

Meeting of the
Unincorporated Organization Acts Committee
May 24, 2021
(sixth meeting)

Agenda

draft – 5-10-21-dsk

1. Administrative matters [5 minutes]
2. Committee presentation for “June Informational Sessions” [10 minutes]
 - a. explain the purpose and (brief) history of the June Informational Sessions
 - b. discuss topics under consideration for presentation
3. Unfinished business
 - a. Issue – Definition of Partnership and Status of Partnership Property When Next-to-Last Partner Dissociates; and Dissolution Avoidance When Partnership Has No Remaining Partners: UPA (2013) §§ 102(11); 302(d); 801(6) and (7)¹ [15 minutes]
 - b. Issue – Addressing the Overbreadth Problem -- Retroactive Shield for Already Incurred, Non-LLP Obligations (and associated changes re: dissolution notices) [Sections 807, 808, and 810] [40 minutes]
 - c. Issue – Merger Provisions in UPSA – Decision to be Made:² [50 minutes]
 - i. Regarding UPSA § 602 (protected series may not be party to entity transaction), does the “narrow channel”³ remain entirely in place?
 - A. if the narrow channel does *not* remain entirely in place, should the committee
 - retain the narrow channel, except extend the current merger channel to conversions and domestications;⁴
 - retain the narrow channel, except allow a protected series to be a party to a merger (both as the surviving entity and as a disappearing entity) [the Leigh Griffith “Devoutly to be Wished” Approach]; or
 - retain the narrow channel, except:
 - extend the current merger channel to conversions and domestications; and
 - allow a protected series to be a party to a merger (both as the surviving entity and as a disappearing entity)
 - B. regardless of the extent (if any) to which the narrow channel is expanded:

¹ The issue of “no remaining partners” is new. As will be seen in the materials for the May 24, 2021 (sixth) meeting, the reporter has proposed a new § 801(7), which is based on an analogous provision from ULLCA (2013).

² Once the committee has made the decisions, the reporter will prepare language.

³ UPSA comments use “narrow channel” as shorthand for two related decisions: (i) prohibiting protected series and series limited liability companies from being involved in almost every type of organic transaction; while (ii) allowing participation in a very narrow range of mergers. As explained in the comments:

The Drafting Committee decided to move slowly in this area [of entity transactions] and to provide a very narrow channel for entity transactions involving protected series. As its first step in creating the narrow channel, the Committee rejected allowing a protected series itself to be a party to any entity transaction.... In service of the “narrow channel”...., [UPSA also] precludes a participation of a series limited liability company in an entity transaction except as is strictly delineated [by the act].

UPSA §§ 602, cmt; 603, cmt.

⁴ An interest exchange has a very different “substantive effect” than a merger, conversion, or domestication. Expanding the “narrow channel” to include interest exchanges would raise additional issues both of policy and drafting.

- does the two-prong approach to delineating the ban remain in place
 - *if two-prong approach does remain in place, confirm:*
 - ~ “same substantive effect” [instead of “substantially similar”]
 - ~ functional approach in comments only [as part of explanation of “same substantive effect”]
 - *if two-prong approach does not remain in place:*
confirm “however designated”
- ii. Regarding UPSA § 603 (restriction on entity transaction involving protected series) – technical changes to be made:
 - A. correct the caption to focus on the series LLCs
SECTION 603. RESTRICTION ON ENTITY TRANSACTION INVOLVING ~~PROTECTED~~SERIES LIMITED LIABILITY COMPANY. A series limited liability company may not be:
 - B. harmonize the language of Section 603 with the revisions to Section 602.