

MEMORANDUM

TO: ABA and NCCUSL Drafting Committees for the
Model Entity Transactions Act

FROM: Ann Conaway Anker
William H. Clark, Jr.

DATE: February 2, 2004

RE: Draft for February 12-15, 2004 Meeting

Accompanying this memorandum is a draft of the proposed Model Entity Transactions Act which we will be discussing at our upcoming meeting in Chicago on February 12-15, 2004. The following comments will provide some background as you review this draft:

1. We started with the last draft of UEnTA as it was revised by the NCCUSL Style Committee and then generalized it to include corporations.
2. There are a number of policy decisions reflected in the text that have not yet been formally considered by our drafting committees. Around the middle of last November, a number of us involved in this project had the opportunity to get together for an informal meeting to discuss how META should be drafted. There was general consensus at that meeting on a number of issues, and we have reflected those informal decisions in this draft. One important purpose of the upcoming Chicago meeting is to review those decisions and endorse or modify them as appropriate.
3. The text of Article 3 in this draft varies somewhat from the previous draft of Article 3 in UEnTA. The Corporate Laws Committee is considering adding provisions on divisions to the Model Business Corporation Act, and Article 3 in this draft largely follows the approach taken in the most recent draft of the MBCA division provisions. While the provisions of Article 3 are clearly different in some respects from the previous text of Article 3 in UEnTA, you should find the provisions in this draft to be an evolutionary refinement of what was proposed in UEnTA.
4. Article 7 has been added from MITA and is a series of conforming changes to the various model, prototype and uniform entity laws. We don't propose to discuss Article 7 in detail at this meeting because the final conforming amendments to those organic laws will be affected by policy decisions in META. We expect that review of Article 7 will be a major topic of our meeting in March in Washington, D.C.

5. The comments in this draft are obviously incomplete. We do not propose to discuss the comments at the Chicago meeting, other than to note issues that it will be useful to clarify or discuss in future drafts of the comments. However, you may find the comments to the definitions in section 102 to be helpful.
6. We have not provided a copy of this draft that has been marked against either UEnTA or MITA because the marked copies we prepared were more confusing than helpful.

We propose to begin the discussion in Chicago with the definitions in section 102 and then move straight through Articles 1, 2 and 3. Since Articles 4, 5 and 6 follow closely many of the provisions of Article 2, if we make it all the way through Article 3 we will have accomplished a great deal. If time permits, we will also look at those provisions of Articles 4, 5 and 6 that differ substantively from Article 2. Article 7, as well as a fuller draft of the comments, will then be the topic for the following meeting in Washington, D.C. As you review Articles 1 through 3, pay particular attention to the following provisions:

- the definitions in section 102 of the following terms:
 - “approve”
 - “interest” and the related terms “governance interest” and “transferable interest”
 - “organic law” and “regulatory law”
 - “type of entity”
- section 103, particularly subsection (f) with regard to the effect of META on existing antitakeover provisions
- section 104 with regard to regulatory approval of transactions and the effect of transactions involving nonprofit entities
- section 108 with regard to appraisal rights
- section 201(c) which attempts to tie META to the existing merger provisions of other organic laws [and similarly section 301(d) with respect to divisions]
- section 203 with regard to approval of a merger by a domestic entity [and similarly section 303 with respect to divisions]
- sections 306 and 307 with respect to the effects of a division

We look forward to seeing you in Chicago.

A.C.A.
W.H.C., Jr.