and~~

~~(6) except as otherwise agreed, the conversion does not dissolve a converting statutory trust or any series thereof for the purposes of Section 801.~~

~~(c) A converted organization that is a foreign organization consents to the jurisdiction of~~

the courts of this state to enforce any debt, obligation, or other liability for which the converting statutory trust is liable, if, before the conversion, the converting statutory trust was subject to suit in this state on the debt, obligation, or other liability. A converted organization that is a foreign organization and not authorized to do business in this state may be served with process in accordance with Section 212.

SECTION 706. MERGER.

(a) A statutory trust may merge with one or more other constituent organizations pursuant to this section and Sections 707 through 709 and a plan of merger if:

(1) the merger is not prohibited by the governing law of any constituent organization; and

(2) each of the other organizations complies with its governing law in effecting the merger.

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

(1) the name and form of each constituent organization;

(2) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(3) the terms and conditions of the merger, including the manner and basis for converting or exchanging the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(4) if the surviving organization is to be created by the merger, the surviving organization's organizational documents; and

(5) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents.

1731 ~~SECTION 707. ACTION ON PLAN OF MERGER BY CONSTITUENT~~

1732 ~~STATUTORY TRUST.~~

1733 ~~(a) A plan of merger must be consented to by all trustees and all beneficial owners of a~~
1734 ~~constituent statutory trust.~~

1735 ~~(b) After a merger is approved, and at any time before a filing is made under Section~~
1736 ~~708, a constituent statutory trust may amend the plan or abandon the planned merger:~~

1737 ~~(1) as provided in the plan; and~~

1738 ~~(2) except as prohibited by the plan, with the same consent as was required to~~
1739 ~~approve the plan.~~

1740 ~~SECTION 708. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.~~

1741 ~~(a) After each constituent organization has approved a merger, articles of merger must be~~
1742 ~~signed on behalf of:~~

1743 ~~(1) each constituent statutory trust, by one or more trustees or other authorized~~
1744 ~~representative; and~~

1745 ~~(2) each other constituent organization, by an authorized representative.~~

1746 ~~(b) Articles of merger under this section must include:~~

1747 ~~(1) the name and form of each constituent organization and the jurisdiction of its~~
1748 ~~governing law;~~

1749 ~~(2) the name and form of the surviving organization, the jurisdiction of its~~
1750 ~~governing law, and, if the surviving organization is created by the merger, a statement to that~~
1751 ~~effect;~~

1752 ~~(3) if the surviving organization is to be created by the merger:~~

1753 ~~(A) if it will be a statutory trust, the trust's certificate of trust; or~~

~~(B) if it will be an organization other than a statutory trust, the
organizational document that creates the organization;
(4) if the surviving organization preexisted the merger, any amendments provided
for in the plan of merger for the organizational document that created the organization;
(5) a statement as to each constituent organization that the merger was approved
as required by the organization's governing law;
(6) if the surviving organization is a foreign organization not authorized to do
business in this state, the street and mailing address of an office that the [Secretary of State] may
use for the purposes of Section 709(b); and
(7) any additional information required by the governing law of any constituent
organization.
(c) Articles of merger must be delivered to the office of the [Secretary of State] for
filing.
(d) A merger becomes effective under this [article]:
(1) if the surviving organization is a statutory trust, on the later of:
(A) filing of the articles of merger by the [Secretary of State]; or
(B) subject to Section 204(c)(2), (3), or (4), as specified in the articles of
merger; or
(2) if the surviving organization is not a statutory trust, as provided by the
governing law of the surviving organization.~~

~~SECTION 709. EFFECT OF MERGER.~~

~~(a) When a merger becomes effective:~~

~~(1) the surviving organization continues or comes into existence;~~

1777 ~~(2) each constituent organization that merges with the surviving organization~~
1778 ~~ceases to exist as a separate organization;~~

1779 ~~(3) all property owned by each constituent organization that ceases to exist vests~~
1780 ~~in the surviving organization;~~

1781 ~~(4) all debts, obligations, and other liabilities of each constituent organization that~~
1782 ~~ceases to exist, including those existing with respect to the property of a series thereof, continue~~
1783 ~~as debts, obligations, or other liabilities of the surviving organization limited to the property~~
1784 ~~thereof as provided for by the plan of merger and the governing law of the surviving~~
1785 ~~organization;~~

1786 ~~(5) an action or proceeding pending by or against any constituent organization~~
1787 ~~that ceases to exist continues as if the merger had not occurred;~~

1788 ~~(6) except as prohibited by law other than this [act], all rights, privileges,~~
1789 ~~immunities, powers, and purposes of each constituent organization that ceases to exist vest in the~~
1790 ~~surviving organization;~~

1791 ~~(7) except as otherwise provided in the plan of merger, the terms and conditions~~
1792 ~~of the plan of merger take effect;~~

1793 ~~(8) if the surviving organization is created by the merger and:~~

1794 ~~(A) if it is a statutory trust, the certificate of trust becomes effective; or~~

1795 ~~(B) if it is an organization other than a statutory trust, the organizational~~
1796 ~~document that creates the organization becomes effective; and~~

1797 ~~(9) if the surviving organization preexisted the merger, any amendment provided~~
1798 ~~for in the articles of merger for the organizational document that created the organization~~
1799 ~~becomes effective.~~

~~(b) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability of a constituent organization if, before the merger, the constituent organization was subject to suit in this state on the debt, obligation, or other liability. A surviving organization that is a foreign organization not authorized to do business in this state may be served with process in accordance with Section 212.~~

~~**SECTION 710. [ARTICLE] NOT EXCLUSIVE.** This [article] does not preclude an organization from being converted or merged under law other than this [act].~~

[PART] 1

GENERAL PROVISIONS

SECTION 701. DEFINITIONS. In this [article]:

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

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

(3) “Conversion” means a transaction authorized by [part] 4.

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

(5) “Converting entity” means the domestic entity that approves a plan of conversion pursuant to Section 743 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation.

(6) “Distributional interest” means the right under an unincorporated entity’s organic law to receive distributions from the entity.

1823 (7) “Domestic”, with respect to a statutory trust, means governed as to its internal affairs
1824 by the law of this state.

1825 (8) “Domesticated statutory trust” means the domesticating statutory trust as it continues
1826 in existence after a domestication.

1827 (9) “Domesticating statutory trust” means the domestic statutory trust that approves a
1828 plan of domestication pursuant to Section 753 or the foreign statutory trust that approves a
1829 domestication pursuant to the law of its jurisdiction of formation.

1830 (10) “Domestication” means a transaction authorized by [part] 5.

1831 (11) “Entity”:

1832 (A) means:

1833 (i) a business corporation;

1834 (ii) a nonprofit corporation;

1835 (iii) a general partnership;

1836 (iv) a limited partnership;

1837 (v) a limited liability company;

1838 [(vi) a general cooperative association;]

1839 (vii) a limited cooperative association;

1840 (viii) an unincorporated nonprofit association;

1841 (ix) a statutory trust, business trust, or common-law business trust; or

1842 (x) any other person that has a legal existence separate from any interest

1843 holder of that person or that has the power to acquire an interest in real property in its own name;

1844 and

1845 (B) does not include:

1846 (i) an individual;
1847 (ii) a testamentary, inter vivos, or charitable trust, except a statutory trust,
1848 business trust, or common-law business trust;
1849 (iii) an association or relationship that is not a partnership solely by reason
1850 of [Section 202(c) of the Revised Uniform Partnership Act] [Section 7 of the Uniform
1851 Partnership Act] or a similar provision of the law of another jurisdiction;
1852 (iv) a decedent’s estate; [or]
1853 (v) a government or a governmental subdivision, agency, or
1854 instrumentality [; or] [.]
1855 [(vi) a person excluded under Section 709.]
1856 (12) “Filing entity” means an entity that is formed by the filing of a public organic
1857 record.
1858 (13) “Foreign” with respect to an entity, means an entity governed as to its internal
1859 affairs by the laws of a jurisdiction other than this state.
1860 (14) “Governance interest” means the right under the organic law or organic rules of an
1861 unincorporated entity, other than as a governor, agent, assignee, or proxy, to:
1862 (A) receive or demand access to information concerning, or the books and
1863 records of, the entity;
1864 (B) vote for the election of the governors of the entity; or
1865 (C) receive notice of or vote on any issue involving the internal affairs of the
1866 entity.
1867 (15) “Governor” means:
1868 (A) a director of a business corporation;

- 1869 (B) a director or trustee of a nonprofit corporation;
- 1870 (C) a general partner of a general partnership;
- 1871 (D) a general partner of a limited partnership;
- 1872 (E) a manager of a manager-managed limited liability company;
- 1873 (F) a member of a member-managed limited liability company;
- 1874 [(G) a director of a general cooperative association;]
- 1875 (H) a director of a limited cooperative association;
- 1876 (I) a manager of an unincorporated nonprofit association;
- 1877 (J) a trustee of a statutory trust, business trust, or common-law business trust; or
- 1878 (K) any other person under whose authority the powers of an entity are exercised

1879 and under whose direction the activities and affairs of the entity are managed pursuant to the

1880 organic law and organic rules of the entity.

1881 (16) “Interest” means:

- 1882 (A) a share in a business corporation;
- 1883 (B) a membership in a nonprofit corporation;
- 1884 (C) a partnership interest in a general partnership;
- 1885 (D) a partnership interest in a limited partnership;
- 1886 (E) a membership interest in a limited liability company;
- 1887 [(F) a share in a general cooperative association;]
- 1888 (G) a member’s interest in a limited cooperative association;
- 1889 (H) a membership in an unincorporated nonprofit association;
- 1890 (I) a beneficial interest in a statutory trust, business trust, or common-law business
- 1891 trust;

1892 (J) a governance interest in any other type of unincorporated entity; or
1893 (K) a distributional interest in an unincorporated entity.
1894 (17) “Interest holder” means:
1895 (A) a shareholder of a business corporation;
1896 (B) a member of a nonprofit corporation;
1897 (C) a general partner of a general partnership;
1898 (D) a general partner of a limited partnership;
1899 (E) a limited partner of a limited partnership;
1900 (F) a member of a limited liability company;
1901 [(G) a shareholder of a general cooperative association;]
1902 (H) a member of a limited cooperative association;
1903 (I) a member of an unincorporated nonprofit association;
1904 (J) a beneficiary of a statutory trust, business trust, or common-law business trust;
1905 or
1906 (K) any other direct holder of an interest.
1907 (18) “Interest holder liability” means:
1908 (A) personal liability for a liability of an entity that is imposed on a person:
1909 (i) solely by reason of the status of the person as an interest holder; or
1910 (ii) by the organic rules of the entity that make one or more specified
1911 interest holders or categories of interest holders liable in their capacity as interest holders for all
1912 or specified liabilities of the entity; or
1913 (B) an obligation of an interest holder under the organic rules of an entity to
1914 contribute to the entity.

1915 (19) “Jurisdiction of formation” means the jurisdiction whose law includes the organic
1916 law of an entity.

1917 (20) “Merger” means a transaction in which two or more merging entities are combined
1918 into a surviving entity pursuant to a record filed by the [Secretary of State].

1919 (21) “Merging entity” means an entity that is a party to a merger and exists immediately
1920 before the merger becomes effective.

1921 (22) “Organic law” means the law of an entity’s jurisdiction of formation governing the
1922 internal affairs of the entity.

1923 (23) “Organic rules” means the public organic record and private organic rules of an
1924 entity.

1925 (24) “Person” means an individual, business corporation, nonprofit corporation,
1926 partnership, limited partnership, limited liability company, [general cooperative association,]
1927 limited cooperative association, unincorporated nonprofit association, statutory trust, business
1928 trust or common-law business trust, estate, trust, association, joint venture, public corporation,
1929 government or governmental subdivision, agency, or instrumentality, or any other legal or
1930 commercial entity.

1931 (25) “Plan” means a plan of merger, interest exchange, conversion, or domestication.

1932 (26) “Private organic rules” mean the rules, whether or not in a record, that govern the
1933 internal affairs of an entity, are binding on all of its interest holders, and are not part of its public
1934 organic record, if any. The term includes:

1935 (A) the bylaws of a business corporation;

1936 (B) the bylaws of a nonprofit corporation;

1937 (C) the partnership agreement of a general partnership;

1938 (D) the partnership agreement of a limited partnership;
1939 (E) the partnership agreement of a limited liability company;
1940 [(F) the bylaws of a general cooperative association;]
1941 (G) the bylaws of a limited cooperative association;
1942 (H) the governing principles of an unincorporated nonprofit association; and
1943 (I) the trust instrument of a statutory trust, business trust, or common-law business
1944 trust.

1945 (27) “Protected agreement” means:

1946 (A) a record evidencing indebtedness and any related agreement in effect on the
1947 effective date of this [act];

1948 (B) an agreement that is binding on an entity on the effective date of this [act];
1949 (C) the organic rules of an entity in effect on the effective date of this [act]; or
1950 (D) an agreement that is binding on any of the governors or interest holders of an
1951 entity on the effective date of this [act].

1952 (28) “Public organic record” means the record the filing of which by the [Secretary of
1953 State] forms an entity and any amendment to or restatement of that record. The term includes:

1954 (A) the articles of incorporation of a business corporation;
1955 (B) the articles of incorporation of a nonprofit corporation;
1956 (C) the certificate of limited partnership of a limited partnership;
1957 (D) the certificate of organization of a limited liability company;
1958 [(E) the articles of incorporation of a general cooperative association;]
1959 (F) the articles of organization of a limited cooperative association; and
1960 (G) the certificate of trust of a statutory trust or business trust.

1961 (29) “Registered foreign entity” means a foreign entity that is registered to do business
1962 or otherwise qualified in this state pursuant to a record filed by the [Secretary of State].

1963 (30) “Surviving entity” means the entity that continues in existence after or is created by
1964 a merger.

1965 (31) “Type of entity” means a generic form of entity:

1966 (A) recognized at common law; or

1967 (B) formed under an organic law, whether or not some entities formed under that
1968 organic law are subject to provisions of that law that create different categories of the form of
1969 entity.

1970 **Reporters' Notes**

1971
1972 Patterned after harmonized META § 102.

1973 *Paragraphs (16)(I) and 17(J) - Query whether to add series; is it possible for person to be*
1974 *a beneficial owner of series without being a beneficial owners of trust? Are series entitled to*
1975 *merge, etc. independently?*

1976
1977 **SECTION 702. RELATIONSHIP OF [ARTICLE] TO OTHER LAWS. This**

1978 [article] does not authorize an act prohibited by, and does not affect the application or
1979 requirements of, law other than this [article].

1980 **Reporters' Note**

1981 Patterned after harmonized META § 103(b).

1982 **SECTION 703. REQUIRED NOTICE OR APPROVAL.**

1983 (a) A domestic or foreign entity that is required to give notice to, or obtain the approval
1984 of, a governmental agency or officer in order to be a party to a merger must give the notice or
1985 obtain the approval in order to be a party to an interest exchange, conversion, or domestication.

1986 (b) Property held for a charitable purpose under the law of this state by a domestic or

1987 foreign entity immediately before a transaction under this [article] becomes effective may not, as
1988 a result of the transaction, be diverted from the objects for which it was donated, granted, or
1989 devised unless, to the extent required by or pursuant to the law of this state concerning cy pres or
1990 other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order
1991 of [name of court] [the attorney general] specifying the disposition of the property.

1992 **Reporters' Note**

1993 Patterned after harmonized META § 104.

1994 **SECTION 704. STATUS OF FILINGS.** A filing under this [article] signed by a
1995 domestic entity becomes part of the public organic record of the entity if the entity's organic law
1996 provides that similar filings under that law become part of the public organic record of the entity.

1997 **Reporters' Note**

1998 Patterned after harmonized META § 105.

1999 **SECTION 705. NONEXCLUSIVITY.** The fact that a transaction under this [article]
2000 produces a certain result does not preclude the same result from being accomplished in any other
2001 manner permitted by law other than this [article].

2002 **Reporters' Note**

2003 Patterned after harmonized META § 106.

2004 **SECTION 706. REFERENCE TO EXTERNAL FACTS.** A plan may refer to facts
2005 ascertainable outside of the plan if the manner in which the facts will operate upon the plan is
2006 specified in the plan. The facts may include the occurrence of an event or a determination or
2007 action by a person, whether or not the event, determination, or action is within the control of a
2008 party to the transaction.

Reporters' Note

Patterned after harmonized META § 107.

SECTION 707. ALTERNATIVE MEANS OF APPROVAL OF TRANSACTIONS.

Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this [article] by the unanimous vote or consent of its interest holders satisfies the requirements of this [article] for approval of the transaction.

Reporters' Note

Patterned after harmonized META § 108.

SECTION 708. APPRAISAL RIGHTS.

(a) An interest holder of a domestic merging, acquired, or converting entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless:

(1) the organic law permits the organic rules to limit the availability of appraisal rights; and

(2) the organic rules provide such a limit.

(b) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this [article] to the extent provided:

(1) in the entity's organic rules; or

(2) in the plan.

Reporters' Note

Patterned after harmonized META § 109(a) and (b).

2032 **[SECTION 709. EXCLUDED ENTITIES AND TRANSACTIONS.**

2033 (a) The following entities may not participate in a transaction under this [article]:

2034 (1)

2035 (2).

2036 (b) This [article] may not be used to effect a transaction that:

2037 (1)

2038 (2)

2039 (3).]

2040 **Reporters' Note**

2041 Patterned after harmonized META § 110.

2042 **[PART] 2**

2043 **MERGER**

2044 **SECTION 721. MERGER AUTHORIZED.**

2045 (a) By complying with this [part]:

2046 (1) one or more domestic statutory trusts may merge with one or more domestic
2047 or foreign entities into a domestic or foreign surviving entity; and

2048 (2) two or more foreign entities may merge into a domestic statutory trust.

2049 (b) By complying with the provisions of this [part] applicable to foreign entities a
2050 foreign entity may be a party to a merger under this [part] or may be the surviving entity in such
2051 a merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.

2052 **Reporters' Note**

2053 Patterned after harmonized META § 201(a), (b), and (d).

2054 **SECTION 722. PLAN OF MERGER.**

2055 (a) A domestic statutory trust may become a party to a merger under this [part] by
2056 approving a plan of merger. The plan must be in a record and contain:

2057 (1) as to each merging entity, its name, jurisdiction of formation, and type;

2058 (2) if the surviving entity is to be created in the merger, a statement to that effect
2059 and its name, jurisdiction of formation, and type;

2060 (3) the manner of converting the interests in each party to the merger into
2061 interests, securities, obligations, rights to acquire interests or securities, cash, or other property,
2062 or any combination of the foregoing;

2063 (4) if the surviving entity exists before the merger, any proposed amendments to
2064 its public organic record or to its private organic rules that are, or are proposed to be, in a record;

2065 (5) if the surviving entity is to be created in the merger, its proposed public
2066 organic record, if any, and the full text of its private organic rules that are proposed to be in a
2067 record;

2068 (6) the other terms and conditions of the merger; and

2069 (7) any other provision required by the law of a merging entity's jurisdiction of
2070 formation or the organic rules of a merging entity.

2071 (b) A plan of merger may contain any other provision not prohibited by law.

2072 **Reporters' Note**

2073 Patterned after harmonized META § 202.

2074 **SECTION 723. APPROVAL OF MERGER.**

2075 (a) A plan of merger is not effective unless it has been approved:

2076 (1) by a domestic merging statutory trust, by all of the beneficial owners of the

2077 trust entitled to vote on or consent to any matter; and
2078 (2) in a record, by each beneficial owner of a domestic merging statutory trust
2079 that will have interest holder liability for debts, obligations and other liabilities that arise after the
2080 merger becomes effective, unless:

2081 (A) the trust instrument of the statutory trust provides in a record for the
2082 approval of a merger in which some or all of its beneficial owners become subject to interest
2083 holder liability by the vote or consent of fewer than all of the beneficial owners; and

2084 (B) the beneficial owner voted for or consented in a record to that
2085 provision of the trust instrument or became a beneficial owner after the adoption of that
2086 provision.

2087 (b) A merger involving a domestic merging entity that is not a statutory trust is not
2088 effective unless the merger is approved by that entity in accordance with its organic law.

2089 (c) A merger involving a foreign merging entity is not effective unless the merger is
2090 approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of
2091 formation.

2092 **Reporters' Note**

2093 Subsections (a) is a simplified version of harmonized META § 203(a). Subsection (b) is
2094 new and supplies some of the provisions of harmonized META § 203(a). Subsection (c) is
2095 patterned after harmonized META § 203(b).

2096
2097 **SECTION 724. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.**

2098 (a) A plan of merger of a domestic merging statutory trust may be amended:

2099 (1) in the same manner as the plan was approved, if the plan does not provide for
2100 the manner in which it may be amended; or

2101 (2) by the beneficial owners of the trust in the manner provided in the plan, but a

2102 beneficial owner that was entitled to vote on or consent to approval of the merger is entitled to
2103 vote on or consent to any amendment of the plan that will change:

2104 (A) the amount or kind of interests, securities, obligations, rights to
2105 acquire interests or securities, cash, or other property, or any combination of the foregoing, to be
2106 received by the interest holders of any party to the plan;

2107 (B) the public organic record or private organic rules of the surviving
2108 entity that will be in effect immediately after the merger becomes effective, except for changes
2109 that do not require approval of the interest holders of the surviving entity under its organic law or
2110 organic rules; or

2111 (C) any other terms or conditions of the plan, if the change would
2112 adversely affect the beneficial owner in any material respect.

2113 (b) After a plan of merger has been approved by a domestic merging statutory trust and
2114 before a statement of merger becomes effective, the plan may be abandoned:

2115 (1) as provided in the plan; or

2116 (2) unless prohibited by the plan, in the same manner as the plan was approved.

2117 (c) If a plan of merger is abandoned after a statement of merger has been delivered to the
2118 [Secretary of State] for filing and before the statement becomes effective, a statement of
2119 abandonment, signed by a merging entity, must be delivered to the [Secretary of State] for filing
2120 before the statement of merger becomes effective. The statement of abandonment takes effect
2121 upon filing, and the merger is abandoned and does not become effective. The statement of
2122 abandonment must contain:

2123 (1) the name of each merging or surviving entity that is a domestic entity or a
2124 qualified foreign entity;

2125 (2) the date on which the statement of merger was delivered to the [Secretary of
2126 State] for filing; and

2127 (3) a statement that the merger has been abandoned in accordance with this
2128 section.

2129 **Reporters' Note**

2130 Patterned after harmonized META § 204.

2131 **SECTION 725. STATEMENT OF MERGER.**

2132 (a) A statement of merger must be signed by each merging entity and delivered to the
2133 [Secretary of State] for filing.

2134 (b) A statement of merger must contain:

2135 (1) the name, jurisdiction of formation, and type of each merging entity that is
2136 not the surviving entity;

2137 (2) the name, jurisdiction of formation, and type of the surviving entity;

2138 (3) a statement that the merger was approved by each domestic merging entity, if
2139 any, in accordance with this [part] and by each foreign merging entity, if any, in accordance with
2140 the law of its jurisdiction of formation;

2141 (4) if the surviving entity exists before the merger and is a domestic filing entity,
2142 any amendment to its public organic record approved as part of the plan of merger;

2143 (5) if the surviving entity is created by the merger and is a domestic filing entity,
2144 its public organic record, as an attachment;

2145 (6) if the surviving entity is created by the merger and is a domestic limited
2146 liability partnership, its [statement of qualification], as an attachment; and

2147 (7) if the surviving entity is a foreign entity that is not a qualified foreign entity, a

mailing address to which the [Secretary of State] may send any process served on the [Secretary of State] pursuant to Section 726(e).

(c) In addition to the requirements of subsection (b), a statement of merger may contain any other provision not prohibited by law.

(d) If the surviving entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) A plan of merger that is signed on behalf of all of the merging entities and meets all of the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a statement of merger and upon filing has the same effect. If a plan of merger is filed as provided in this subsection, references in this [article] to a statement of merger refer to the plan of merger filed under this subsection.

Reporters' Note

Patterned after harmonized META § 205.

SECTION 726. EFFECT OF MERGER.

(a) When a merger becomes effective:

(1) the surviving entity continues or comes into existence;

(2) each merging entity that is not the surviving entity ceases to exist;

(3) all property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;

(4) all debts, obligations and other liabilities of each merging entity are debts, obligations and other liabilities of the surviving entity;

2171 (5) except as otherwise provided by law or the plan of merger, all of the rights,
2172 privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;
2173 (6) if the surviving entity exists before the merger:
2174 (A) all of its property continues to be vested in it without transfer,
2175 reversion or impairment;
2176 (B) it remains subject to all of its debts, obligations and other liabilities;
2177 and
2178 (C) all of its rights, privileges, immunities, powers, and purposes continue
2179 to be vested in it;
2180 (7) the name of the surviving entity may be substituted for the name of any
2181 merging entity that is a party to any pending action or proceeding;
2182 (8) if the surviving entity exists before the merger:
2183 (A) its public organic record, if any, is amended as provided in the
2184 statement of merger; and
2185 (B) its private organic rules that are to be in a record, if any, are amended
2186 to the extent provided in the plan of merger;
2187 (9) if the surviving entity is created by the merger:
2188 (A) its public organic record, if any, is effective; and
2189 (B) its private organic rules are effective; and
2190 (10) the interests in each merging entity that are to be converted in the merger are
2191 converted, and the interest holders of those interests are entitled only to the rights provided to
2192 them under the plan of merger and to any appraisal rights they have under Section 708 and the
2193 merging entity's organic law.

2194 (b) Except as otherwise provided in the organic law or organic rules of a merging entity,
2195 the merger does not give rise to any rights that an interest holder, governor, or third party would
2196 otherwise have upon a dissolution, liquidation, or winding-up of the merging entity.

2197 (c) When a merger becomes effective, a person that did not have interest holder liability
2198 with respect to any of the merging entities and that becomes subject to interest holder liability
2199 with respect to a domestic entity as a result of a merger has interest holder liability only to the
2200 extent provided by the organic law of that entity and only for those debts, obligations and other
2201 liabilities that arise after the merger becomes effective.

2202 (d) When a merger becomes effective, the interest holder liability of a person that ceases
2203 to hold an interest in a domestic merging entity with respect to which the person had interest
2204 holder liability is as follows:

2205 (1) the merger does not discharge any interest holder liability under the organic
2206 law of the domestic merging entity to the extent the interest holder liability arose before the
2207 merger became effective;

2208 (2) the person does not have interest holder liability under the organic law of the
2209 domestic merging entity for any liability that arises after the merger becomes effective;

2210 (3) the organic law of the domestic merging entity continues to apply to the
2211 release, collection, or discharge of any interest holder liability preserved under paragraph (1) as
2212 if the merger had not occurred and the surviving entity were the domestic merging entity; and

2213 (4) the person has whatever rights of contribution from any other person as are
2214 provided by other law or the organic rules of the domestic merging entity with respect to any
2215 interest holder liability preserved under paragraph (1) as if the merger had not occurred.

2216 (e) When a merger becomes effective, a foreign entity that is the surviving entity:

2217 (1) may be served with process in this state for the collection and enforcement of
2218 any debts, obligations or other liabilities of a domestic merging entity; and

2219 (2) appoints the [Secretary of State] as its agent for service of process for
2220 collecting or enforcing those debts, obligations and other liabilities.

2221 (f) When a merger becomes effective, the registration to do business or other foreign
2222 qualification in this state of any foreign merging entity that is not the surviving entity is
2223 canceled.

2224 **Reporters' Note**

2225 Patterned after harmonized META § 206.

2226 **[PART] 3**

2227 **INTEREST EXCHANGE**

2228 **SECTION 731. INTEREST EXCHANGE AUTHORIZED.**

2229 (a) By complying with this [part]:

2230 (1) a domestic statutory trust may acquire all of one or more classes or series of
2231 interests of another domestic or foreign entity in exchange for interests, securities, obligations,
2232 rights to acquire interests or securities, cash, or other property, or any combination of the
2233 foregoing; or

2234 (2) all of one or more classes or series of interests of a domestic statutory trust
2235 may be acquired by another domestic or foreign entity in exchange for interests, securities,
2236 obligations, rights to acquire interests or securities, cash, or other property, or any combination
2237 of the foregoing.

2238 (b) By complying with the provisions of this [part] applicable to foreign entities a
2239 foreign entity may be the acquiring or acquired entity in an interest exchange under this [part] if

2240 the interest exchange is authorized by the law of the foreign entity's jurisdiction of formation.

2241 (c) If a protected agreement contains a provision that applies to a merger of a domestic
2242 statutory trust but does not refer to an interest exchange, the provision applies to an interest
2243 exchange in which the domestic statutory trust is the acquired entity as if the interest exchange
2244 were a merger until the provision is amended after the effective date of this [act].

2245 **Reporters' Note**

2246 Patterned after harmonized META § 301(a) – (c) and (e).

2247 **SECTION 732. PLAN OF INTEREST EXCHANGE.**

2248 (a) A domestic statutory trust may be the acquired entity in an interest exchange under
2249 this [part] by approving a plan of interest exchange. The plan must be in a record and contain:

2250 (1) the name of the acquired entity;

2251 (2) the name, jurisdiction of formation, and type of the acquiring entity;

2252 (3) the manner of converting the interests in the acquired entity into interests,
2253 securities, obligations, rights to acquire interests or securities, cash, or other property, or any
2254 combination of the foregoing;

2255 (4) any proposed amendments to the certificate of trust or trust instrument that
2256 are, or are proposed to be, in a record of the acquired entity;

2257 (5) the other terms and conditions of the interest exchange; and

2258 (6) any other provision required by the law of this state or the trust instrument of
2259 the acquired entity.

2260 (b) A plan of interest exchange may contain any other provision not prohibited by law.

2261 **Reporters' Note**

2262 Patterned after harmonized META § 302.

2263 **SECTION 733. APPROVAL OF INTEREST EXCHANGE.**

2264 (a) A plan of interest exchange is not effective unless it has been approved:

2265 (1) by all of the beneficial owners of a domestic acquired statutory trust entitled to
2266 vote on or consent to any matter; and

2267 (2) in a record, by each beneficial owner of the domestic acquired statutory trust
2268 that will have interest holder liability for debts, obligations and other liabilities that arise after the
2269 interest exchange becomes effective, unless:

2270 (A) the trust instrument of the statutory trust provides in a record for the
2271 approval of an interest exchange or a merger in which some or all of its beneficial owners
2272 become subject to interest holder liability by the vote or consent of fewer than all of the
2273 beneficial owners; and

2274 (B) the beneficial owner voted for or consented in a record to that
2275 provision of the trust instrument or became a beneficial owner after the adoption of that
2276 provision.

2277 (b) An interest exchange involving a domestic acquired entity that is not a statutory trust
2278 is not effective unless it is approved by the domestic entity in accordance with its organic law.

2279 (c) An interest exchange involving a foreign acquired entity is not effective unless it is
2280 approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of
2281 formation.

2282 (d) Except as otherwise provided in its organic law or organic rules, the interest holders
2283 of the acquiring entity are not required to approve the interest exchange.

2284 **Reporters' Note**

2285 Subsection (a) is a simplified version of harmonized META § 303(a). Subsection (b) is
2286 new and supplies some of the provisions of harmonized META § 303(a). Subsections (c) and (d)

are patterned after harmonized META § 303(b) and (c).

SECTION 734. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST

EXCHANGE.

(a) A plan of interest exchange of a domestic acquired statutory trust may be amended:

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

(2) by the beneficial owners of the trust in the manner provided in the plan, but a beneficial owner that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by any of the beneficial owners of the acquired statutory trust under the plan;

(B) the certificate of trust or trust instrument of the acquired statutory trust that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the beneficial owners of the acquired statutory trust under this Act or the trust instrument; or

(C) any other terms or conditions of the plan, if the change would adversely affect the beneficial owner in any material respect.

(b) After a plan of interest exchange has been approved by a domestic acquired statutory trust 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 a plan of interest exchange is abandoned after a statement of interest exchange has

2311 been delivered to the [Secretary of State] for filing and before the statement becomes effective, a
2312 statement of abandonment, signed by the acquired statutory trust, must be delivered to the
2313 [Secretary of State] for filing before the statement of interest exchange becomes effective. The
2314 statement of abandonment takes effect upon filing, and the interest exchange is abandoned and
2315 does not become effective. The statement of abandonment must contain:

2316 (1) the name of the acquired statutory trust;

2317 (2) the date on which the statement of interest exchange was delivered to the
2318 [Secretary of State] for filing; and

2319 (3) a statement that the interest exchange has been abandoned in accordance with
2320 this section.

2321 **Reporters' Note**

2322 Patterned after harmonized META § 304.

2323 **SECTION 735. STATEMENT OF INTEREST EXCHANGE.**

2324 (a) A statement of interest exchange must be signed by a domestic acquired statutory
2325 trust and delivered to the [Secretary of State] for filing.

2326 (b) A statement of interest exchange must contain:

2327 (1) the name of the acquired statutory trust;

2328 (2) the name, jurisdiction of formation, and type of the acquiring entity;

2329 (3) a statement that the plan of interest exchange was approved by the acquired
2330 entity in accordance with this [part]; and

2331 (4) any amendments to the acquired statutory trust's certificate of trust approved
2332 as part of the plan of interest exchange.

2333 (c) In addition to the requirements of subsection (b), a statement of interest exchange

2334 may contain any other provision not prohibited by law.

2335 (d) A plan of interest exchange that is signed by a domestic acquired statutory trust and
2336 meets all of the requirements of subsection (b) may be delivered to the [Secretary of State] for
2337 filing instead of a statement of interest exchange and upon filing has the same effect. If a plan of
2338 interest exchange is filed as provided in this subsection, references in this [article] to a statement
2339 of interest exchange refer to the plan of interest exchange filed under this subsection.

2340 **Reporters' Note**

2341 Patterned after harmonized META § 305(a) – (d).

2342 **SECTION 736. EFFECT OF INTEREST EXCHANGE.**

2343 (a) When an interest exchange in which the acquired entity is a domestic statutory trust
2344 becomes effective:

2345 (1) the interests in the domestic acquired statutory trust that are the subject of the
2346 interest exchange cease to exist or are converted or exchanged, and the beneficial owners holding
2347 those interests are entitled only to the rights provided to them under the plan of interest exchange
2348 and to any appraisal rights they have under Section 708;

2349 (2) the acquiring entity becomes the holder of the interests in the acquired entity
2350 stated in the plan of interest exchange to be acquired by the acquiring entity;

2351 (3) the certificate of trust of the acquired entity is amended as provided in the
2352 statement of interest exchange; and

2353 (4) the provisions of the trust instrument of the acquired entity that are to be in a
2354 record, if any, are amended to the extent provided in the plan of interest exchange.

2355 (b) Except as otherwise provided in the trust instrument of a domestic acquired statutory
2356 trust, the interest exchange does not give rise to any rights that a partner or third party would

2357 otherwise have upon a dissolution, liquidation, or winding-up of the acquired entity.

2358 (c) When an interest exchange becomes effective, a person that did not have interest
2359 holder liability with respect to a domestic acquired statutory trust and that becomes subject to
2360 interest holder liability with respect to a domestic entity as a result of the interest exchange has
2361 interest holder liability only to the extent provided by the organic law of the entity and only for
2362 those debts, obligations and liabilities that arise after the interest exchange becomes effective.

2363 (d) When an interest exchange becomes effective, the interest holder liability of a person
2364 that ceases to hold an interest in a domestic acquired statutory trust with respect to which the
2365 person had interest holder liability is as follows:

2366 (1) the interest exchange does not discharge any interest holder liability to the
2367 extent the interest holder liability arose before the interest exchange became effective;

2368 (2) the person does not have interest holder liability for any liability that arises
2369 after the interest exchange becomes effective; and

2370 (3) the person has whatever rights of contribution from any other person as are
2371 provided by other law or the partnership agreement of the acquired entity with respect to any
2372 interest holder liability preserved under paragraph (1) as if the interest exchange had not
2373 occurred.

2374 **Reporters' Note**

2375 Patterned after harmonized META § 306.

2376 **[PART] 4**

2377 **CONVERSION**

2378 **SECTION 741. CONVERSION AUTHORIZED.**

2379 (a) By complying with this [part], a domestic statutory trust may become:

2380 (1) a domestic entity of a different type; or
2381 (2) a foreign entity of a different type, if the conversion is authorized by the law
2382 of the foreign jurisdiction.

2383 (b) By complying with the provisions of this [part] applicable to foreign entities a
2384 foreign entity that is not a foreign statutory trust may become a domestic statutory trust if the
2385 conversion is authorized by the law of the foreign entity's jurisdiction of formation.

2386 (c) If a protected agreement contains a provision that applies to a merger of a domestic
2387 statutory trust but does not refer to a conversion, the provision applies to a conversion of the
2388 entity as if the conversion were a merger until the provision is amended after the effective date of
2389 this [act].

2390 **Reporters' Note**

2391 Patterned after harmonized META § 401.

2392 **SECTION 742. PLAN OF CONVERSION.**

2393 (a) A domestic statutory trust may convert to a different type of entity under this [part]
2394 by approving a plan of conversion. The plan must be in a record and contain:

2395 (1) the name of the converting statutory trust;
2396 (2) the name, jurisdiction of formation, and type of the converted entity;
2397 (3) the manner of converting the interests in the converting statutory trust into
2398 interests, securities, obligations, rights to acquire interests or securities, cash, or other property,
2399 or any combination of the foregoing;

2400 (4) the proposed public organic record of the converted entity if it will be a filing
2401 entity;

2402 (5) the full text of the private organic rules of the converted entity that are

2403 proposed to be in a record;
2404 (6) the other terms and conditions of the conversion; and
2405 (7) any other provision required by the law of this state or the trust instrument of
2406 the converting statutory trust.

2407 (b) A plan of conversion may contain any other provision not prohibited by law.

2408 **Reporters' Note**

2409 Patterned after harmonized META § 402.

2410 **SECTION 743. APPROVAL OF CONVERSION.**

2411 (a) A plan of conversion is not effective unless it has been approved:

2412 (1) by a domestic converting statutory trust by all of the beneficial owners of the
2413 statutory trust entitled to vote on or consent to any matter; and

2414 (2) in a record, by each beneficial owner of a domestic converting statutory trust
2415 that will have interest holder liability for debts, obligations and other liabilities that arise after the
2416 conversion becomes effective:

2417 (A) the trust instrument of the statutory trust provides in a record for the
2418 approval of a conversion or a merger in which some or all of its beneficial owners become
2419 subject to interest holder liability by the vote or consent of fewer than all of the beneficial
2420 owners; and

2421 (B) the beneficial owner voted for or consented in a record to that
2422 provision of the trust instrument or became a beneficial owner after the adoption of that
2423 provision.

2424 (b) A conversion involving a domestic converting entity that is not a statutory trust is not
2425 effective unless it is approved by the domestic converting entity in accordance with its organic

2426 law.

2427 (c) A conversion of a foreign converting entity is not effective unless it is approved by
2428 the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

2429 **Reporters' Notes**

2430 Subsection (a) is a simplified version of harmonized META § 403(a). Subsection (b) is
2431 new and supplies some of the provisions of harmonized META § 403(a). Subsection (c) is
2432 patterned after harmonized META § 403(b).

2433

2434 **SECTION 744. AMENDMENT OR ABANDONMENT OF PLAN OF**

2435 **CONVERSION.**

2436 (a) A plan of conversion of a domestic converting statutory trust may be amended:

2437 (1) in the same manner as the plan was approved, if the plan does not provide for
2438 the manner in which it may be amended; or

2439 (2) by the beneficial owners of the trust in the manner provided in the plan, but a
2440 beneficial owner that was entitled to vote on or consent to approval of the conversion is entitled
2441 to vote on or consent to any amendment of the plan that will change:

2442 (A) the amount or kind of interests, securities, obligations, rights to
2443 acquire interests or securities, cash, or other property, or any combination of the foregoing, to be
2444 received by any of the interest holders of the converting entity under the plan;

2445 (B) the public organic record or private organic rules of the converted
2446 entity that will be in effect immediately after the conversion becomes effective, except for
2447 changes that do not require approval of the interest holders of the converted entity under its
2448 organic law or organic rules; or

2449 (C) any other terms or conditions of the plan, if the change would
2450 adversely affect the beneficial owner in any material respect.

(b) After a plan of conversion has been approved by a domestic converting statutory trust and before a statement of conversion 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 a plan of conversion is abandoned after a statement of conversion has been delivered to the [Secretary of State] for filing and before the filing becomes effective, a statement of abandonment, signed by the converting entity, must be delivered to the [Secretary of State] for filing before the time the statement of conversion becomes effective. The statement of abandonment takes effect upon filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the converting statutory trust;

(2) the date on which the statement of conversion was delivered to the [Secretary of State] for filing; and

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

Reporters' Note

Patterned after harmonized META § 404.

SECTION 745. STATEMENT OF CONVERSION.

(a) A statement of conversion must be signed by the converting entity and delivered to the [Secretary of State] for filing.

(b) A statement of conversion must contain:

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

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

2474 (3) if the converting entity is a domestic entity, a statement that the plan of
2475 conversion was approved in accordance with this [part] or, if the converting entity is a foreign
2476 entity, a statement that the conversion was approved by the foreign converting entity in
2477 accordance with the law of its jurisdiction of formation;

2478 (4) if the converted entity is a domestic filing entity, the text of its public organic
2479 record, as an attachment;

2480 (5) if the converted entity is a domestic limited liability partnership, the text of its
2481 [statement of qualification], as an attachment; and

2482 (6) if the converted entity is a foreign entity that is not a qualified foreign entity,
2483 a mailing address to which the [Secretary of State] may send any process served on the
2484 [Secretary of State] pursuant to Section 746(e).

2485 (c) In addition to the requirements of subsection (b), a statement of conversion may
2486 contain any other provision not prohibited by law.

2487 (d) If the converted entity is a domestic entity, its public organic record, if any, must
2488 satisfy the requirements of the law of this state, except that it does not need to be signed and may
2489 omit any provision that is not required to be included in a restatement of the public organic
2490 record.

2491 (e) A plan of conversion that is signed by a domestic converting entity and meets all of
2492 the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead
2493 of a statement of conversion and upon filing has the same effect. If a plan of conversion is filed
2494 as provided in this subsection, references in this [article] to a statement of conversion refer to the
2495 plan of conversion filed under this subsection.

Reporters' Note

Patterned after harmonized META § 405(a) – (e).

SECTION 746. EFFECT OF CONVERSION.

(a) When a conversion in which the converted entity is a domestic statutory trust becomes effective:

(1) the converted entity is:

(A) organized under and subject to this [act]; and

(B) the same entity without interruption as the converting entity;

(2) all property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

(3) all debts, obligations and liabilities of the converting entity continue as debts, obligations and liabilities of the converted entity;

(4) except as otherwise provided by law or the plan of conversion, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(5) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) if a converted entity is a filing entity, its public organic record is effective;

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

(8) the private organic rules of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective; and

(9) the interests in the converting entity are converted, and the interest holders of

2519 the converting entity are entitled only to the rights provided to them under the plan of conversion
2520 and to any appraisal rights they have under Section 708 and the converting entity's organic law.

2521 (b) Except as otherwise provided in the trust instrument of a domestic converting
2522 statutory trust, the conversion does not give rise to any rights that a beneficial owner, or third
2523 party would otherwise have upon a dissolution, liquidation, or winding-up of the converting
2524 entity.

2525 (c) When a conversion becomes effective, a person that did not have interest holder
2526 liability with respect to the converting entity and that becomes subject to interest holder liability
2527 with respect to a domestic entity as a result of a conversion has interest holder liability only to
2528 the extent provided by the organic law of the entity and only for those debts, obligations and
2529 liabilities that arise after the conversion becomes effective.

2530 (d) When a conversion becomes effective, the interest holder liability of a person that
2531 ceases to hold an interest in a domestic statutory trust with respect to which the person had
2532 interest holder liability is as follows:

2533 (1) the conversion does not discharge any interest holder liability to the extent the
2534 interest holder liability arose before the conversion became effective;

2535 (2) the person does not have interest holder liability for any liability that arises
2536 after the conversion becomes effective; and

2537 (3) the person has whatever rights of contribution from any other person as are
2538 provided by other law or the partnership agreement of the converting entity with respect to any
2539 interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

2540 (e) When a conversion becomes effective, a foreign entity that is the converted entity:

2541 (1) may be served with process in this state for the collection and enforcement of

2542 any of its debts, obligations and liabilities; and

2543 (2) appoints the [Secretary of State] as its agent for service of process for

2544 collecting or enforcing those debts, obligations and liabilities.

2545 (f) If the converting entity is a registered foreign entity, the registration to do business or

2546 other foreign qualification in this state of the converting entity is canceled when the conversion

2547 becomes effective.

2548 (g) A conversion does not require the entity to wind up its affairs and does not constitute

2549 or cause the dissolution of the entity.

2550 **Reporters' Note**

2551 Patterned after harmonized META § 406.

2552 **[PART] 5**

2553 **DOMESTICATION**

2554 **SECTION 751. DOMESTICATION AUTHORIZED.**

2555 (a) By complying with this [part], a domestic statutory trust may become a foreign

2556 statutory trust if the domestication is authorized by the law of the foreign jurisdiction.

2557 (b) By complying with the provisions of this [part] applicable to foreign statutory trusts a

2558 foreign statutory trust may become a domestic statutory trust if the domestication is authorized

2559 by the law of the foreign statutory trust's jurisdiction of formation.

2560 (c) If a protected agreement contains a provision that applies to a merger of a domestic

2561 statutory trust but does not refer to a domestication, the provision applies to a domestication of

2562 the statutory trust as if the domestication were a merger until the provision is amended after the

2563 effective date of this [act].

2564 **Reporters' Note**

2565 Patterned after harmonized META § 501(a) – (c).

2566 **SECTION 752. PLAN OF DOMESTICATION.**

2567 (a) A domestic statutory trust may become a foreign statutory trust in a domestication by
2568 approving a plan of domestication. The plan must be in a record and contain:

2569 (1) the name of the domesticating statutory trust;

2570 (2) the name and jurisdiction of formation of the domesticated statutory trust;

2571 (3) the manner of converting the interests in the domesticating statutory trust into
2572 interests, securities, obligations, rights to acquire interests or securities, cash, or other property,
2573 or any combination of the foregoing;

2574 (4) the proposed certificate of trust of the domesticated statutory trust;

2575 (5) the full text of the trust instrument of the domesticated statutory trust that are
2576 proposed to be in a record;

2577 (6) the other terms and conditions of the domestication; and

2578 (7) any other provision required by the law of this state or the trust instrument of
2579 the domesticating statutory trust.

2580 (b) A plan of domestication may contain any other provision not prohibited by law.

2581 **Reporters' Note**

2582 Patterned after harmonized META § 502.

2583 **SECTION 753. APPROVAL OF DOMESTICATION.**

2584 (a) A plan of domestication of a domestic domesticating statutory trust is not effective
2585 unless it has been approved:

2586 (1) by all of the beneficial owners entitled to vote on or consent to any matter;

2587 and

2588 (2) in a record, by each beneficial owner that will have interest holder liability for

2589 debts, obligations and liabilities that arise after the domestication becomes effective, unless:

2590 (A) the trust instrument of the entity in a record provide for the approval

2591 of a domestication or merger in which some or all of its beneficial owners become subject to

2592 interest holder liability by the vote or consent of fewer than all of the beneficial owners; and

2593 (B) the beneficial owner voted for or consented in a record to that

2594 provision of the trust instrument or became a beneficial owner after the adoption of that

2595 provision.

2596 (b) A domestication of a foreign domesticating statutory trust is not effective unless it is

2597 approved in accordance with the law of the foreign statutory trust's jurisdiction of formation.

2598 **Reporters' Note**

2599 Subsection (a) is a simplified version of harmonized META § 503(a). Subsection (b) is
2600 patterned after harmonized META § 503(b).

2601

2602 **SECTION 754. AMENDMENT OR ABANDONMENT OF PLAN OF**

2603 **DOMESTICATION.**

2604 (a) A plan of domestication of a domestic domesticating statutory trust may be amended:

2605 (1) in the same manner as the plan was approved, if the plan does not provide for

2606 the manner in which it may be amended; or

2607 (2) by the beneficial owners of the trust in the manner provided in the plan, but a

2608 beneficial owner that was entitled to vote on or consent to approval of the domestication is

2609 entitled to vote on or consent to any amendment of the plan that will change:

2610 (A) the amount or kind of interests, securities, obligations, rights to

2611 acquire interests or securities, cash, or other property, or any combination of the foregoing, to be

2612 received by any of the beneficial owners of the domesticating statutory trust under the plan;

2613 (B) the certificate of trust or trust instrument of the domesticated statutory

2614 trust that will be in effect immediately after the domestication becomes effective, except for

2615 changes that do not require approval of the beneficial owners of the domesticated statutory trust

2616 under its organic law or trust instrument; or

2617 (C) any other terms or conditions of the plan, if the change would

2618 adversely affect the beneficial owners in any material respect.

2619 (b) After a plan of domestication has been approved by a domestic domesticating

2620 statutory trust and before a statement of domestication becomes effective, the plan may be

2621 abandoned:

2622 (1) as provided in the plan; or

2623 (2) unless prohibited by the plan, in the same manner as the plan was approved.

2624 (c) If a plan of domestication is abandoned after a statement of domestication has been

2625 delivered to the [Secretary of State] for filing and before the filing becomes effective, a statement

2626 of abandonment, signed by the domesticating statutory trust, must be delivered to the [Secretary

2627 of State] for filing before the time the statement of domestication becomes effective. The

2628 statement of abandonment takes effect upon filing, and the domestication is abandoned and does

2629 not become effective. The statement of abandonment must contain:

2630 (1) the name of the domesticating statutory trust;

2631 (2) the date on which the statement of domestication was delivered to the

2632 [Secretary of State] for filing; and

2633 (3) a statement that the domestication has been abandoned in accordance with

2634 this section.

2635 **Reporters' Note**

2636 Patterned after harmonized META § 504.

2637 **SECTION 755. STATEMENT OF DOMESTICATION.**

2638 (a) A statement of domestication must be signed by the domesticating statutory trust and
2639 delivered to the [Secretary of State] for filing.

2640 (b) A statement of domestication must contain:

2641 (1) the name and jurisdiction of formation of the domesticating statutory trust;

2642 (2) the name and jurisdiction of formation of the domesticated statutory trust;

2643 (3) if the domesticating statutory trust is a domestic statutory trust, a statement
2644 that the plan of domestication was approved in accordance with this [part] or, if the
2645 domesticating statutory trust is a foreign statutory trust, a statement that the domestication was
2646 approved in accordance with the law of its jurisdiction of formation;

2647 (4) the certificate of trust of the domesticated statutory trust, as an attachment;

2648 and

2649 (5) if the domesticated foreign statutory trust is not a registered foreign statutory
2650 trust, a mailing address to which the [Secretary of State] may send any process served on the
2651 [Secretary of State] pursuant to Section 756(e).

2652 (c) In addition to the requirements of subsection (b), a statement of domestication may
2653 contain any other provision not prohibited by law.

2654 (d) The certificate of trust of a domesticated domestic statutory trust must satisfy the
2655 requirements of the law of this state, except that it does not need to be signed.

2656 (e) A plan of domestication that is signed by a domesticating domestic statutory trust and
2657 meets all of the requirements of subsection (b) may be delivered to the [Secretary of State] for

filing instead of a statement of domestication and upon filing has the same effect. If a plan of domestication is filed as provided in this subsection, references in this [article] to a statement of domestication refer to the plan of domestication filed under this subsection.

Reporters' Note

Patterned after harmonized META § 505(a) – (e).

SECTION 756. EFFECT OF DOMESTICATION.

(a) When a domestication becomes effective:

(1) the domesticated statutory trust is:

(A) organized under and subject to the organic law of the domesticated statutory trust; and

(B) the same entity without interruption as the domesticating statutory trust;

(2) all property of the domesticating statutory trust continues to be vested in the domesticated entity without transfer, reversion, or impairment;

(3) all debts, obligations, and liabilities of the domesticating statutory trust continue as debts, obligations, and liabilities of the domesticated statutory trust;

(4) except as otherwise provided by law or the plan of domestication, all of the rights, privileges, immunities, powers, and purposes of the domesticating statutory trust remain in the domesticated statutory trust;

(5) the name of the domesticated statutory trust may be substituted for the name of the domesticating statutory trust in any pending action or proceeding;

(6) the certificate of trust of the domesticated statutory trust is effective;

(7) the provisions of the trust instrument of the domesticated statutory trust that

2681 are to be in a record, if any, approved as part of the plan of domestication are effective; and
2682 (8) the interests in the domesticating statutory trust are converted to the extent and
2683 as approved in connection with the domestication, and the beneficial owners of the domesticating
2684 statutory trust are entitled only to the rights provided to them under the plan of domestication and
2685 to any appraisal rights they have under Section 708.

2686 (b) Except as otherwise provided in the organic law or trust instrument of the
2687 domesticating statutory trust, the domestication does not give rise to any rights that an interest
2688 holder or third party would otherwise have upon a dissolution, liquidation, or winding-up of the
2689 domesticating statutory trust.

2690 (c) When a domestication becomes effective, a person that did not have interest holder
2691 liability with respect to the domesticating statutory trust and that becomes subject to interest
2692 holder liability with respect to a domestic entity as a result of the domestication has interest
2693 holder liability only to the extent provided by the organic law of the entity and only for those
2694 debts, obligations and other liabilities that arise after the domestication becomes effective.

2695 (d) When a domestication becomes effective:

2696 (1) the domestication does not discharge any interest holder liability under this
2697 [act] to the extent the interest holder liability arose before the domestication became effective;

2698 (2) a person does not have interest holder liability under this [act] for any debts,
2699 obligations, and liabilities that arise after the domestication becomes effective;

2700 (3) a person has whatever rights of contribution from any other person as are
2701 provided by other law or the partnership agreement of a domestic domesticating statutory trust
2702 with respect to any interest holder liability preserved under paragraph (1) as if the domestication
2703 had not occurred.

2704 (e) When a domestication becomes effective, a foreign statutory trust that is the
2705 domesticated statutory trust:
2706 (1) may be served with process in this state for the collection and enforcement of
2707 any of its debts, obligations, and liabilities; and
2708 (2) appoints the [Secretary of State] as its agent for service of process for
2709 collecting or enforcing those debts, obligations and liabilities.
2710 (f) If the domesticating statutory trust is a registered foreign statutory trust, the
2711 registration of the statutory trust is canceled when the domestication becomes effective.
2712 (g) A domestication does not require the statutory trust to wind up its affairs and does
2713 not constitute or cause the dissolution of the statutory trust.

2714 **Reporters' Note**

2715 Patterned after harmonized META § 506.

2716

2717 **[ARTICLE] 8**

2718 **DISSOLUTION AND WINDING UP**

2719 **SECTION 801. EVENTS CAUSING DISSOLUTION.** A statutory trust is dissolved

2720 only by:

2721 (1) an administrative dissolution under Section 806; or

2722 (2) the filing of articles of dissolution under Section 802:

2723 (A) on the occurrence of an event or circumstance that the governing instrument
2724 states causes dissolution; or

2725 (B) with the approval of all the beneficial owners.

2726 **SECTION 802. ARTICLES OF DISSOLUTION.**

2727 (a) If dissolution of a statutory trust is authorized under Section 801, the trust shall
2728 deliver to the [Secretary of State] for filing articles of dissolution setting forth:

2729 (1) the name of the trust; and

2730 (2) the date of the dissolution.

2731 (b) Except as otherwise provided in Section 204(c), a statutory trust is dissolved when
2732 articles of dissolution that comply with subsection (a) are filed by the [Secretary of State].

2733 **SECTION 803. WINDING UP.**

2734 (a) A dissolved statutory trust shall wind up its activities, and the trust and each series
2735 thereof continues after dissolution only for the purpose of ~~its~~ winding up.

2736 (b) In winding up its activities, a statutory trust shall:

2737 (1) discharge the trust's debts, obligations, and other liabilities, settle and close
2738 the trust's activities, and marshal and distribute the property of the trust; and

2739 (2) distribute any surplus property after complying with paragraph (1) to the

2740 beneficial owners in proportion to their beneficial interests.

2741 (c) In winding up its activities, a statutory trust may:

2742 (1) preserve the trust's activities and property as a going concern for a reasonable
2743 time;

2744 (2) institute, maintain, and defend actions and proceedings, whether civil,
2745 criminal, or administrative;

2746 (3) transfer the trust's property;

2747 (4) settle disputes; and

2748 (5) perform other acts necessary or appropriate to its winding up.

2749 (d) Trustees of a dissolved statutory trust that has disposed of claims under Section 804
2750 or 805 are not liable for breach of duty with respect to claims against the trust that are barred or
2751 satisfied under Section 804 or 805.

2752 (e) The dissolution of a statutory trust does not terminate the authority of its agent for
2753 service of process.

2754 (f) On application of any person that shows good cause, the [appropriate court] may
2755 appoint a person to be a receiver for a dissolved statutory trust with the power to undertake any
2756 action that might have been done by the trust during its winding up if the action is necessary for
2757 final settlement of the trust.

2758 **Reporters' Notes**

2759 Like HULLCA § 703, should a statutory trust be able to rescind dissolution? If so, a section
2760 similar to Section 703 needs to be added.

2761 **SECTION 804. ~~NOTICE TO CLAIMANT~~ KNOWN CLAIMS AGAINST**
2762 **DISSOLVED STATUTORY TRUST.**
2763

2764 (a) Except as otherwise provided in subsection ~~(e)~~ (d), a dissolved statutory trust may

2765 ~~dispose~~ give notice of a known claim ~~against it by sending notice to the claimant in a record of~~
2766 ~~the dissolution of the trust. The notice must:~~ under subsection (b), which has the effect as
2767 provided in subsection (c).

2768 (b) A dissolved statutory trust may in a record notify its known claimants of the
2769 dissolution. The notice must:

2770 (1) specify the information required to be included in the claim;

2771 (2) provide a mailing address to which the claim is to be sent;

2772 (3) state the deadline for receipt of the claim, which may not be less than 120 days
2773 after the date the notice is sent to the claimant; and

2774 (4) state that the claim will be barred if not received by the deadline.

2775 ~~(b)~~ (c) A claim against a dissolved statutory trust is barred if the requirements of
2776 subsection ~~(a)~~ (b) are met and:

2777 (1) the claim is not received by the specified deadline; or

2778 (2) if the claim is timely received but rejected by the trust:

2779 (A) the trust ~~notifies~~ causes the claimant to receive a notice in a record

2780 stating that the claim is rejected and will be barred unless the claimant commences an action

2781 against the trust to enforce the claim ~~by the 90th day~~ within 90 days after the claimant receives
2782 the notice; and

2783 (B) the claimant does not commence the required action ~~not later than the~~
2784 ~~90th day~~ within 90 days.

2785 ~~(e)~~ (d) This section does not apply to a claim based on ~~(1)~~ an event occurring after the
2786 effective date of dissolution; or ~~(2)~~ a liability that on that date is ~~unmatured or~~ contingent.

2787 **SECTION 805. PUBLICATION OF NOTICE OTHER CLAIMS AGAINST**

2788 **DISSOLVED STATUTORY TRUST.**

2789 (a) A dissolved statutory trust may publish notice of its dissolution and request persons
2790 having claims against the trust to present them in accordance with the notice.

2791 (b) ~~A~~ The notice under subsection (a) must:

2792 (1) be published at least once in a newspaper of general circulation in the [county]
2793 in this state in which the dissolved statutory trust's principal office is located or, if it has none in
2794 this state, in the [county] in which the ~~trust's designated~~ office of the trust's registered agent is or
2795 was last located;

2796 (2) describe the information required ~~for a claim~~ to be contained in a claim and
2797 provide a mailing address to which the claim is to be sent; and

2798 ~~(3) provide a mailing address to which the claim may be sent; and~~

2799 ~~(4)~~ (3) state that a claim against the trust is barred unless an action to enforce the
2800 claim is commenced not later than ~~[three]~~ three years after publication of the notice.

2801 (c) If a dissolved statutory trust publishes a notice in accordance with subsection (b), the
2802 claim of each of the following claimants is barred unless the claimant commences an action to
2803 enforce a claim against the trust not later than ~~[three]~~ three years after the publication date of the
2804 notice, ~~the claim of each of the following claimants is barred:~~

2805 (1) a claimant that did not receive notice in a record under Section 804;

2806 (2) a claimant whose claim was timely sent to the trust but ~~was rejected or not~~
2807 acted on; and

2808 (3) a claimant whose claim is contingent at, or based on an event occurring after,
2809 the effective date of dissolution.

2810 (d) A claim not barred under this section or Section 804 may be enforced:

2811 (1) against a dissolved statutory trust, to the extent of its undistributed property;

2812 and

2813 (2) except as provided in Section 806, if assets of the trust have been distributed
2814 after dissolution, against a beneficial owner to the extent of that person's proportionate share of
2815 the claim or of the assets distributed to the beneficial owner after dissolution, whichever is less,
2816 but a person's total liability for all claims under this paragraph does not exceed the total amount
2817 of assets distributed to the person after dissolution.

2818 ~~(e) If property of the trust has been distributed after dissolution, a claim not barred under~~
2819 ~~this section may be enforced against a beneficial owner to the extent of that beneficial owner's~~
2820 ~~proportionate share of the property distributed to the beneficial owner after dissolution.~~
2821 ~~However, a beneficial owner's total liability for all claims under this subsection does not exceed~~
2822 ~~the total amount of property distributed to the beneficial owner after dissolution.~~

2823 **SECTION 806. COURT PROCEEDINGS.**

2824 (a) A dissolved statutory that has published a notice under section 805 may file an
2825 application with the [appropriate court] in the county where the dissolved trust's principal office,
2826 or, if none in this state, the office of its registered agent, is located for a determination of the
2827 amount and form of security to be provided for payment of claims that are contingent or have not
2828 been made known to the dissolved trsu or that are based on an event occurring after the effective
2829 date of dissolution but which, based on the facts known to the dissolved trust, are reasonably
2830 estimated to arise after the effective date of dissolution. Provision need not be made for any
2831 claim that is or is reasonably anticipated to be barred under section 805(c).

2832 (b) Within 10 days after the filing of the application, notice of the proceeding must be
2833 given by the dissolved statutory trust to each claimant holding a contingent claim whose

2834 contingent claim is shown on the records of the dissolved trust.

2835 (c) The court may appoint a guardian ad litem to represent all claimants whose identities
2836 are unknown in any proceeding brought under this section. The reasonable fees and expenses of
2837 such guardian, including all reasonable expert witness fees, must be paid by the dissolved
2838 statutory trust.

2839 (d) Provision by the dissolved statutory trust for security in the amount and the form
2840 ordered by the court under subsection (a) satisfies the dissolved trust's obligations with respect to
2841 claims that are contingent, have not been made known to the dissolved trust, or are based on an
2842 event occurring after the effective date of dissolution, and such claims may not be enforced
2843 against a beneficial owner that received assets in liquidation

2844 **SECTION ~~806~~ 807. ADMINISTRATIVE DISSOLUTION.**

2845 (a) The [Secretary of State] may commence a proceeding under subsections (b) and (c) to
2846 dissolve a statutory trust administratively if the trust does not:

2847 (1) ~~is without an agent for service of process in this state for [30] days~~ pay any
2848 fee, tax, or penalty required to be paid to the [Secretary of State] not later than [six months] after
2849 it is due;

2850 (2) ~~does not file~~ deliver an [annual] [biennial] report to the [Secretary of State] not
2851 later than ~~the 60th day~~ [six months] after ~~the it is~~ due ~~date~~; or

2852 (3) ~~does not pay, not later than the 60th day after the due date, any fee, tax, or~~
2853 ~~penalty due to the [Secretary of State]~~ have a registered agent in this state for [60] consecutive
2854 days.

2855 (b) If the [Secretary of State] determines that ~~a ground exists~~ one or more grounds exist
2856 for administratively dissolving a statutory trust, the [Secretary of State] shall ~~file a notice of~~

2857 ~~dissolution and send a copy of the notice to the trust's agent for service of process, or if the trust~~
2858 ~~does not have an agent for service of process in this state, to the trust's designated office. The~~
2859 ~~notice must state~~ serve the company pursuant to Section ____ with notice in a record of the
2860 [Secretary of State's] determination.

2861 ~~(1) the effective date of the dissolution, which must be at least [60] days after the~~
2862 ~~date the [Secretary of State] sends the copy; and~~

2863 ~~(2) the reason for the dissolution.~~

2864 ~~(c) Unless a statutory trust cures the grounds for dissolution under subsection (a) stated in~~
2865 ~~the notice of dissolution before the date stated in the notice, the [Secretary of State] shall~~
2866 ~~dissolve the trust administratively by preparing, signing, and filing a declaration of dissolution~~
2867 ~~that states the grounds for dissolution. The [Secretary of State] shall send a copy of the~~
2868 ~~declaration to the trust's agent for service of process, or if the trust does not have an agent for~~
2869 ~~service of process in this state, to the trust's designated office. If a statutory trust, not later than~~
2870 ~~[60] days after service of the notice is effected pursuant to subsection (b), does not correct each~~
2871 ~~ground for dissolution or demonstrate to the satisfaction of the [Secretary of State] that each~~
2872 ~~ground determined by the [Secretary of State] does not exist, the [Secretary of State] shall~~
2873 ~~dissolve the company administratively by signing a declaration of dissolution that recites the~~
2874 ~~ground or grounds for dissolution and its effective date. The [Secretary of State] shall file the~~
2875 ~~original of the declaration and serve a copy on the company pursuant to Section ____.~~

2876 ~~(d) A statutory trust that is dissolved administratively continues in existence as an entity~~
2877 ~~but may not carry on any activities except as necessary to wind up its activities and liquidate its~~
2878 ~~assets under Sections ____ and ____, to notify claimants under Sections ____ and ____, or to apply~~
2879 ~~for reinstatement under Section 808.~~

2880 **SECTION ~~807~~ 808. REINSTATEMENT FOLLOWING ADMINISTRATIVE**
2881 **DISSOLUTION.**

2882 (a) A statutory trust that ~~has been~~ is dissolved administratively under Section 807 may
2883 apply to the [Secretary of State] for reinstatement [not later than two years after the effective date
2884 of dissolution]. The application must ~~be delivered to the [Secretary of State] for filing and~~ state:

2885 (1) the name of the trust ~~and the effective date of its dissolution~~ at the time of its
2886 administrative dissolution and, if needed, a different name that satisfies Section ____;

2887 (2) the address of the principal office of the statutory trust and the name and
2888 address of its registered agent;

2889 (3) the effective date of the statutory trust's dissolution; and

2890 (4) that the grounds for dissolution either did not exist or have been ~~cured; and~~

2891 ~~(3) that the trust's name satisfies the requirements of Section 207~~ eliminated.

2892 (b) ~~If the [Secretary of State] determines that an application under subsection (a) contains~~
2893 ~~the required information and that the information is correct, the [Secretary of State] shall prepare~~
2894 ~~a declaration of reinstatement that states this determination, sign and file the original of the~~
2895 ~~declaration of reinstatement, and send a copy to the trust's agent for service of process. To be~~
2896 ~~reinstated, a statutory trust must pay all fees, taxes, and penalties that were due to the [Secretary~~
2897 ~~of State] at the time of its administrative dissolution and all fees, taxes, and penalties that would~~
2898 ~~have been due to the [Secretary of State] while the statutory trust was dissolved administratively.~~

2899 (c) If the [Secretary of State] determines that an application contains the information
2900 required by subsection (a), is satisfied that the information is correct, and determines that all
2901 payments required to be made to the [Secretary of State] by subsection (b) have been made, the
2902 [Secretary of State] shall cancel the declaration of dissolution and prepare a statement, of

reinstatement that states the [Secretary of State's] determination and the effective date of reinstatement, file the original of the statement, and serve a copy on the statutory trust.

~~(e)~~ (d) When a reinstatement ~~becomes~~ under this section is effective, it relates back to ~~for~~ all purposes and takes effect as of the effective date of the administrative dissolution and the statutory trust resumes carrying on its activities as if the administrative dissolution had ~~not~~ never occurred, except for the rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had reason to know of the reinstatement.

SECTION ~~808~~ 809. JUDICIAL REVIEW OF ~~REJECTION~~ DENIAL OF REINSTATEMENT.

(a) If the [Secretary of State] ~~rejects~~ denies a statutory trust's application for reinstatement following administrative dissolution, the [Secretary of State] shall ~~send~~ serve the statutory trust with a notice in a record that ~~states~~ explains the reason or reasons for ~~rejection to the trust's agent for service of process or, if the trust does not have an agent for service of process, to the trust's designated office~~ the denial.

~~(b) A statutory trust may obtain review of the rejection by petitioning the [appropriate court] to set aside the dissolution. The petition must be delivered to the [Secretary of State] and contain a copy of the [Secretary of State's] declaration of dissolution, the trust's application for reinstatement, and the [Secretary of State's] notice of rejection. A statutory trust may seek judicial review of denial of reinstatement in the [appropriate court] not later than [30] days after service of the notice of denial.~~

~~(c) The court may order the [Secretary of State] to reinstate a dissolved statutory trust or take other action the court considers appropriate.~~

2926 [ARTICLE] 9

2927 FOREIGN STATUTORY TRUSTS

2928 SECTION 901. GOVERNING LAW.

2929 (a) The law of the jurisdiction of formation of a foreign statutory trust governs:

2930 (1) the internal affairs of the trust;

2931 (2) the liability ~~of a beneficial owner~~ that a person has as a beneficial owner ~~and~~
2932 ~~or trustee as trustee~~ for a debt, obligation, or other liability of the trust or a series thereof; and

2933 (3) the enforceability of a debt, obligation, or other liability of:

2934 (A) the statutory trust ~~or a series thereof~~ against the property of ~~the trust~~
2935 ~~or any series thereof;~~ and

2936 (B) a series trust against the property of the statutory trust or any other
2937 series thereof.

2938 (b) The [Secretary of State] may not deny a foreign statutory trust a certificate of
2939 ~~registration~~ A foreign statutory trust is not precluded from registering to do business in this state
2940 because of any difference between the law of its jurisdiction of formation and the ~~laws~~ law of
2941 this state.

2942 (c) ~~A certificate of registration~~ Registration of a foreign statutory trust to do business in
2943 this state does not authorize a foreign statutory trust to engage in any business or exercise any
2944 power that a statutory trust may not engage in or exercise in this state.

2945 Reporters' Notes

2946 *Subsection (a)(3) - proposed changes mirror those proposed for Section 301.*

2947 **SECTION 902. REGISTRATION TO DO BUSINESS IN THIS STATE.**

2948 (a) A foreign statutory trust may not do business in this state until it registers with the

2949 [Secretary of State] under this [article].

2950 (b) A foreign statutory trust doing business in this state may not maintain an action in this
2951 state unless it is registered to do business in this state.

2952 (c) The failure of a foreign statutory trust to register to do business in this state does not
2953 impair the validity of a contract or act of the foreign statutory trust or preclude it from defending
2954 an action or proceeding in this state.

2955 (d) The liability of a beneficial owner or trustee of a foreign statutory trust is governed by
2956 the laws of its jurisdiction of formation. Any limitation on that liability is not waived solely
2957 because the foreign statutory trust does business in this state without registering.

2958 (e) Section 901(a) and (b) applies even if a foreign statutory trust fails to register under
2959 this [article].

2960 **Reporters' Notes**

2961 Patterned after Harmonized Business Organizations Act § 1-502.

2962 **SECTION ~~902~~ 903. APPLICATION FOR CERTIFICATE OF REGISTRATION** 2963 **FOREIGN REGISTRATION STATEMENT.**

2964 ~~(a)~~ To register to do business in this state, a foreign statutory trust ~~may apply for a~~
2965 ~~certificate of registration to do business in this state by delivering an application~~ must deliver a
2966 foreign registration statement to the [Secretary of State] for filing. The ~~application~~ statement
2967 ~~must contain~~ state:

2968 (1) the name of the trust and, if the name does not comply with Section 207, an
2969 alternate name adopted pursuant to Section 906(a);

2970 (2) ~~the name of the state or other jurisdiction of formation of the trust~~ trust's
2971 jurisdiction of formation;

(3) the street and mailing address of the ~~trust's~~ principal office of the foreign statutory trust and, if the ~~laws of the~~ law of its jurisdiction of formation ~~of the trust require~~ requires it to maintain an office in that jurisdiction, the street and mailing address of the ~~required~~ office; and

(4) the name and street and mailing address of the trust's ~~initial~~ registered agent ~~for service of process in this state.~~

~~(b) A foreign statutory trust shall deliver with a completed application under subsection (a) a certificate of good standing or a record of similar import signed by the [Secretary of State] or other official having custody of the foreign statutory trust's publicly filed records in the state or other jurisdiction of formation of the foreign statutory trust.~~

SECTION 904. AMENDMENT OF FOREIGN REGISTRATION STATEMENT.

(a) A registered foreign statutory trust shall deliver to the [Secretary of State] for filing an amendment to its foreign registration statement if there is a change in:

(1) the name of the trust;

(2) the jurisdiction of formation;

(3) the address or addresses required by Section 903(3); or

(4) the information required by Section 903(4).

(b) The requirements of Section 903 for an original foreign registration statement apply to an amendment of a foreign registration statement under this section.

Reporters' Note

Patterned after Harmonized Business Organizations Act § 1-504.

SECTION 903 905. ACTIVITIES NOT CONSTITUTING DOING BUSINESS.

(a) Activities of a foreign statutory trust which do not constitute doing business in this

2995 state ~~within the meaning of~~ under this [article] include:

2996 (1) maintaining, defending, mediating, arbitrating, or settling an action or
2997 proceeding;

2998 (2) carrying on any activity concerning its internal affairs, including holding
2999 meetings of its beneficial owners or trustees ~~or carrying on any other activity concerning its~~
3000 ~~internal affairs~~;

3001 (3) maintaining accounts ~~or depositing assets~~ in financial institutions;

3002 (4) maintaining offices or agencies for the transfer, exchange, and registration of
3003 ~~the trust's own beneficial interests or securities~~ of the trust or maintaining trustees or depositories
3004 with respect to those ~~beneficial interests or securities~~;

3005 (5) selling through independent contractors;

3006 (6) soliciting or obtaining orders, ~~whether by mail or electronic means or through~~
3007 ~~employees or agents or otherwise~~, by any means if the orders require acceptance outside this
3008 state before they become contractual obligations contracts;

3009 (7) creating or acquiring indebtedness, mortgages, or security interests in ~~real or~~
3010 ~~personal~~ property;

3011 (8) securing or collecting debts or enforcing mortgages or other security interests
3012 in property securing the debts, and holding, protecting, or maintaining property so acquired;

3013 (9) conducting an isolated transaction that ~~is completed by the 30th day and~~ is not
3014 in the course of similar transactions; and

3015 (10) owning, without more, property; and

3016 ~~(10)~~ (11) doing business in interstate commerce.

3017 (b) This section does not apply in determining the contacts or activities that may subject a

foreign statutory trust to service of process, taxation, or regulation under law of this state other than this [act].

(c) A person does not do business in this state solely because of being a trustee or a beneficial owner of a foreign statutory trust that does ~~do~~ business in this state.

~~SECTION 904. FILING OF CERTIFICATE OF REGISTRATION.~~ ~~Unless the [Secretary of State] determines that an application for a certificate of registration does not comply with the filing requirements of this [act], the [Secretary of State], on payment of all filing fees, shall file the application, prepare, sign, and file a certificate of registration to do business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the foreign statutory trust or its representative.~~

~~SECTION 905. CERTIFIED COPY OF CERTIFICATE OF REGISTRATION.~~

~~(a) The [Secretary of State], on request and payment of the required fee, shall furnish a certified copy of the certificate of registration for a qualified foreign statutory trust if the records filed with the [Secretary of State] show that the [Secretary of State] has filed a certificate of registration, has not revoked the certificate of registration, and has not filed a notice of cancellation.~~

~~(b) Subject to any limitation stated in the certificate, the certified copy of the certificate of registration issued by the [Secretary of State] to a foreign statutory trust may be relied upon as conclusive evidence that the trust is authorized to do business in this state as of the date of the certificate.~~

SECTION 906. NONCOMPLYING NAME OF FOREIGN STATUTORY TRUST.

(a) A foreign statutory trust whose name does not comply with Section 207 may not ~~obtain a certificate of registration~~ register to do business in this state until it adopts, for the

3041 purpose of doing business in this state, an alternate name that complies with Section 207. A
3042 foreign statutory trust that ~~adopts~~ registers under an alternate name under this subsection ~~and~~
3043 ~~obtains a certificate of registration with the name~~ need not comply with [this state's fictitious or
3044 assumed name statute]. After ~~obtaining a certificate of registration~~ registering to do business in
3045 this state with an alternate name, a foreign statutory trust ~~shall~~ may do business in this state
3046 under:

3047 (1) the alternate name;

3048 (2) its name in its jurisdiction of formation, with the addition of its jurisdiction of
3049 formation clearly identified; or

3050 (3) the name unless the trust an assumed or fictitious name the trust is authorized
3051 to use under [this state's fictitious or assumed name statute] ~~to do business in this state under~~
3052 ~~another name.~~

3053 (b) If a ~~qualified~~ registered foreign statutory trust changes its name to one that does not
3054 comply with Section 207, it may not ~~thereafter~~ do business in this state until it complies with
3055 subsection (a) ~~and obtains an amended certificate of registration~~ by amending its registration to
3056 adopt an alternate name that complies with Section 207.

3057 **SECTION 907. WITHDRAWAL OF REGISTRATION OF REGISTERED**
3058 **FOREIGN STATUTORY TRUST.**

3059 (a) A registered foreign statutory trust may withdraw its registration by delivering a
3060 statement of withdrawal to the [Secretary of State] for filing. The statement of withdrawal must
3061 state:

3062 (1) the name of the foreign statutory trust and the name of the jurisdiction under
3063 whose law it is formed;

3064 (2) that the trust is not doing business in this state and that it withdraws its
3065 registration to do business in this state;

3066 (3) that the trust revokes the authority of its registered agent to accept service on
3067 its behalf; and

3068 (4) an address to which service of process may be made under subsection (b).

3069 (b) After the withdrawal of the registration of a foreign statutory trust, service of process
3070 in any action or proceeding based on a cause of action arising during the time it was registered to
3071 do business in this state may be made pursuant to Section ____.

3072 **Reporters' Note**

3073 Patterned after Harmonized Business Organizations Act § 1-507.

3074 **SECTION 908. WITHDRAWAL DEEMED ON CONVERSION TO DOMESTIC**
3075 **FILING ENTITY OR DOMESTIC LIMITED LIABILITY PARTNERSHIP.** A registered
3076 foreign statutory trust that converts to any type of domestic filing entity or to a domestic limited
3077 liability partnership is deemed to have withdrawn its registration on the effective date of the
3078 conversion.

3079 **Reporters' Note**

3080 Patterned after Harmonized Business Organizations Act § 1-508.

3081 **SECTION 909. WITHDRAWAL ON DISSOLUTION OR CONVERSION TO**
3082 **NONFILING ENTITY OTHER THAN LIMITED LIABILITY PARTNERSHIP.**

3083 (a) A registered foreign statutory trust that has dissolved and completed winding up or
3084 that has converted to a domestic or foreign nonfiling entity other than a limited liability
3085 partnership shall deliver a statement of withdrawal to the [Secretary of State] for filing. The
3086 statement must state:

3087 (1) the name of the foreign statutory trust and the name of the jurisdiction under
3088 whose law it was formed before the dissolution or conversion;

3089 (2) that the foreign statutory trust surrenders its registration to do business in this
3090 state as a registered foreign statutory trust; and

3091 (3) if the foreign statutory trust has converted to a foreign nonfiling entity other
3092 than a foreign limited liability partnership:

3093 (A) the type of nonfiling entity to which it has converted and the
3094 jurisdiction whose laws govern its internal affairs;

3095 (B) that it revokes the authority of its registered agent to accept service on
3096 its behalf; and

3097 (C) a mailing address to which service of process may be made under
3098 subsection (b).

3099 (b) After the withdrawal under this section of a foreign statutory trust that has converted
3100 to a foreign nonfiling entity is effective, service of process in any proceeding based on a cause of
3101 action arising during the time it was registered to do business in this state may be made pursuant
3102 to Section _____.

3103 (c) After the withdrawal under this section of a foreign statutory trust that has converted
3104 to a domestic nonfiling entity other than a limited liability partnership is effective, service of
3105 process may be made on the nonfiling entity pursuant to Section _____.

3106 **Reporters' Note**

3107 Patterned after Harmonized Business Organizations Act § 1-509.

3108

3109 **SECTION 1-510. TRANSFER OF REGISTRATION.**

3110 (a) When a registered foreign statutory trust has merged into a nonregistered foreign

3111 entity or has converted to a foreign entity required to register with the [Secretary of State] to do
3112 business in this state, the foreign statutory trust shall deliver to the [Secretary of State] for filing
3113 an application for transfer of registration. The application must state:

3114 (1) the name of the foreign statutory trust;

3115 (2) the name of the entity into which it has merged or to which it has been
3116 converted, and, if the name does not comply with Section 207, an alternate name adopted
3117 pursuant to Section 906(a);

3118 (3) the type of entity into which it has merged or to which it has been converted
3119 and the jurisdiction whose law governs its internal affairs; and

3120 (4) the following information regarding the entity into which it has merged or to
3121 which it has been converted, if different than the information for the applicant entity:

3122 (A) the street and mailing address of the principal office of the entity and,
3123 if the law of the entity's jurisdiction of formation requires it to maintain an office in that
3124 jurisdiction, the street and mailing address of that office; and

3125 (B) the name and street and mailing address of its registered agent in this
3126 state.

3127 (b) When an application for transfer of registration takes effect, the registration of the
3128 foreign statutory trust to do business in this state is transferred without interruption to the entity
3129 into which it has merged or to which it has been converted.

3130 **Reporters' Note**

3131 Patterned after Harmonized Business Organizations Act § 1-510.

3132

3133 **SECTION ~~907~~ 911. REVOCATION OF CERTIFICATE TERMINATION OF**
3134 **REGISTRATION.**

3135 (a) The [Secretary of State] may ~~revoke the certificate of~~ terminate the registration of a
3136 ~~qualified~~ foreign statutory trust to do business in this state in the manner provided in subsections

3137 (b) and (c) if the trust does not:

3138 ~~(1) appoint and maintain an agent for service of process;~~

3139 ~~(2) deliver for filing a statement of change not later than the 60th day after a~~
3140 ~~change has occurred in the name or address of the agent;~~

3141 ~~(3) file an [annual] [biennial] report pursuant to Section 213 not later than the~~
3142 ~~60th day after the due date; or~~

3143 ~~(4) pay, by the 60th day after the due date, any fee, tax, or penalty due to the~~
3144 ~~[Secretary of State].~~

3145 (1) pay, not later than [60 days] after the due date, any fee, tax, or penalty
3146 required to be paid to the [Secretary of State] under this [article] or law other than this [act];

3147 (2) deliver to the [Secretary of State] for filing, not later than [60 days] after the
3148 due date, the [annual] [biennial] report, if any, required by Section 213;

3149 (3) have a registered agent as required by Section 1-402; or

3150 (4) deliver to the [Secretary of State] for filing a statement of change under
3151 Section within 30 days after a change has occurred in the name or address of the registered
3152 agent.

3153 (b) ~~To revoke a certificate of registration of a foreign statutory trust, the [Secretary of~~
3154 ~~State] must prepare, sign, and file a notice of revocation and send a copy to the trust's agent for~~
3155 ~~service of process in this state, or if the trust does not appoint and maintain a agent for service of~~

~~process in this state, to the trust's designated office. The [Secretary of State] may terminate the~~
~~registration of a foreign statutory trust by filing a notice of termination or noting the termination~~
~~in the records of the [Secretary of State] and by delivering a copy of the notice or the information~~
~~in the notation to the trust's registered, or if the trust does not have a registered agent, to the~~
~~trust's principal office as designated in Section 903(4). The notice must state or the information~~
~~in the notation must include:~~

(1) the effective date of the ~~revocation~~ termination, which must be at least [60]
days after the date the [Secretary of State] ~~sends~~ delivers the copy; and

(2) the ~~basis for the revocation~~ grounds for termination under subsection (a).

~~(c) Unless a foreign statutory trust cures the grounds for revocation under subsection (a)~~
~~stated in the notice of revocation before the date stated in the notice, the authority of the trust to~~
~~do business in this state ceases on that date. The authority of a foreign statutory trust to do~~
~~business in this state ceases on the effective date of the notice of termination unless before that~~
~~date the trust cures each ground for termination stated in the notice filed under subsection (b). If~~
~~the trust cures each ground, the [Secretary of State] shall file a record so stating.~~

~~(d) If a foreign statutory trust cures the grounds stated in the notice of revocation under~~
~~subsection (b), the [Secretary of State] shall indicate that the trust is reinstated on the filed notice.~~
~~The reinstatement of the trust relates back to for all purposes and takes effect as of the date of the~~
~~notice of revocation, except for the rights of a person arising out of an act or omission in reliance~~
~~on the dissolution before the person knew or had reason to know of the reinstatement.~~

~~SECTION 908. CANCELLATION OF CERTIFICATE OF REGISTRATION.~~

~~(a) To cancel its certificate of registration to do business in this state, a qualified foreign~~
~~statutory trust must deliver to the [Secretary of State] for filing a notice of cancellation that~~

3179 states:

3180 ~~(1) the name of the trust;~~

3181 ~~(2) the date of filing of its initial certificate of registration;~~

3182 ~~(3) that the certificate of registration is being canceled; and~~

3183 ~~(4) any other information as determined by the trustee filing the statement.~~

3184 ~~(b) A certificate of registration is canceled when the notice of cancellation becomes~~
3185 ~~effective under Section 204.~~

3186 **SECTION 909. EFFECT OF FAILURE TO HAVE CERTIFICATE OF**
3187 **REGISTRATION.**

3188 ~~(a) A foreign statutory trust doing business in this state may not maintain an action or~~
3189 ~~proceeding in this state unless it has a certificate of registration to do business in this state.~~

3190 ~~(b) The failure of a foreign statutory trust to have a certificate of registration to do~~
3191 ~~business in this state does not impair the validity of a contract or act of the trust or preclude the~~
3192 ~~trust from defending an action or proceeding in this state.~~

3193 ~~(c) A trustee or beneficial owner of a foreign statutory trust is not liable for a debt,~~
3194 ~~obligation, or other liability of the trust solely because the trust did business in this state without~~
3195 ~~a certificate of registration.~~

3196 ~~(d) If a foreign statutory trust does business in this state without a certificate of~~
3197 ~~registration or cancels its certificate of registration, the trust may be served in accordance with~~
3198 ~~Section 212 for actions arising out of doing business in this state.~~

3199 **[SECTION 910 912. ACTION BY [ATTORNEY GENERAL].** The [Attorney
3200 General] may maintain an action to enjoin a foreign statutory trust from doing business in this
3201 state in violation of this [article].]

3202

3203 **[ARTICLE] 10**

3204 **MISCELLANEOUS PROVISIONS**

3205 **SECTION 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

3206 applying and construing this uniform act, consideration must be given to the need to promote
3207 uniformity of the law with respect to its subject matter among states that enact it.

3208 **SECTION 1002. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**

3209 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
3210 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
3211 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
3212 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
3213 U.S.C. Section 7003(b).

3214 **SECTION 1003. SAVINGS CLAUSE.** This [act] does not affect an action

3215 commenced, proceeding brought, or right accrued before this [act] takes effect.

3216 **SECTION 1004. RESERVATION OF POWER TO AMEND OR REPEAL.** The

3217 [name of state legislature] has power to amend or repeal all or part of this [act] at any time and
3218 all statutory trusts and foreign statutory trusts subject to this [act] are governed by the
3219 amendment or repeal.

3220 **SECTION 1005. APPLICATION TO EXISTING RELATIONSHIPS.**

3221 (a) This [act] does not limit, prohibit, or invalidate the existence, acts, or obligations of
3222 any common-law trust created or doing business in this state before, on, or after [the effective
3223 date of the act]. The law of this state other than this [act] pertaining to trusts apply to common-
3224 law trusts.

3225 (b) A common-law trust created under the law of this state before, on, or after [the

3226 effective date of this [act]] that does not have a predominantly donative purpose may elect to be
3227 governed by this [act] by filing a certificate of trust under Section 201.

3228 [(c) A trust created pursuant to a statute of this state that was required by that statute to
3229 file a certificate of trust with [the Secretary of State] before [the effective date of this [act]] may
3230 elect to be governed by the provisions of this [act] by filing an amendment to its certificate of
3231 trust under Section 202.]

3232 [(d) On [two years after the effective date of this [act]], this [act] governs the
3233 organization and internal affairs of all trusts created pursuant to a statute of this state that was
3234 required by that statute to file a certificate of trust with the [Secretary of State] before the
3235 effective date of this [act].]

3236 **SECTION 1006. REPEALS.** [On [all-inclusive date], the] [The] following are
3237 repealed:

3238 (1) [the state Statutory Trust Act as amended and in effect immediately before [the
3239 effective date of this [act]]];

3240 (2) [the state Business Trust Act as amended and in effect immediately before [the
3241 effective date of this [act]]]; and

3242 (3) [the state Real Estate Investment Trust Act as amended and in effect immediately
3243 before [the effective date of this [act]]].

3244 **SECTION 1007. EFFECTIVE DATE.** This [act] takes effect