

MEMORANDUM

TO: Series Drafting Committee

FROM: Steve Frost
Dan Kleinberger

DATE: March 15, 2016

RE: Agenda for this weekend

Hello everyone! We look forward to seeing you this weekend. We wanted to share a few items with you before the meeting.

a) We would like to ask everyone to keep track separately of matters that relate to style, including typos, and the like. Please send your lists to us (either before or shortly after our meeting), and we will work through them after the meeting. We want to focus this weekend on the remaining substantive points we have to resolve.

b) Before listing the open substantive points we have identified (and there will be more), let us mention that we are trying to arrange for a group dinner on Saturday night at a new Argentinian steak restaurant near our hotel. I have eaten there before, and the food is wonderful. If you are otherwise making dinner plans this weekend, please consider leaving Saturday open for a group dinner.

c) We intend to simply turn pages and address open points as they arise. Our preliminary list of issues includes the following items (in the order we expect them to be presented):

1. Should we define the term “associated” with reference to the series limited liability company?
2. Whether we make “associated” a defined term or retain the current approach, *see* Section 302(e), we need to think through the consequences of describing the limited liability company as being associated. Presumably it is not actually a member of itself, but what other unintended consequences might follow (which we would want to anticipate and rule out)?
3. We need to review the definition of “asset”. The definition was developed in consultation with Jay Adkisson, Ed Smith, and Norm Powell.
4. Should we delete the definition of “person” and rely on the term as defined in the LLC statute, but draft a trailing amendment to define person to include protected series? (Dan and I agree we should.)
5. Should “series transferee” still be defined to exclude an associated member and the series?

6. Does an associated member or the associated company, which later gets someone else's transferable interest, subsequently "wear two hats" and hold the later acquired interest as a bare naked series transferee or does it fold into its existing interest? This is the practical question that follows from the definitional question.
7. We have inserted a definition for "non-associated property." Should we retain that term or simply refer to "property that is not associated" and delete the defined term?
8. Do we need an extrapolation provision pertaining to limitations on the power of an LLC – e.g., limits on distributions?
9. We need to discuss Sections 106 and 107 generally to see if people are comfortable with the operation.
 - a. Is Section 302(d) waivable and, if so, only if it provides for a series manager or dissolution of the series?
10. Section 202 questions
 - a. We need to add designator language (this is just an FYI)
 - b. Should bracketed alternatives be retained as alternatives or should one of the alternatives be selected?
11. Section 301(b)(1) – should the skills and knowledge of an ordinary business person prong be deleted?
12. Section 301(b)(3) – should we create parallel requirements for transferring an asset to another protected series or the company?
13. Should we delete 301(d) ?
 - a. No consequences are specified.
 - b. Once a protected series no longer has an interest in an asset, it can no longer claim that the asset is associated property.
 - c. If Section 301(b)(3) is amended as noted in #11, we would need to make a rule for preserving the record. Perhaps all records of internal transfers should be kept by the series limited liability company.
14. Section 401 – should "lack of formalities not grounds for piercing" apply? – fn. 30
15. Footnote 37 – list all possible defendants?