

MEMORANDUM

June 8, 2015

To: Uniform Law Conference

FROM: Steve Frost
Dan Kleinberger

Re: ISSUES LIST FOR SERIES OF UNINCORPORATED BUSINESS ENTITIES

In preparing the current draft of the Series of Unincorporated Business Entities Act, we have considered (and are continuing to reconsider) a number of issues. A listing of certain of these issues (organized by general topic), together with the current approach to address the issue is as follows. Also, a number of issues are listed and discussed in the prefatory note to the draft of the Act prepared for the 2015 Annual Meeting.

	Issue	Resolution
	Overall Transparency	
1.	Significant additions to the Act (which are summarized to some extent below) add transparency and recordkeeping requirements to resolve concerns about shell games raised at the 2014 Annual Meeting. Are there other provisions that should be added?	We need to focus further on any additions necessary to protect the interests of creditors, especially involuntary creditors. Additional matters that require further consideration are listed in items 2 and 3.
2.	Should the Act apply its recordkeeping requirements to titled property owned by a series organization subject to different titling requirements in another jurisdictions?	Under consideration.
3.	How should we address a foreign protected series whose governing law provides for less transparency than under the Act?	Under consideration.
	Preliminary Structural Issues	

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1.	Given the variety of unincorporated entities and multiple acts for each entity, what form should the act take?	Because of concerns expressed at the 2014 annual meeting, our act does not incorporate by reference specific provisions of other statutes. Instead, the act comprises principally provisions specific to protected series plus a general extrapolation provision, which, as a default rule, applies to each protected series the <i>inter se</i> in effect for the series organization.
2.	Should the act be limited to LLCs?	Prior to our last drafting session, we discovered that Delaware, which is the only state that permits limited partnerships to have series, only has about 10 limited partnerships that have indicated they may establish series. In contrast, we know that Illinois, for example, has over 24,000 active series that have been established by Illinois LLCs. We are still considering limiting application of the act to LLCs.
3.	How do we draft an act that may be adopted by states that have not adopted Uniform Acts, e.g., the Uniform LLC Act?	To maximize enactability, we are going to draft our Act with language that applies regardless of whether a jurisdiction has enacted some version of the Uniform LLC Act. We will include an appendix with a version of the Act that would apply the concepts in the Harmonized LLC Act.
	Establishing the Series	
1.	Is a public filing required to establish a protected series?	While most current statutes do not require a filing to establish a series, we believe the public should receive notice. Also, requiring a filing to establish the series clarifies results for UCC purposes and, possibly, for bankruptcy purposes.
2.	Does the Act specifically address whether a protected series is a separate legal entity?	No. A feature of the Act is that for those persons who do not want the series to be a separate legal entity, they may take that position. However, we do provide that the

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		series is a separate person and describe certain of the consequences of this characterization.
3.	Why does the act refer to a “protected series?”	Because many entity statutes (incorporated and unincorporated business statutes) permit classes and series of interests, but these series do not establish liability shields, we distinguish the Act’s very different type of series by identifying them as “protected series.”
4.	Are there any requirements for the name of a protected series?	The name of a protected series must include an identifier, such as “Protected Series” and must begin with the name of the series organization, thus allowing third parties to identify the relationship and note the limitation on liability that may apply when dealing with the series organization and its protected series.
5.	What powers does a protected series have?	A protected series has all powers of the series organization other than the power to: (i) establish other series, (ii) participate in certain mergers or (iii) continue after the series organization has completed its winding up. The committee is still considering whether to permit a protected series to participate in any form of merger.
6.	What is the relationship of the agreement for the series organization to a protected series?	The agreement for the series organization generally applies to the series, except as otherwise provided in that agreement.
7.	Must an annual report be filed and what information must be included in the report?	If the series organization must file a report with the state, the report must include the names of all protected series of the series organization.
8.	Who acts as registered agent for a protected series?	The registered agent for the series organization is also the agent for each protected series of the organization, and the filing to establish the series constitutes an

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		affirmation that the series organization has made an appropriate arrangement with the registered agent.
	Management	
1.	How is a protected series governed/managed?	As a default rule, a protected series is managed by the series organization.
2.	What are the duties of managers or members associated with a protected series, particularly of if the series organization is the manager?	We are attempting to define the obligations of the managers and, if applicable, the series organization in these circumstances to address an inherent conflict. A manager of a protected series does not owe duties to the series organization or other protected series or associated owners. In addition, the act provides a safe harbor when a series organization makes a decision that might benefit itself or one of its protected series over another protected series.

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	Rights with regard to a Protected Series	
1.	What rights are associated with a protected series and who can own those rights?	Both economic and management rights are associated with a protected series. A person with both sets of rights is said to be “associated” with the protected series. Only owners of the series organization or the organization itself may be associated with a protected series. As a default rule, economic rights are transferable, including to non-owners.
2.	When is a person associated with a protected series?	When under the agreement the person (owner or the series organization) is identified as being associated with the protected series and the person’s economic interest is identified.
	Property	
1.	When is property of a protected series (and the series organization) shielded from claims of creditors of other protected series or the series organization?	Property of a protected series is shielded (except from the claims of its creditors) if the property is associated with the protected series. Property of the series organization is shielded from liabilities of its protected series if the property is associated with the series organization.
2.	How is property associated with a series?	Property is associated with a protected series if the series organization has created and maintains a record that identifies the series and identifies the property and distinguishes the property from property owned by the series organization or other series. The standard of proof is that a reasonable person with no interest in the series must be able to identify the property as being separate from property of the series organization and other series. Titled property must be titled appropriately and associated with the series. We have adopted

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		a rule that the burden of proving association is on the person asserting association.
3.	What are the rights of creditors?	For the property of a protected series to be shielded from the claims of creditors of the series organization or other protected series, the property must be associated at the time the liability arose or the property must not have been owned at such time for the shield to apply. We clarify that the series may not associate property after the claim arose and limit rights of creditors.
	Dissolution/Termination	
1.	How does a protected series dissolve/terminate?	We have addressed an ambiguity in existing statutes that provide a protected series dissolves and must wind up when the series organization dissolves. A series organization may not complete its winding up process and terminate unless all of its protected series have wound up and terminated.