

MODEL ENTITY TRANSACTIONS ACT (2007)

- Comparison draft showing changes from AM 2011 binder draft (clean, stripped, and resequenced) to the latest version of the draft final act

1 **~~HARMONIZED~~ MODEL ENTITY TRANSACTIONS ACT (2007)**
2 **(Last Amended 2011)**

3
4 [ARTICLE] 1

5 GENERAL PROVISIONS

6 SECTION 101. SHORT TITLE. This [act] may be cited as the Model Entity
7 Transactions Act. ~~([year of enactment]).~~

8 SECTION 102. DEFINITIONS. In this [act]:

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

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

13 (3) “Approve” means, in the case of an entity, for its governors and interest holders to
14 take whatever steps are necessary under the entity’s organic rules, organic law, and other law to:

15 (A) propose a transaction subject to this [act];

16 (B) adopt and approve the terms and conditions of the transaction; and

17 (C) conduct any required proceedings or otherwise obtain any required votes or
18 consents of the governors or interest holders.

19 ~~——(4) “Business corporation” means a corporation whose internal affairs are governed by~~
20 ~~[the Model Business Corporation Act].~~

21 ~~——(5)(4) “Conversion” means a transaction authorized by [Article] 4.~~

22 ~~——(6)(5) “Converted entity” means the converting entity as it continues in existence~~
23 ~~after a conversion.~~

24 ~~——(7)(6) “Converting entity” means the domestic entity that approves a plan of~~

1 conversion pursuant to Section 403 or the foreign entity that approves a conversion pursuant to
2 the law of its jurisdiction of formation.

3 ~~(8)(7)~~ “Distributional interest” means the right under an unincorporated entity’s
4 organic law and organic rules to receive distributions from the entity.

5 ~~(9)(8)~~ “Domestic ~~”;~~” with respect to an entity, means governed as to its internal
6 affairs by the law of this state.

7 ~~(10)(9)~~ “Domesticated entity” means the domesticating entity as it continues in
8 existence after a domestication.

9 ~~(11)(10)~~ “Domesticating entity” means the domestic entity that approves a plan
10 of domestication pursuant to Section 503 or the foreign entity that approves a domestication
11 pursuant to the law of its jurisdiction of formation.

12 ~~(12)(11)~~ “Domestication” means a transaction authorized by [Article] 5.

13 ~~(13)(12)~~ “Entity~~”;~~”:

14 (A) means:

15 (i) a business corporation;

16 (ii) a nonprofit corporation;

17 (iii) a general partnership, including a limited liability partnership;

18 (iv) a limited partnership, including a limited liability limited partnership;

19 (v) a limited liability company;

20 [(vi) a general cooperative association;]

21 (vii) a limited cooperative association;

22 (viii) an unincorporated nonprofit association;

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

- 1 (x) any other person that has:
- 2 (I) a legal existence separate from any interest holder of that
- 3 person; or
- 4 (II) the power to acquire an interest in real property in its own
- 5 name; and
- 6 (B) does not include:
- 7 (i) an individual;
- 8 (ii) a ~~testamentary or inter vivos~~ trust with a predominately donative
- 9 purpose or a charitable trust;
- 10 (iii) an association or relationship that is not listed in paragraph (a) and is
- 11 not a partnership solely by reason of under the rules stated in [Section 202(c) of the ~~Revised~~
- 12 ~~Uniform Partnership Act (1997) (Last Amended 2011)~~ [Section 7 of the Uniform Partnership
- 13 ~~Act (1914)~~] or a similar provision of the law of another jurisdiction;
- 14 (iv) a decedent’s estate; ~~or~~
- 15 (v) a government or a governmental subdivision, agency, or
- 16 instrumentality ~~or~~
- 17 ~~[(vi) a person excluded under Section 110].~~

18 ~~(14)(13)~~ “Filing entity” means an entity whose formation requires the filing of a

19 public organic record. The term does not include a limited liability partnership.

20 ~~(15)(14)~~ “Foreign”, with respect to an entity, means an entity governed as to its

21 internal affairs by the law of a jurisdiction other than this state.

22 ~~(16)(15)~~ “Governance interest” means a right under the organic law or organic

23 rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

1 (A) receive or demand access to information concerning, or the books and
2 records of, the entity;

3 (B) vote for or consent to the election of the governors of the entity; or

4 (C) receive notice of or vote on or consent to an issue involving the internal
5 affairs of the entity.

6 ~~(17)~~(16) “Governor” means:

7 (A) a director of a business corporation;

8 (B) a director or trustee of a nonprofit corporation;

9 (C) a general partner of a general partnership;

10 (D) a general partner of a limited partnership;

11 (E) a manager of a manager-managed limited liability company;

12 (F) a member of a member-managed limited liability company;

13 [(G) a director of a general cooperative association;]

14 (H) a director of a limited cooperative association;

15 (I) a manager of an unincorporated nonprofit association;

16 (J) a trustee of a statutory trust, business trust, or common-law business trust; or

17 (K) any other person ~~by or~~ under whose authority the powers of an entity are

18 exercised and under whose direction the activities and affairs of the entity are managed pursuant
19 to the organic law and organic rules of the entity.

20 ~~(18)~~(17) “Interest” means:

21 (A) a share in a business corporation;

22 (B) a membership in a nonprofit corporation;

23 (C) a partnership interest in a general partnership;

- 1 (D) a partnership interest in a limited partnership;
- 2 (E) a membership interest in a limited liability company;
- 3 [(F) a share in a general cooperative association;]
- 4 (G) a member’s interest in a limited cooperative association;
- 5 (H) a membership in an unincorporated nonprofit association;
- 6 (I) a beneficial interest in a statutory trust, business trust, or common-law
- 7 business trust; or
- 8 (J) a governance interest or distributional interest in any other type of
- 9 unincorporated entity.

10 ~~(19)(18)~~ “Interest exchange” means a transaction authorized by [Article] 3.

11 ~~(20)(19)~~ “Interest holder” means:

- 12 (A) a shareholder of a business corporation;
- 13 (B) a member of a nonprofit corporation;
- 14 (C) a general partner of a general partnership;
- 15 (D) a general partner of a limited partnership;
- 16 (E) a limited partner of a limited partnership;
- 17 (F) a member of a limited liability company;
- 18 [(G) a shareholder of a general cooperative association;]
- 19 (H) a member of a limited cooperative association;
- 20 (I) a member of an unincorporated nonprofit association;
- 21 (J) a beneficiary or beneficial owner of a statutory trust, business trust, or
- 22 common-law business trust; or
- 23 (K) any other direct holder of an interest.

1 ~~_____~~ ~~(21)(20)~~ “Interest holder liability” means:

2 (A) personal liability for a liability of an entity ~~that~~which is imposed on a person:

3 (i) solely by reason of the status of the person as an interest holder; or

4 (ii) by the organic rules of the entity which make one or more specified
5 interest holders or categories of interest holders liable in their capacity as interest holders for all
6 or specified liabilities of the entity; or

7 (B) an obligation of an interest holder under the organic rules of an entity to
8 contribute to the entity.

9 ~~_____~~ ~~(22)(21)~~ “Jurisdiction”, used to refer to a political entity, means the United States,
10 a state, a foreign country, or a political subdivision of a foreign country.

11 ~~_____~~ ~~(23)(22)~~ “Jurisdiction of formation” means the jurisdiction whose law includes
12 the organic law of an entity.

13 ~~_____~~ ~~(24)(23)~~ “Merger” means a transaction in which two or more merging
14 entities are combined into a surviving entity pursuant to a record filed by the [Secretary of State].

15 ~~_____~~ ~~(25)(24)~~ “Merging entity” means an entity that is a party to a merger and exists
16 immediately before the merger becomes effective.

17 ~~_____~~ ~~(26)~~ ~~“Nonprofit corporation” means a corporation whose internal affairs are governed~~
18 ~~by [the Model Nonprofit Corporation Act].~~

19 ~~_____~~ ~~(27)(25)~~ “Organic law” means the law of an entity’s jurisdiction of formation
20 governing the internal affairs of the entity.

21 ~~_____~~ ~~(28)(26)~~ “Organic rules” means the public organic record and private organic
22 rules of an entity.

23 ~~_____~~ ~~(29)(27)~~ “Person” means an individual, business corporation, nonprofit

1 corporation, partnership, limited partnership, limited liability company, [general cooperative
2 association,] limited cooperative association, unincorporated nonprofit association, statutory
3 trust, business trust, common-law business trust, estate, trust, association, joint venture, public
4 corporation, government or governmental subdivision, agency, or instrumentality, or any other
5 legal or commercial entity.

6 ~~(30)(28)~~ “Plan” means a plan of merger, plan of interest exchange, plan of
7 conversion, or plan of domestication.

8 ~~(3129)~~ “Plan of conversion” means a plan under Section 402.

9 ~~(3230)~~ “Plan of domestication” means a plan under Section 502.

10 ~~(3331)~~ “Plan of interest exchange” means a plan under Section 302.

11 ~~(3432)~~ “Plan of merger” means a plan under Section 202.

12 ~~(35)(33)~~ “Private organic rules” means the rules, whether or not in a record, that
13 govern the internal affairs of an entity, are binding on all of its interest holders, and are not part
14 of its public organic record, if any. The term includes:

15 (A) the bylaws of a business corporation;

16 (B) the bylaws of a nonprofit corporation;

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

18 (D) the partnership agreement of a limited partnership;

19 (E) the operating agreement of a limited liability company;

20 [(F) the bylaws of a general cooperative association;]

21 (G) the bylaws of a limited cooperative association;

22 (H) the governing principles of an unincorporated nonprofit association; and

23 (I) the trust instrument of a statutory trust or similar rules of a business trust or

1 common-law business trust.

2 ~~(36(34))~~ “Property” means all property, whether real, personal, or mixed or
3 tangible or intangible, or any right or interest therein.

4 ~~(37(35))~~ “Protected agreement” means:

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

7 (B) an agreement that is binding on an entity on [the effective date of this [act]];

8 (C) the organic rules of an entity in effect on [the effective date of this [act]]; or

9 (D) an agreement that is binding on any of the governors or interest holders of an
10 entity on [the effective date of this [act]].

11 ~~(38(36))~~ “Public organic record” means the record the filing of which by the
12 [Secretary of State] is required to form an entity and any amendment to or restatement of that
13 record. The term includes:

14 (A) the articles of incorporation of a business corporation;

15 (B) the articles of incorporation of a nonprofit corporation;

16 (C) the certificate of limited partnership of a limited partnership;

17 (D) the certificate of organization of a limited liability company;

18 [(E) the articles of incorporation of a general cooperative association;]

19 (F) the articles of organization of a limited cooperative association; and

20 (G) the certificate of trust of a statutory trust or similar record of a business trust.

21 ~~(39(37))~~ “Record²”, used as a noun, means information that is inscribed
22 on a tangible medium or that is stored in an electronic or other medium and is retrievable in
23 perceivable form.

1 ~~(40)~~(38) “Registered foreign entity” means a foreign entity that is registered to do
2 business in this state pursuant to a record filed by the [Secretary of State].

3 ~~(41)~~(39) “Sign” means, with present intent to authenticate or adopt a record:

4 (A) to execute or adopt a tangible symbol; or

5 (B) to attach to or logically associate with the record an electronic symbol,
6 sound, or process.

7 ~~(42)~~(40) “State” means a state of the United States, the District of Columbia,
8 Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the
9 jurisdiction of the United States.

10 ~~(43)~~(41) “Statement of conversion” means a statement under Section 405.

11 ~~(44)~~(42) “Statement of domestication” means a statement under Section 505.

12 ~~(45)~~(43) “Statement of interest exchange” means a statement under Section 305.

13 ~~(46)~~(44) “Statement of merger” means a statement under Section 205.

14 ~~(47)~~(45) “Surviving entity” means the entity that continues in existence after or is
15 created by a merger under [Article] 2.

16 ~~(48)~~(46) “Transfer” includes:

17 (A) an assignment;

18 (B) a conveyance;

19 (C) a sale;

20 (D) a lease;

21 (E) an encumbrance, including a mortgage or security interest;

22 (F) a gift; and

23 (G) a transfer by operation of law.

1 ~~(49(47))~~ “Type of entity” means a generic form of entity:

2 (A) recognized at common law; or

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

5 **SECTION 103. RELATIONSHIP OF [ACT] TO OTHER LAWS.**

6 (a) Unless displaced by particular provisions of this [act], the principles of law and
7 equity supplement this [act].

8 (b) This [act] does not authorize an act prohibited by, and does not affect the application
9 or requirements of, law other than this [act].

10 (c) A transaction effected under this [act] may not create or impair any right or
11 obligation on the part of a person under a provision of the law of this state other than this [act]
12 relating to a change in control, takeover, business combination, control-share acquisition, or
13 similar transaction involving a domestic merging, acquired, converting, or domesticating
14 business corporation unless:

15 (1) if the corporation does not survive the transaction, the transaction satisfies
16 any requirements of the provision; or

17 (2) if the corporation survives the transaction, the approval of the plan is by a
18 vote of the shareholders or directors which would be sufficient to create or impair the right or
19 obligation directly under the provision.

20 **SECTION 104. REQUIRED NOTICE OR APPROVAL.**

21 (a) A domestic or foreign entity that is required to give notice to, or obtain the approval
22 of, a governmental agency or officer of this state to be a party to a merger must give the notice or
23 obtain the approval to be a party to an interest exchange, conversion, or domestication.

1 (b) Property held for a charitable purpose under the law of this state by a domestic or
2 foreign entity immediately before a transaction under this [act] becomes effective may not, as a
3 result of the transaction, be diverted from the objects for which it was donated, granted, devised,
4 or otherwise transferred unless, to the extent required by or pursuant to the law of this state
5 concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains
6 an appropriate order of [the appropriate court] [the Attorney General] specifying the disposition
7 of the property.

8 (c) A bequest, devise, gift, grant, or promise contained in a will or other instrument of
9 donation, subscription, or conveyance that is made to a merging entity that is not the surviving
10 entity and that takes effect or remains payable after the merger inures to the surviving entity. A
11 trust obligation that would govern property if transferred to the nonsurviving entity applies to
12 property that is transferred to the surviving entity under this section.

13 *Legislative Note: As an alternative to enacting subsection (a), a state may identify each of its*
14 *regulatory laws that requires prior approval for a merger of a regulated entity, decide whether*
15 *regulatory approval should be required for an interest exchange, conversion, or domestication,*
16 *and make amendments as appropriate to those laws.*

17
18 *As with subsection (a), an adopting state may choose to amend its various laws with*
19 *respect to the nondiversion of charitable property to cover the various transactions authorized*
20 *by this act as an alternative to enacting subsection (b).*

21
22 **SECTION 105. STATUS OF FILINGS.** A filing under this [act] signed by a domestic
23 entity becomes part of the public organic record of the entity if the entity’s organic law provides
24 that similar filings under that law become part of the public organic record of the entity.

25 **SECTION 106. NONEXCLUSIVITY.** The fact that a transaction under this [act]
26 produces a certain result does not preclude the same result from being accomplished in any other
27 manner permitted by law other than this [act].

28 **SECTION 107. REFERENCE TO EXTERNAL FACTS.** A plan may refer to facts

1 ascertainable outside the plan if the manner in which the facts will operate upon the plan is
2 specified in the plan. The facts may include the occurrence of an event or a determination or
3 action by a person, whether or not the event, determination, or action is within the control of a
4 party to the transaction.

5 **SECTION 108. ALTERNATIVE MEANS OF APPROVAL OF TRANSACTIONS.**

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

9 **SECTION 109. APPRAISAL RIGHTS.**

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

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

16 (2) the organic rules provide ~~such~~ a limit or for elimination.

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

20 (1) the entity's organic rules;

21 (2) the plan; or

22 (3) the case of a business corporation, by action of its governors.

23 (c) If an interest holder is entitled to contractual appraisal rights under subsection (b) and

1 the entity’s organic law does not provide procedures for the conduct of an appraisal rights
2 proceeding, [Chapter 13 of the Model Business Corporation Act] applies to the extent practicable
3 or as otherwise provided in the entity’s organic rules or the plan.

4 *Legislative Note: Section 109(a) preserves appraisal rights (sometimes referred to as*
5 *“dissenters’ rights”) granted by other laws. As an alternative to enacting subsection (a), a state*
6 *may amend the appraisal rights provisions of its organic laws to specify which transactions*
7 *under this act will give rise to appraisal rights. If that alternative approach is adopted,*
8 *subsections (b) and (c) should be designated as subsections (a) and (b).*

9
10 **[SECTION 110. EXCLUDED ENTITIES AND TRANSACTIONS.]**

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

12 (1)

13 (2).

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

15 (1)

16 (2).1

17 _____.]

18 *Legislative Note: Subsection (a) may be used by states that have special statutes restricted to*
19 *the organization of certain types of entities. A common example is banking statutes that prohibit*
20 *banks from engaging in transactions other than pursuant to those statutes.*

21
22 *Nonprofit entities may participate in transactions under this act with for-profit entities,*
23 *subject to compliance with Section 104(b). If a state desires, however, to exclude entities with a*
24 *charitable purpose or to exclude other types of entities from the scope of the act, that may be*
25 *done by referring to those entities in subsection (a).*

26
27 *More limited provisions that exclude certain types of domestic entities just from certain*
28 *provisions of this act are set forth in Sections 201(d) (mergers), 301(e) (interest exchanges),*
29 *401(d) (conversions), and 501(e) (domestications).*

30
31 *Subsection (b) may be used to exclude certain types of transactions governed by more*
32 *specific statutes. A common example is the conversion of an insurance company from mutual to*
33 *stock form. There may be other types of transactions that vary greatly among the states.*

34
35 **[ARTICLE] 2**

1 **MERGER**

2 **SECTION 201. MERGER AUTHORIZED.**

3 (a) Except as otherwise provided in this section, by complying with this [article]:

4 (1) one or more domestic entities may merge with one or more domestic or
5 foreign entities into a domestic or foreign surviving entity; and

6 (2) two or more foreign entities may merge into a domestic entity.

7 (b) Except as otherwise provided in this section, by complying with the provisions of
8 this [article] applicable to foreign entities, a foreign entity may be a party to a merger under this
9 [article] or may be the surviving entity in such a merger if the merger is authorized by the law of
10 the foreign entity’s jurisdiction of formation.

11 (c) This [article] does not apply to a transaction under:

12 (1) [Chapter 11 of the Model Business Corporation Act];

13 (2) [Chapter 11 of the Model Nonprofit Corporation Act];

14 (3) [Article 911 of the Uniform Partnership Act (1997) (Last Amended 2011)];

15 (4) [Article 11 of the Uniform Limited Partnership Act (2001)] (Last Amended
16 2011);

17 (5) [Article ~~7 of the Uniform Statutory Trust Entity Act~~];

18 ~~—————(6) [Article 10 of the Uniform Limited Liability Company Act (2006)] ~~or~~~~
19 (Last Amended 2011);

20 ~~—————(7) [Article 16 of the Uniform Limited Cooperative Association Act (2007)] ~~or~~~~
21 or (Last Amended 2011);

22 ~~—————(8) [Article 9 of the Uniform Statutory Trust Entity Act (2009)~~
23 (Last Amended 2011);

1 (8) [Section 29 of the Uniform Unincorporated Nonprofit Association Act (2008)
2 (Last Amended 2011)]; or

3 (9) Cite provisions of any other organic law that has merger provisions for entities
4 of the same type].

5 **Legislative Note:** The text of subsection (c) will depend on which choice a state makes with
6 respect to the scope of the act. Four options are outlined in paragraph 3 of the Legislative Note
7 following Section 605:

8
9 1. It is anticipated that most states will choose either option (a) or (d). If a state chooses
10 option (a), the state will retain all of the merger provisions for entities of the same type it
11 currently has in its organic laws and will repeal any merger provisions for entities of
12 different types in those laws. The end result will be that the merger provisions in the
13 organic laws will apply to mergers of entities of the same type and this act will apply to
14 mergers involving entities of more than one type or mergers of entities of the same type
15 where there are no existing merger provisions in an organic law. The format of
16 subsection (c) incorporates this option.

17
18 2. If a state chooses option (b), it will add merger provisions for entities of the same type
19 to all of its organic laws and the list of statutes in subsection (c) will simply need to be
20 conformed to the state's entity law scheme.

21
22 3. If a state chooses option (c), subsection (c) is not necessary because this act will
23 govern all mergers whether involving the same type of entity or different types of entities.

24
25 4. If a state chooses option (d), the list of statutes in subsection (c) will probably include
26 only the business and nonprofit corporation act merger provisions since under option (d)
27 this act will apply to mergers of unincorporated entities involving entities of the same
28 type, as well as mergers involving different types of entities.

29
30 **SECTION 202. PLAN OF MERGER.**

31 (a) A domestic entity may become a party to a merger under this [article] by approving a
32 plan of merger. The plan must be in a record and contain:

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

35 (2) if the surviving entity is to be created in the merger, a statement to that effect
36 and the entity's name, jurisdiction of formation, and type of entity;

1 ~~association, a merger requiring approval by a vote of the interest holders of the business~~
2 ~~corporation; transaction under this [article];~~ or
3 ~~_____ (B) if neither its organic law nor organic rules provide for approval of a~~
4 ~~merger described in subparagraph (A)(ii); _____ (B) by all of the interest holders of~~
5 the entity entitled to vote on or consent to any matter; if:
6 _____ (i) in the case of an entity that is not a business corporation or
7 limited cooperative association, neither its organic law nor organic rules provide for approval of
8 the merger; or
9 _____ (ii) in the case of an entity that is a limited cooperative association,
10 neither its organic law nor organic rules provide for approval of a transaction under this [article];
11 and
12 (2) in a record, by each interest holder of a domestic merging entity ~~that~~which
13 will have interest holder liability for debts, obligations, and other liabilities that arise after the
14 merger becomes effective, unless, in the case of an entity that is not a business corporation or
15 nonprofit corporation:
16 (A) the organic rules of the entity provide in a record for the approval of a
17 merger in which some or all of its interest holders become subject to interest holder liability by
18 the vote or consent of fewer than all the interest holders; and
19 (B) the interest holder consented in a record to or voted for that provision
20 of the organic rules or became an interest holder after the adoption of that provision.
21 (b) A merger under this [article] involving a foreign merging entity is not effective
22 unless the merger is approved by the foreign entity in accordance with the law of the foreign
23 entity's jurisdiction of formation.

1 **SECTION 204. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.**

2 (a) A plan of merger may be amended only with the consent of each party to the plan,
3 except as otherwise provided in the plan.

4 (b) A domestic merging entity may approve an amendment of a plan of merger:

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

7 (2) by the governors or interest holders of the entity in the manner provided in
8 the plan, but an interest holder that was entitled to vote on or consent to approval of the merger is
9 entitled to vote on or consent to any amendment of the plan that will change:

10 (A) the amount or kind of interests, securities, obligations, money, other
11 property, rights to acquire interests or securities, or any combination of the foregoing, to be
12 received by the interest holders of any party to the plan;

13 (B) the public organic record, if any, or private organic rules of the
14 surviving entity that will be in effect immediately after the merger becomes effective, except for
15 changes that do not require approval of the interest holders of the surviving entity under its
16 organic law or organic rules; or

17 (C) any other terms or conditions of the plan, if the change would
18 adversely affect the interest holder in any material respect.

19 (c) After a plan of merger has been approved and before a statement of merger becomes
20 effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a
21 domestic merging entity may abandon the plan in the same manner as the plan was approved.

22 (d) If a plan of merger is abandoned after a statement of merger has been delivered to the
23 [Secretary of State] for filing and before the statement ~~of merger~~ becomes effective, a statement

1 of abandonment, signed by a party to the plan, must be delivered to the [Secretary of State] for
2 filing before the statement of merger becomes effective. The statement of abandonment takes
3 effect ~~upon~~ filing, and the merger is abandoned and does not become effective. The statement
4 of abandonment must contain:

- 5 (1) the name of each party to the plan of merger;
- 6 (2) the date on which the statement of merger was ~~delivered to~~ filed by the
7 [Secretary of State] ~~for filing~~; and
- 8 (3) a statement that the merger has been abandoned in accordance with this
9 section.

10 **SECTION 205. STATEMENT OF MERGER; EFFECTIVE DATE.**

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

13 (b) A statement of merger must contain:

- 14 (1) the name, jurisdiction of formation, and type of entity of each merging entity
15 that is not the surviving entity;
- 16 (2) the name, jurisdiction of formation, and type of entity of the surviving entity;
- 17 (3) if the statement of merger is not to be effective upon filing, the later date and
18 time on which it will become effective, which may not be more than 90 days after the date of
19 filing;
- 20 (4) a statement that the merger was approved by each domestic merging entity, if
21 any, in accordance with this [article] and by each foreign merging entity, if any, in accordance
22 with the law of its jurisdiction of formation;
- 23 (5) if the surviving entity exists before the merger and is a domestic filing entity,

1 any amendment to its public organic record approved as part of the plan of merger;

2 (6) if the surviving entity is created by the merger and is a domestic filing entity,
3 its public organic record, as an attachment;

4 (7) if the surviving entity is created by the merger and is a domestic limited
5 liability partnership, its statement of qualification, as an attachment; and

6 (8) if the surviving entity is a foreign entity that is not a registered foreign entity,
7 a mailing address to which the [Secretary of State] may send any process served on the
8 [Secretary of State] pursuant to Section 206(e).

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

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

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

20 (f) A statement of merger becomes effective ~~upon~~ the date and time of filing or the
21 later date and time specified in the statement of merger. If the surviving entity is a domestic
22 entity, the merger becomes effective when the statement of merger is effective. If the surviving
23 entity is a foreign entity, the merger becomes effective as provided by the organic law of the

1 surviving entity.

2 **SECTION 206. EFFECT OF MERGER.**

3 (a) When a merger under this [article] becomes effective:

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

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

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

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

10 (5) except as otherwise provided by law or the plan of merger, all ~~of~~ the rights,
11 privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

12 (6) if the surviving entity exists before the merger:

13 (A) all its property continues to be vested in it without transfer, reversion,
14 or impairment;

15 (B) it remains subject to all its debts, obligations, and other liabilities; and

16 (C) all its rights, privileges, immunities, powers, and purposes continue to
17 be vested in it;

18 (7) the name of the surviving entity may be substituted for the name of any
19 merging entity that is a party to any pending action or proceeding;

20 (8) if the surviving entity exists before the merger:

21 (A) its public organic record, if any, is amended asto the extent provided
22 in the statement of merger; and

23 (B) its private organic rules that are to be in a record, if any, are amended

1 to the extent provided in the plan of merger;

2 (9) if the surviving entity is created by the merger:

3 ~~(A) its public organic record, if any, is effective; and~~

4 ~~(B), its private organic rules are effective and:~~

5 ~~_____ ; and~~

6 ~~(A) if it is a filing entity, its public organic record is effective; and~~

7 ~~(B) if it is a limited liability partnership, its statement of qualification is~~
8 ~~effective; and~~

9 (10) the interests in each merging entity which are to be converted in the merger
10 are converted, and the interest holders of those interests are entitled only to the rights provided to
11 them under the plan of merger and to any appraisal rights they have under Section 109 and the
12 merging entity's organic law.

13 (b) Except as otherwise provided in the organic law or organic rules of a merging entity,
14 a merger under this [article] does not give rise to any rights that an interest holder, governor, or
15 third party would ~~otherwise~~ have upon a dissolution, liquidation, or winding up of the merging
16 entity.

17 (c) When a merger under this [article] becomes effective, a person that did not have
18 interest holder liability with respect to any of the merging entities and ~~that~~ becomes subject to
19 interest holder liability with respect to a domestic entity as a result of ~~the~~ merger has interest
20 holder liability only to the extent provided by the organic law of that entity and only for those
21 debts, obligations, and other liabilities that arise after the merger becomes effective.

22 (d) When a merger becomes effective, the interest holder liability of a person that ceases
23 to hold an interest in a domestic merging entity with respect to which the person had interest

1 holder liability is as follows:

2 (1) The merger does not discharge any interest holder liability under the organic
3 law of the domestic merging entity to the extent the interest holder liability arose before the
4 merger became effective.

5 (2) The person does not have interest holder liability under the organic law of the
6 domestic merging entity for any debt, obligation, or other liability that arises after the merger
7 becomes effective.

8 (3) The organic law of the domestic merging entity continues to apply to the
9 release, collection, or discharge of any interest holder liability preserved under paragraph (1) as
10 if the merger had not occurred ~~and the surviving entity were the domestic merging entity.~~

11 (4) The person has whatever rights of contribution from any other person as are
12 provided by law other than this [act] or the organic rules of the domestic merging entity with
13 respect to any interest holder liability preserved under paragraph (1) as if the merger had not
14 occurred.

15 (e) When a merger under this [article] becomes effective, a foreign entity that is the
16 surviving entity may be served with process in this state for the collection and enforcement of
17 any debts, obligations, or other liabilities of a domestic merging entity in accordance with
18 applicable law.

19 (f) When a merger under this [article] becomes effective, the registration to do business
20 in this state of any foreign merging entity that is not the surviving entity is canceled.

21 **[ARTICLE] 3**

22 **INTEREST EXCHANGE**

23 **SECTION 301. INTEREST EXCHANGE AUTHORIZED.**

1 (a) Except as otherwise provided in this section, by complying with this [article]:

2 (1) a domestic entity may acquire all of one or more classes or series of interests
3 of another domestic entity or a foreign entity in exchange for interests, securities, obligations,
4 money, other property, rights to acquire interests or securities, ~~money, or other property~~, or any
5 combination of the foregoing; or

6 (2) all of one or more classes or series of interests of a domestic entity may be
7 acquired by another domestic entity or a foreign entity in exchange for interests, securities,
8 obligations, money, other property, rights to acquire interests or securities, or any combination of
9 the foregoing.

10 (b) Except as otherwise provided in this section, by complying with the provisions of
11 this [article] applicable to foreign entities, a foreign entity may be the acquiring or acquired
12 entity in an interest exchange under this [article] if the interest exchange is authorized by the law
13 of the foreign entity's jurisdiction of formation.

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

18 [(d) This [article] does not apply to a transaction under:

19 (1) [Chapter 11 of the Model Business Corporation Act]; or

20 (2).]

21 *Legislative Note: As pointed out in the Legislative Note following Section 605, the scope of this*
22 *article will depend on which of the four methods of dealing with the enacting state's existing*
23 *interest exchange statutes is chosen. A state might choose to limit any existing interest exchange*
24 *provisions to same-type transactions, for example interest exchanges where all of the entities are*
25 *corporations. Any interest exchange provisions added to entity statutes should similarly be*
26 *limited to same-type transactions. The net effect will be that the interest exchange provisions in*

1 the various entity statutes will govern same-type interest exchanges and Article 3 will govern
2 cross-type interest exchanges. In the event a state does not have any existing interest exchange
3 legislation and chooses not to add interest exchange provisions to any of its entity statutes, or
4 chooses to repeal its existing interest exchange statutes, Article 3 will govern and will cover both
5 same-type and cross-type interest exchanges.

6
7 **SECTION 302. PLAN OF INTEREST EXCHANGE.**

8 (a) A domestic entity may be the acquired entity in an interest exchange under this
9 [article] by approving a plan of interest exchange. The plan must be in a record and contain:

10 (1) the name and type of entity of the acquired entity;

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

12 (3) the manner of converting the interests in the acquired entity into interests,
13 securities, obligations, money, other property, rights to acquire interests or securities, or any
14 combination of the foregoing;

15 (4) any proposed amendments to ~~the public organic record, if any, or private~~
16 ~~organic rules that are, or are proposed to be, in a record of the acquired entity;~~

17 (A) the public organic record, if any, of the acquired entity; and

18 (B) the private organic rules of the acquired entity that are, or are
19 proposed to be, in a record;

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

21 (6) any other provision required by the law of this state or the organic rules of the
22 acquired entity.

23 (b) In addition to the requirements of subsection (a), a plan of interest exchange may
24 contain any other provision not prohibited by law.

25 **SECTION 303. APPROVAL OF INTEREST EXCHANGE.**

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

1 (1) by a domestic acquired entity:

2 (A) in accordance with the requirements, if any, in its organic law and
3 organic rules for approval of an interest exchange;

4 (B) except as otherwise provided in subsection (d), if neither its organic
5 law nor organic rules provide for approval of an interest exchange, in accordance with the
6 requirements, if any, in its organic law and organic rules for approval of:

7 (i) in the case of an entity that is not a business corporation, a
8 merger, as if the interest exchange were a merger; or

9 (ii) in the case of a business corporation, a merger requiring
10 approval by a vote of the interest holders of the business corporation, as if the interest exchange
11 were that type of merger; or

12 ~~(C) (iii) in the case of a limited cooperative association, a transaction~~
13 ~~under this [article]; or~~

14 ~~(C) by all of the interest holders of the entity entitled to vote on or~~
15 ~~consent to any matter if:~~

16 ~~(i) in the case of an entity that is not a business corporation or~~
17 ~~limited cooperative association, neither its organic law nor organic rules provide for approval of~~
18 ~~an interest exchange or a merger described in subparagraph (B); or~~

19 ~~(ii), by all of the interest holders of the entity entitled to vote on or~~
20 ~~consent to any matter;)~~ ~~in the case of a limited cooperative association, neither its organic law~~
21 ~~nor organic rules provide for approval of an interest exchange or a transaction under this~~
22 ~~[article]; and~~

23 (2) in a record, by each interest holder of a domestic acquired entity that will

1 have interest holder liability for debts, obligations, and other liabilities that arise after the interest
2 exchange becomes effective, unless, in the case of an entity that is not a business corporation or
3 nonprofit corporation:

4 (A) the organic rules of the entity provide in a record for the approval of
5 an interest exchange or a merger in which some or all of its interest holders become subject to
6 interest holder liability by the vote or consent of fewer than all the interest holders; and

7 (B) the interest holder consented in a record to or voted for that provision
8 of the organic rules or became an interest holder after the adoption of that provision.

9 (b) An interest exchange involving a foreign acquired entity is not effective unless it is
10 approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of
11 formation.

12 (c) Except as otherwise provided in its organic law or organic rules, the interest holders
13 of the acquiring entity are not required to approve the interest exchange.

14 (d) A provision of the organic law of a domestic acquired entity that would permit a
15 merger between the acquired entity and the acquiring entity to be approved without the vote or
16 consent of the interest holders of the acquired entity because of the percentage of interests in the
17 acquired entity held by the acquiring entity does not apply to approval of an interest exchange
18 under subsection (a)(1)(B).

19 **Legislative Note:** An issue that needs to be analyzed under this section is what approval
20 requirements apply to an interest exchange if there are no interest exchange provisions for
21 entities of the same type in the organic law for a particular type of entity. If an entity's organic
22 law, and also its organic rules, are silent on approving an interest exchange, subsection
23 (a)(1)(B) provides that the required approval is the approval required for a merger under the
24 entity's organic law. If the entity's organic law required a majority vote of the entity's interest
25 holders to approve a merger, the approval of an interest exchange if the entity is the acquired
26 entity would also require a majority vote of its interest holders. If the organic law, on the other
27 hand, required a unanimous vote of the entity's interest holders to approve a merger, a
28 unanimous vote would also be required to approve an interest exchange. As a result, differences

1 between entity laws on the vote required to approve a merger will be carried over into this act.
2 It is important, therefore, that states review any differences in the merger approval requirements
3 in their organic laws to determine if those differences are supported by appropriate policy
4 considerations.

5
6 If an entity's organic law does not provide for approval of either a merger or an interest
7 exchange, and if the entity's organic rules are also silent on approval of a merger or interest
8 exchange, then subsection (a)(1)(C) requires approval of an interest exchange by all of the
9 entity's interest holders. States should evaluate how that approval requirement compares to any
10 approval requirements it has adopted for mergers or interest exchanges in any of its other
11 organic laws.

12
13 This article permits the organic rules of an acquired entity to be amended in the context
14 of an interest exchange. The other articles in this act also permit the organic rules to be
15 amended in the contexts of the other types of transactions that may be accomplished under this
16 act. When states conduct the analysis described in this Legislative Note of what approval
17 requirement to adopt, they should also evaluate that question from the perspective of what
18 approval requirements they provide in their organic laws for amending the organic rules of each
19 type of entity.

20
21 The analysis described in this Legislative Note needs to be undertaken with respect to
22 Sections 403 and 503 as well.

23
24 See the Legislative Note following Section 605 for additional information about these
25 issues.

26
27 **SECTION 304. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST**

28 **EXCHANGE.**

29 (a) A plan of interest exchange may be amended only with the consent of each party to
30 the plan, except as otherwise provided in the plan.

31 (b) A domestic acquired entity may approve an amendment of a plan of interest
32 exchange:

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

35 (2) by the governors or interest holders of the entity in the manner provided in
36 the plan, but an interest holder that was entitled to vote on or consent to approval of the interest

1 exchange is entitled to vote on or consent to any amendment of the plan that will change:

2 (A) the amount or kind of interests, securities, obligations, money, other
3 property, rights to acquire interests or securities, or any combination of the foregoing, to be
4 received by any of the interest holders of the acquired entity under the plan;

5 (B) the public organic record, if any, or private organic rules of the
6 acquired entity that will be in effect immediately after the interest exchange becomes effective,
7 except for changes that do not require approval of the interest holders of the acquired entity
8 under its organic law or organic rules; or

9 (C) any other terms or conditions of the plan, if the change would
10 adversely affect the interest holder in any material respect.

11 (c) After a plan of interest exchange has been approved and before a statement of interest
12 exchange becomes effective, the plan may be abandoned as provided in the plan. Unless
13 prohibited by the plan, a domestic acquired entity may abandon the plan in the same manner as
14 the plan was approved.

15 (d) If a plan of interest exchange is abandoned after a statement of interest exchange has
16 been delivered to the [Secretary of State] for filing and before the ~~filing~~statement becomes
17 effective, a statement of abandonment, signed by the acquired entity, must be delivered to the
18 [Secretary of State] for filing before the statement of interest exchange becomes effective. The
19 statement of abandonment takes effect ~~upon~~on filing, and the interest exchange is abandoned and
20 does not become effective. The statement of abandonment must contain:

21 (1) the name of the acquired entity;

22 (2) the date on which the statement of interest exchange was ~~delivered to~~filed by
23 the [Secretary of State] ~~for filing;~~ and

1 (3) a statement that the interest exchange has been abandoned in accordance with
2 this section.

3 **SECTION 305. STATEMENT OF INTEREST EXCHANGE; EFFECTIVE**

4 **DATE.**

5 (a) A statement of interest exchange must be signed by a domestic acquired entity and
6 delivered to the [Secretary of State] for filing.

7 (b) A statement of interest exchange must contain:

8 (1) the name and type of entity of the acquired entity;

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

10 (3) if the statement of interest exchange is not to be effective upon filing, the
11 later date and time on which it will become effective, which may not be more than 90 days after
12 the date of filing;

13 (4) a statement that the plan of interest exchange was approved by the acquired
14 entity in accordance with this [article]; and

15 (5) any amendments to the acquired entity's public organic record, if any,
16 approved as part of the plan of interest exchange.

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

19 (d) A plan of interest exchange that is signed by a domestic acquired entity and meets all
20 the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead
21 of a statement of interest exchange and upon filing has the same effect. If a plan of interest
22 exchange is ~~delivered to the [Secretary of State] for filing~~filed as provided in this subsection,
23 references in this [act] to a statement of interest exchange refer to the plan of interest exchange

1 filed under this subsection.

2 (e) ~~A statement of~~An interest exchange becomes effective ~~upon~~on the date and time of
3 filing of the statement of interest exchange or the later date and time specified in the statement-~~of~~
4 ~~interest exchange~~.

5 **SECTION 306. EFFECT OF INTEREST EXCHANGE.:**

6 (a) When an interest exchange in which the acquired entity is a domestic entity becomes
7 effective:

8 (1) the interests in the domestic acquired entity ~~that~~which are the subject of the
9 interest exchange ~~cease to exist or~~ are converted-~~or exchanged~~, and the interest holders of those
10 interests are entitled only to the rights provided to them under the plan of interest exchange and
11 to any appraisal rights they have under Section 109 and the acquired entity's organic law;

12 (2) the acquiring entity becomes the interest holder of the interests in the
13 acquired entity stated in the plan of interest exchange to be acquired by the acquiring entity;

14 (3) the public organic record, if any, of the acquired entity is amended asto the
15 extent provided in the statement of interest exchange; and

16 (4) the private organic rules of the acquired entity that are to be in a record, if
17 any, are amended to the extent provided in the plan of interest exchange.:-

18 (b) Except as otherwise provided in the organic law or organic rules of the acquired
19 entity, the interest exchange does not give rise to any rights that an interest holder, governor, or
20 third party would ~~otherwise~~ have upon a dissolution, liquidation, or winding up of the acquired
21 entity.

22 (c) When an interest exchange becomes effective, a person that did not have interest
23 holder liability with respect to the acquired entity and ~~that~~ becomes subject to interest holder

1 liability with respect to a domestic entity as a result of the interest exchange has interest holder
2 liability only to the extent provided by the organic law of the entity and only for those debts,
3 obligations, and other liabilities that arise after the interest exchange becomes effective.

4 (d) When an interest exchange becomes effective, the interest holder liability of a person
5 that ceases to hold an interest in a domestic acquired entity with respect to which the person had
6 interest holder liability is as follows:

7 (1) The interest exchange does not discharge any interest holder liability under
8 the organic law of the domestic acquired entity to the extent the interest holder liability arose
9 before the interest exchange became effective.

10 (2) The person does not have interest holder liability under the organic law of the
11 domestic acquired entity for any debt, obligation, or other liability that arises after the interest
12 exchange becomes effective.

13 (3) The organic law of the domestic acquired entity continues to apply to the
14 release, collection, or discharge of any interest holder liability preserved under paragraph (1) as
15 if the interest exchange had not occurred.

16 (4) The person has whatever rights of contribution from any other person as are
17 provided by law other than this [act] or the organic law or organic rules of the domestic acquired
18 entity with respect to any interest holder liability preserved under paragraph (1) as if the interest
19 exchange had not occurred.

20 **[ARTICLE] 4**

21 **CONVERSION**

22 **SECTION 401. CONVERSION AUTHORIZED.**

23 (a) By complying with this [article], a domestic entity may become:

- 1 (1) a domestic entity that is a different type of entity; or
2 (2) a foreign entity that is a different type of entity, if the conversion is authorized
3 by the law of the foreign jurisdiction.

4 (b) By complying with the provisions of this [article] applicable to foreign entities, a
5 foreign entity may become a domestic entity ~~of that is~~ a different type of entity if the conversion
6 is authorized by the law of the foreign entity's jurisdiction of formation.

7 (c) If a protected agreement contains a provision that applies to a merger of a domestic
8 entity but does not refer to a conversion, the provision applies to a conversion of the entity as if
9 the conversion were a merger until the provision is amended after [the effective date of this
10 [act]].

11 *Legislative Note: Many states have existing provisions in their corporation and unincorporated*
12 *entity statutes that allow conversions. These statutes, however, vary greatly. A few allow*
13 *conversion of one type of entity into any other type of entity. Most, however, allow only limited*
14 *types of conversions, e.g., general partnerships to limited partnerships (and limited partnerships*
15 *to general partnerships) but not to all other types of entities. If a state has conversion*
16 *provisions, the recommended course of action is to repeal all those statutes. See the Legislative*
17 *Note following Section 605.. The net effect will be that this act will apply to all conversions.*
18 *Leaving the existing conversion provisions in place will create confusion for practitioners*
19 *because in some cases there will be two applicable conversion statutes, the existing conversion*
20 *statute and Article 4 of this act, but in other situations only Article 4 of this act will apply.*

21
22 **SECTION 402. PLAN OF CONVERSION.**

23 (a) A domestic entity may convert to a different type of entity under this [article] by
24 approving a plan of conversion. The plan must be in a record and contain:

- 25 (1) the name and type of entity of the converting entity;
26 (2) the name, jurisdiction of formation, and type of entity of the converted entity;
27 (3) the manner of converting the interests in the converting entity into interests,
28 securities, obligations, money, other property, rights to acquire interests or securities, or any
29 combination of the foregoing;

1 (4) the proposed public organic record of the converted entity if it will be a filing
2 entity;

3 (5) the full text of the private organic rules of the converted entity ~~that~~which are
4 proposed to be in a record;

5 (6) the other terms and conditions of the conversion; and

6 (7) any other provision required by the law of this state or the organic rules of the
7 converting entity.

8 (b) In addition to the requirements of subsection (a), a plan of conversion may contain
9 any other provision not prohibited by law.

10 **SECTION 403. APPROVAL OF CONVERSION.**

11 (a) A plan of conversion is not effective unless it has been approved:

12 (1) by a domestic converting entity:

13 (A) in accordance with the requirements, if any, in its organic rules for
14 approval of a conversion;

15 (B) if its organic rules do not provide for approval of a conversion, in
16 accordance with the requirements, if any, in its organic law and organic rules for approval of:

17 (i) in the case of an entity that is not a business corporation, a
18 merger, as if the conversion were a merger; or

19 (ii) in the case of a business corporation, a merger requiring
20 approval by a vote of the interest holders of the business corporation, as if the conversion were
21 that type of merger; or

22 ~~_____ (C) _____~~ (C) by all of the interest holders of the entity
23 entitled to vote on or consent to any matter if:

1 (i) in the case of any entity that is not a business corporation or
2 limited cooperative association, neither its organic law nor organic rules provide for approval of
3 a conversion or a merger ~~described in subparagraph (B); or~~

4 (ii), by all of the interest holders of the entity entitled to vote on or
5 consent to any matter;) in the case of a limited cooperative association, neither its organic law
6 nor organic rules provide for approval of a conversion or a transaction under this [article]; and

7 (2) in a record, by each interest holder of a domestic converting entity ~~that~~which
8 will have interest holder liability for debts, obligations, and other liabilities that arise after the
9 conversion becomes effective, unless, in the case of an entity that is not a business or nonprofit
10 corporation:

11 (A) the organic rules of the entity provide in a record for the approval of a
12 conversion or a merger in which some or all of its interest holders become subject to interest
13 holder liability by the vote or consent of fewer than all the interest holders; and

14 (B) the interest holder voted for or consented in a record to ~~or voted for~~
15 that provision of the organic rules or became an interest holder after the adoption of that
16 provision.

17 (b) A conversion of a foreign converting entity is not effective unless it is approved by
18 the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

19 *Legislative Note: The analysis of approval requirements in the Legislative Note to Section 303*
20 *should also be undertaken with respect to conversions.*

21
22 **SECTION 404. AMENDMENT OR ABANDONMENT OF PLAN OF**
23 **CONVERSION.**

24 (a) A plan of conversion of a domestic converting entity may be amended:

25 (1) in the same manner as the plan was approved, if the plan does not provide for

1 the manner in which it may be amended; or

2 (2) by the governors or interest holders of the entity in the manner provided in
3 the plan, but an interest holder that was entitled to vote on or consent to approval of the
4 conversion is entitled to vote on or consent to any amendment of the plan that will change:

5 (A) the amount or kind of interests, securities, obligations, money, other
6 property, rights to acquire interests or securities, or any combination of the foregoing, to be
7 received by any of the interest holders of the converting entity under the plan;

8 (B) the public organic record, if any, or private organic rules of the
9 converted entity ~~that~~which will be in effect immediately after the conversion becomes effective,
10 except for changes that do not require approval of the interest holders of the converted entity
11 under its organic law or organic rules; or

12 (C) any other terms or conditions of the plan, if the change would
13 adversely affect the interest holder in any material respect.

14 (b) After a plan of conversion has been approved by a domestic converting entity and
15 before a statement of conversion becomes effective, the plan may be abandoned:

16 (1) as provided in the plan; or

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

18 (c) If a plan of conversion is abandoned after a statement of conversion has been
19 delivered to the [Secretary of State] for filing and before the ~~filing~~statement becomes effective, a
20 statement of abandonment, signed by the converting entity, must be delivered to the [Secretary
21 of State] for filing before the statement of conversion becomes effective. The statement of
22 abandonment takes effect ~~upon~~on filing, and the conversion is abandoned and does not become
23 effective. The statement of abandonment must contain:

- 1 (1) the name of the converting entity;
- 2 (2) the date on which the statement of conversion was ~~delivered to~~filed by the
- 3 [Secretary of State] ~~for filing~~; and
- 4 (3) a statement that the conversion has been abandoned in accordance with this
- 5 section.

6 **SECTION 405. STATEMENT OF CONVERSION; EFFECTIVE DATE.**

7 (a) A statement of conversion must be signed by the converting entity and delivered to

8 the [Secretary of State] for filing.

9 (b) A statement of conversion must contain:

10 (1) the name, jurisdiction of formation, and type of entity of the converting

11 entity;

12 (2) the name, jurisdiction of formation, and type of entity of the converted entity;

13 (3) if the statement of conversion is not to be effective upon filing, the later date

14 and time on which it will become effective, which may not be more than 90 days after the date of

15 filing;

16 (4) if the converting entity is a domestic entity, a statement that the plan of

17 conversion was approved in accordance with this [article] or, if the converting entity is a foreign

18 entity, a statement that the conversion was approved by the foreign ~~converting~~ entity in

19 accordance with the law of its jurisdiction of formation;

20 (5) if the converted entity is a domestic filing entity, ~~the text of~~ its public organic

21 record, as an attachment;

22 (6) if the converted entity is a domestic limited liability partnership, ~~the text of~~ its

23 statement of qualification, as an attachment; and

1 (7) if the converted entity is a foreign entity that is not a registered foreign entity,
2 a mailing address to which the [Secretary of State] may send any process served on the
3 [Secretary of State] pursuant to Section 406(e).

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

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

10 (e) A plan of conversion that is signed by a domestic converting entity and meets all the
11 requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a
12 statement of conversion and ~~upon~~ filing has the same effect. If a plan of conversion is filed as
13 provided in this subsection, references in this [act] to a statement of conversion refer to the plan
14 of conversion filed under this subsection.

15 (f) A statement of conversion becomes effective ~~upon~~ the date and time of filing or the
16 later date and time specified in the statement of conversion. If the converted entity is a domestic
17 entity, the conversion becomes effective when the statement of conversion is effective. If the
18 converted entity is a foreign entity, the conversion becomes effective as provided by the organic
19 law of the converted entity.

20 SECTION 406. EFFECT OF CONVERSION.

21 (a) When a conversion becomes effective:

22 (1) the converted entity is:

23 (A) organized under and subject to the organic law of the converted

1 entity; and

2 (B) the same entity without interruption as the converting entity;

3 (2) all property of the converting entity continues to be vested in the converted
4 entity without transfer, reversion, or impairment;

5 (3) all debts, obligations, and other liabilities of the converting entity continue as
6 debts, obligations, and other liabilities of the converted entity;

7 (4) except as otherwise provided by law or the plan of conversion, all-~~of~~ the
8 rights, privileges, immunities, powers, and purposes of the converting entity remain in the
9 converted entity;

10 (5) the name of the converted entity may be substituted for the name of the
11 converting entity in any pending action or proceeding;

12 (6) if a converted entity is a filing entity, its public organic record is effective;

13 (7) if the converted entity is a limited liability partnership, its statement of
14 qualification is effective-~~simultaneously~~;

15 (8) the private organic rules of the converted entity ~~that~~which are to be in a
16 record, if any, approved as part of the plan of conversion are effective; and

17 (9) the interests in the converting entity are converted, and the interest holders of
18 the converting entity are entitled only to the rights provided to them under the plan of conversion
19 and to any appraisal rights they have under Section 109 and the converting entity's organic law.

20 (b) Except as otherwise provided in the organic law or organic rules of the converting
21 entity, the conversion does not give rise to any rights that an interest holder, governor, or third
22 party would ~~otherwise~~ have upon a dissolution, liquidation, or winding up of the converting
23 entity.

1 (c) When a conversion becomes effective, a person that did not have interest holder
2 liability with respect to the converting entity and ~~that~~ becomes subject to interest holder liability
3 with respect to a domestic entity as a result of athe conversion has interest holder liability only to
4 the extent provided by the organic law of the entity and only for those debts, obligations, and
5 other liabilities that arise after the conversion becomes effective.

6 (d) When a conversion becomes effective:

7 (1) The conversion does not discharge any interest holder liability under the
8 organic law of a domestic converting entity to the extent the interest holder liability arose before
9 the conversion became effective.

10 (2) A person does not have interest holder liability under the organic law of a
11 domestic converting entity for any debt, obligation, or other liability that arises after the
12 conversion becomes effective.

13 (3) The organic law of a domestic converting entity continues to apply to the
14 release, collection, or discharge of any interest holder liability preserved under paragraph (1) as
15 if the conversion had not occurred.

16 (4) A person has whatever rights of contribution from any other person as are
17 provided by other law or the organic rules of the domestic converting entity with respect to any
18 interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

19 (e) When a conversion becomes effective, a foreign entity that is the converted entity
20 may be served with process in this state for the collection and enforcement of any of its debts,
21 obligations, and other liabilities in accordance with applicable law.

22 (f) If the converting entity is a registered foreign entity, the registration to do business in
23 this state of the converting entity is canceled when the conversion becomes effective.

1 (g) A conversion does not require the entity to wind up its affairs and does not constitute
2 or cause the dissolution of the entity.

3 [ARTICLE] 5

4 DOMESTICATION

5 DOMESTICATION

6 **SECTION 501. DOMESTICATION AUTHORIZED.**

7 (a) Except as otherwise provided in this section, by complying with this [article], a
8 domestic entity may become a domestic entity of the same type of entity in a foreign jurisdiction
9 if the domestication is authorized by the law of the foreign jurisdiction.

10 (b) Except as otherwise provided in this section, by complying with the provisions of
11 this [article] applicable to foreign entities a foreign entity may become a domestic entity of the
12 same type of entity in this state if the domestication is authorized by the law of the foreign
13 entity's jurisdiction of formation.

14 (c) If a protected agreement contains a provision that applies to a merger of a domestic
15 entity but does not refer to a domestication, the provision applies to a domestication of the entity
16 as if the domestication were a merger until the provision is amended after [the effective date of
17 this [act]].

18 ~~[(d) This [article] does not apply to the domestication of:~~

19 (1) [a business corporation, if the state has adopted Subchapter 9B of the Model
20 Business Corporation Act]; [or]

21 ~~(2-.)~~ [a nonprofit corporation, if the state has adopted Subchapter 9B of the
22 Model Nonprofit Corporation Act]; [or]

23 _____ (3).]

1 *Legislative Note: A few states have existing domestication provisions in their organic laws.*
2 *Because a domestication is a transaction involving entities of the same type, as opposed to a*
3 *transaction involving entities of different types, a state may choose to keep any existing*
4 *domestication provisions in its organic laws and it may decide to add domestication provisions*
5 *to its other organic laws. Any domestication provisions in other organic laws should be listed in*
6 *subsection (d). In that case, Article 5 will apply only to domestications of an entity whose*
7 *organic law does not authorize a domestication. If a state does not have domestication*
8 *provisions in any of its organic laws, subsection (d) should be omitted.*
9

10 **SECTION 502. PLAN OF DOMESTICATION.**

11 (a) A domestic entity may become a foreign entity in a domestication by approving a
12 plan of domestication. The plan must be in a record and contain:

13 (1) the name and type of entity of the domesticating entity;

14 (2) the name and jurisdiction of formation of the domesticated entity;

15 (3) the manner of converting the interests in the domesticating entity into
16 interests, securities, obligations, money, other property, rights to acquire interests or securities,
17 or any combination of the foregoing;

18 (4) the proposed public organic record of the domesticated entity if it is a filing
19 entity;

20 (5) the full text of the private organic rules of the domesticated entity that are
21 proposed to be in a record;

22 (6) the other terms and conditions of the domestication; and

23 (7) any other provision required by the law of this state or the organic rules of the
24 domesticating entity.

25 (b) In addition to the requirements of subsection (a), a plan of domestication may contain
26 any other provision not prohibited by law.

27 **SECTION 503. APPROVAL OF DOMESTICATION.**

28 (a) A plan of domestication is not effective unless it has been approved:

1 (1) by a domestic domesticating entity:

2 (A) in accordance with the requirements, if any, in its organic rules for
3 approval of a domestication;

4 (B) if its organic rules do not provide for approval of a domestication, in
5 accordance with the requirements, if any, in its organic law and organic rules for approval of:

6 (i) in the case of an entity that is not a business corporation, a
7 merger, as if the domestication were a merger; or

8 (ii) in the case of a business corporation, a merger requiring
9 approval by a vote of the interest holders of the business corporation, as if the domestication
10 were that type of merger; or

11 ~~_____ (C) _____~~ (C) by all of the interest holders of the entity
12 entitled to vote on or consent to any matter if:

13 _____ (i) in the case of an entity that is not a business corporation or
14 limited cooperative association, neither its organic law nor organic rules provide for approval of
15 a domestication or a merger ~~described in subparagraph (B);~~

16 _____ (ii), by all of the interest holders of the entity entitled to vote on or
17 consent to any matter;) in the case of a limited cooperative association, neither its organic law
18 nor organic rules provide for approval of a domestication or a transaction under this [article]; and

19 (2) in a record, by each interest holder of a domestic domesticating entity that
20 will have interest holder liability for debts, obligations, and other liabilities that arise after the
21 domestication becomes effective, unless, in the case of an entity that is not a business
22 corporation or nonprofit corporation:

23 (A) the organic rules of the entity in a record provide for the approval of a

1 domestication or merger in which some or all of its interest holders become subject to interest
2 holder liability by the vote or consent of fewer than all ~~of~~ the interest holders; and

3 (B) the interest holder consented in a record to or voted for that provision
4 of the organic rules or became an interest holder after the adoption of that provision.

5 (b) A domestication of a foreign domesticating entity is not effective unless it is
6 approved in accordance with the law of the foreign entity's jurisdiction of formation.

7 *Legislative Note: The analysis of approval requirements in the Legislative Note to Section 303*
8 *should also be undertaken with respect to domestications.*

9
10 **SECTION 504. AMENDMENT OR ABANDONMENT OF PLAN OF**
11 **DOMESTICATION.**

12 (a) A plan of domestication of a domestic domesticating entity may be amended:

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

15 (2) by the governors or interest holders of the entity in the manner provided in
16 the plan, but an interest holder that was entitled to vote on or consent to approval of the
17 domestication is entitled to vote on or consent to any amendment of the plan that will change:

18 (A) the amount or kind of interests, securities, obligations, money, other
19 property, rights to acquire interests or securities, or any combination of the foregoing, to be
20 received by any of the interest holders of the domesticating entity under the plan;

21 (B) the public organic record, if any, or private organic rules of the
22 domesticated entity that will be in effect immediately after the domestication becomes effective,
23 except for changes that do not require approval of the interest holders of the domesticated entity
24 under its organic law or organic rules; or

25 (C) any other terms or conditions of the plan, if the change would

1 adversely affect the interest holder in any material respect.

2 (b) After a plan of domestication has been approved by a domestic domesticating entity
3 and before a statement of domestication becomes effective, the plan may be abandoned:

4 (1) as provided in the plan; or

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

6 (c) If a plan of domestication is abandoned after a statement of domestication has been
7 delivered to the [Secretary of State] for filing and before the ~~filling~~statement becomes effective, a
8 statement of abandonment, signed by the entity, must be delivered to the [Secretary of State] for
9 filing before the statement of domestication becomes effective. The statement of abandonment
10 takes effect ~~upon~~on filing, and the domestication is abandoned and does not become effective.

11 The statement of abandonment must contain:

12 (1) the name of the domesticating entity;

13 (2) the date on which the statement of domestication was filed; and

14 (3) a statement that the domestication has been abandoned in accordance with
15 this section.

16 **SECTION 505. STATEMENT OF DOMESTICATION; EFFECTIVE DATE.**

17 (a) A statement of domestication must be signed by the domesticating entity and
18 delivered to the [Secretary of State] for filing.

19 (b) A statement of domestication must contain:

20 (1) the name, jurisdiction of formation, and type of entity of the domesticating
21 entity;

22 (2) the name and jurisdiction of formation of the domesticated entity;

23 (3) if the statement of domestication is not to be effective upon filing, the later

1 date and time on which it will become effective, which may not be more than 90 days after the
2 date of filing;

3 (4) if the domesticating entity is a domestic entity, a statement that the plan of
4 domestication was approved in accordance with this [article] or, if the domesticating entity is a
5 foreign entity, a statement that the domestication was approved in accordance with the law of its
6 jurisdiction of formation;

7 (5) if the domesticated entity is a domestic filing entity, its public organic record,
8 as an attachment;

9 (6) if the domesticated entity is a domestic limited liability partnership, its
10 statement of qualification, as an attachment; and

11 (7) if the domesticated entity is a foreign entity that is not a registered foreign
12 entity, a mailing address to which the [Secretary of State] may send any process served on the
13 [Secretary of State] pursuant to Section 506(e).

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

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

20 (e) A plan of domestication that is signed by a domesticating domestic entity and meets
21 all the requirements of subsection (b) may be delivered to the [Secretary of State] for filing
22 instead of a statement of domestication and ~~upon~~ filing has the same effect. If a plan of
23 domestication is filed as provided in this subsection, references in this [act] to a statement of

1 domestication refer to the plan of domestication filed under this subsection.

2 (f) A statement of domestication becomes effective ~~upon~~ the date and time of filing or
3 the later date and time specified in the statement of domestication.

4 **SECTION 506. EFFECT OF DOMESTICATION.**

5 (a) When a domestication becomes effective:

6 (1) the domesticated entity is:

7 (A) organized under and subject to the organic law of the domesticated
8 entity; and

9 (B) the same entity without interruption as the domesticating entity;

10 (2) all property of the domesticating entity continues to be vested in the
11 domesticated entity without transfer, reversion, or impairment;

12 (3) all debts, obligations, and other liabilities of the domesticating entity continue
13 as debts, obligations, and other liabilities of the domesticated entity;

14 (4) except as otherwise provided by law or the plan of domestication, all of the
15 rights, privileges, immunities, powers, and purposes of the domesticating entity remain in the
16 domesticated entity;

17 (5) the name of the domesticated entity may be substituted for the name of the
18 domesticating entity in any pending action or proceeding;

19 (6) if the domesticated entity is a filing entity, its public organic record is
20 effective;

21 (7) if the domesticated entity is a limited liability partnership, its statement of
22 qualification is effective simultaneously;

23 (8) the private organic rules of the domesticated entity that are to be in a record,

1 if any, approved as part of the plan of domestication are effective; and

2 _____; and

3 (9) the interests in the domesticating entity are converted to the extent and as
4 approved in connection with the domestication, and the interest holders of the domesticating
5 entity are entitled only to the rights provided to them under the plan of domestication and to any
6 appraisal rights they have under Section 109 and the domesticating entity's organic law.

7 (b) Except as otherwise provided in the organic law or organic rules of the domesticating
8 entity, the domestication does not give rise to any rights that an interest holder, governor, or third
9 party would ~~otherwise~~ have upon a dissolution, liquidation, or winding up of the domesticating
10 entity.

11 (c) When a domestication becomes effective, a person that did not have interest holder
12 liability with respect to the domesticating entity and ~~that~~ becomes subject to interest holder
13 liability with respect to a domestic entity as a result of the domestication has interest holder
14 liability only to the extent provided by the organic law of the entity and only for those debts,
15 obligations, and other liabilities that arise after the domestication becomes effective.

16 (d) When a domestication becomes effective:

17 (1) The domestication does not discharge any interest holder liability under the
18 organic law of a domesticating domestic entity to the extent the interest holder liability arose
19 before the domestication became effective;.

20 (2) A person does not have interest holder liability under the organic law of a
21 domestic domesticating entity for any debt, obligation, or other liability that arises after the
22 domestication becomes effective;.

23 (3) The organic law of a domestic domesticating entity continues to apply to the

1 release, collection, or discharge of any interest holder liability preserved under paragraph (1) as
2 if the domestication had not occurred; ~~and.~~

3 (4) A person has whatever rights of contribution from any other person as are
4 provided by other law or the organic rules of a domestic domesticating entity with respect to any
5 interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

6 (e) When a domestication becomes effective, a foreign entity that is the domesticated
7 entity may be served with process in this state for the collection and enforcement of any of its
8 debts, obligations, and other liabilities in accordance with applicable law.

9 (f) If a domesticating entity is a registered foreign entity, the registration to do business
10 in this state of the domesticating entity is canceled when the domestication becomes effective.

11 (g) A domestication does not require the entity to wind up its affairs and does not
12 constitute or cause the dissolution of the entity.

13 **[ARTICLE] 6**

14 **MISCELLANEOUS PROVISIONS**

15 **MISCELLANEOUS PROVISIONS**

16 **SECTION 601. CONSISTENCY OF APPLICATION.** In applying and construing
17 this [act], consideration must be given to the need to promote consistency of the law with respect
18 to its subject matter among states that enact it.

19 **SECTION 602. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
20 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, ~~or~~ ~~and~~ supersedes the
21 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but
22 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
23 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15

1 U.S.C. Section 7003(b).

2 **SECTION ~~605603~~. SAVINGS CLAUSE~~;~~** This [act] does not affect an action or
3 proceeding commenced or right accrued before [the effective date of this [act]].

4 **[SECTION ~~603604~~. SEVERABILITY CLAUSE~~;~~** If any provision of this [act] or its
5 application to any person or circumstance is held invalid, the invalidity does not affect other
6 provisions or applications of this [act] which can be given effect without the invalid provision or
7 application, and to this end the provisions of this [act] are severable~~;~~.]

8 *Legislative Note: Include this section only if this state lacks a general severability statute or a*
9 *declaration by the highest court of this state stating a general rule of severability.*

10

11 **SECTION ~~604605~~. CONFORMING AMENDMENTS AND REPEALS~~;~~** ~~[See~~
12 ~~Appendix 2.]~~

13 (1)

14 (2)

15

16 **SECTION 606. EFFECTIVE DATE~~;~~** This [act] takes effect . . .

1
2
3 **Legislative Note:** This Note provides a guide for amendments, repeals, and additions that must
4 be made to existing statutes when META is enacted in a particular state. This is a complex task
5 because of the wide variation in current state statutes with respect to the types of entities that
6 can engage in one or more of the transactions authorized by META.

7
8 **1. Step One: Identify Existing Laws**
9

10 The first step that must be taken is to identify all of the existing statutory provisions that
11 allow for same-type (all of the entities involved are the same, e.g., a merger between two
12 corporations) and cross-type (more than one type of entity is involved in the transaction, e.g., a
13 merger between a corporation and a partnership), mergers, interest exchanges, conversions, and
14 domestications for any kind of entity. An entity is defined in Section 102 to include all types of
15 partnerships (general partnerships, limited liability partnerships, limited partnerships, and
16 limited liability limited partnerships), limited liability companies, all types of corporations
17 (including nonprofit corporations, close corporations in those states that have separate statutes
18 for close corporations, and professional corporations), business trusts, statutory trusts,
19 cooperatives, and unincorporated nonprofit associations. Many states have statutes governing
20 other types of business organizations. Texas, for example, has special statutory provisions for
21 real estate investment trusts (in most other states, REITs would be considered a type of business
22 trust). These special types of entities should also be included in the review process.

23
24 **2. Step Two: Analyze Existing Laws**
25

26 The next step is to analyze the overall existing statutory framework for same-type and
27 cross-type transactions. This analysis will reveal that there are gaps in coverage for many of the
28 types of transactions covered by the act, either directly or by default, even in those states that
29 have adopted Chapter 9 and 11 of the Model Business Corporation Act and the uniform
30 unincorporated organization acts.

31
32 Every state will have provisions for mergers of corporations into other corporations but
33 not all states authorize interest exchanges between corporations (the corporate statutes
34 generally refer to these as share exchanges) and only a few states specifically authorize
35 corporations to enter into merger or interest exchange transactions with other types of entities.
36 Moreover, very few existing corporate statutes have provisions for conversions of corporations
37 into other types of entities or authorize corporations to domesticate in another state.

38
39 The same-type and cross-type landscape with respect to unincorporated entities is even
40 less complete. The Uniform Partnership Act (1997) (RUPA), which has been adopted in
41 approximately 2/3 of the states (and in the District of Columbia, Puerto Rico and the Virgin
42 Islands), for example, only authorizes mergers and conversions of general partnerships and
43 limited partnerships. It does not allow conversions into any other type of entity or mergers with
44 any other type of entity; nor does it authorize interest exchange or domestication transactions.
45 Several states that have adopted RUPA have provisions allowing same-type and cross-type
46 conversions and mergers of general partnerships with not only limited partnerships but also with
47 corporations and limited liability companies; and a few RUPA states have expanded the list to

1 include any business entity (it is unclear in many of these states, however, whether these statutes
2 apply to non-profit entities).

3
4 The statutory framework for limited partnership same-type and cross-type transactions is
5 also quite varied. Most states have the Uniform Limited Partnership Act (1976 with 1985
6 Amendments). That act has no provisions dealing with merger, interest exchange, conversion,
7 or domestication transactions. . Some states allow conversions of limited partnerships into
8 limited liability companies and a few states expand the conversion list to include corporations;
9 most also allow mergers of limited partnerships into other limited partnerships and some other
10 types of entities. Several states appear to exclude non-profit organizations, business trusts, and
11 cooperatives from their cross-form list.

12
13 Most limited liability company statutes have provisions authorizing mergers and
14 conversions, although the scope of coverage is quite varied. There are substantial differences
15 with respect to same-type and cross-type transactions in the existing statutes.

16
17 There are very few same-type or cross-type provisions in statutes governing all the other
18 types of entities that exist under state law. There are some exceptions, however, such as the
19 Delaware Statutory Trust Act, 12 Del. Code §§ 3815 and 3820-23.

20 21 **3. Step Three: Prepare Amendments and Repeals**

22
23 Once the analysis of the existing same-type and cross-type statutes has been made,
24 decisions need to be made as to which ones should be amended or repealed and whether to add
25 additional provisions to these statutes. Under META, if the statute governing an entity has
26 same-type provisions, those provisions govern the transaction in question. META provides
27 default rules, however, if the other applicable entity statute has no same-type provisions for the
28 transaction in question. META also applies to cross-type transactions (but defaults to
29 applicable state entity law for approval requirements and the like). In deciding how to amend,
30 repeal or add to the existing entity statutes, achieving two goals should be paramount:

- 31
32 1. avoiding any potential inconsistency between META's provisions and similar
33 provisions in the state's entity statutes; and
34
35 2. making the interplay between META and the state's various entity laws relatively
36 easy to navigate.

37
38 There are at least four ways to achieve these goals which are described below. It is
39 anticipated that most states will choose either (a) or (d).

40 41 **(a) Limit Existing Laws to Same-Type Transactions**

42
43 This method is based on the assumption that practicing lawyers in a state will not be
44 comfortable completely repealing all of the state's existing restructuring statutes and will want
45 to retain at least the existing same-type transaction statutes, especially the merger statutes, the
46 type of restructuring transaction with which lawyers are most familiar and are used to finding in
47 the state's entity acts.

1
2 Implementing this approach is accomplished as follows.:

3
4 1. With respect to the state's corporation statutes:

5
6 (i) Repeal any cross-type provisions from the state's corporation merger
7 statutes. In states whose corporate codes do not have any cross-type
8 merger provisions, no amendments to the state's corporate merger
9 provisions will be necessary. Most states also may not have interest
10 exchange provisions in their corporate codes. If that is the case, same-
11 type provisions for interest exchanges do not need to be added to the
12 corporate codes because under META the requirements for approval of a
13 merger and other rights that a shareholder would have in a merger, for
14 example, dissenters' rights, apply. See Sections 203(a) (mergers) and
15 303(a) (interest exchange).

16
17 (ii) Repeal any conversion provisions in the state's corporation statutes.
18 Article 4 of META will, therefore, govern all conversions.

19
20 (iii) Retain any existing domestication provisions in the state's organic laws.
21 As is pointed out in the Legislative Note to META Section 501, these entity
22 specific domestication provisions will be listed in Section 501(d) with the
23 result being that Article 5 of META will apply to those types of entities
24 whose organic laws do not already have domestication provisions.

25
26 2. With respect to the state's other entity statutes:

27
28 (i) Amend all the merger, interest exchange, and conversion provisions in the
29 state's other entity statutes by stripping out all of the cross-type provisions
30 in the merger provisions, and by repealing any interest exchange or
31 conversion provisions. Any existing domestication provisions would be
32 retained and an appropriate reference to those provisions would be
33 included in Section 501(d).

34
35 (ii) The existing requirements for approval of mergers, interest exchanges,
36 conversions, domestications, and amendment of the organic rules in the
37 state's existing organic laws for unincorporated entities need to be
38 carefully reviewed. The situation is more complicated, however, if there is
39 not complete consistency among those organic laws; for example, as is
40 sometimes the case, if the state's partnership statutes require unanimity
41 but its LLC statute requires only a majority vote for some or all
42 transactions. If there is not complete consistency, decisions will need to
43 be made whether to retain the differences or to make all of the voting
44 requirements either unanimous or majority. Other issues that will need to
45 be resolved are what the appropriate vote should be for transactions other
46 than mergers (i.e., interest exchanges, conversions, and domestications)
47 where there are no existing voting provisions other than for mergers;

1 what is the appropriate voting requirement for a transaction under META
2 where an unincorporated entity organic law does not have any same-type
3 or cross-type provisions for that type of transaction; and how the voting
4 requirements under META relate to the vote required to amend an
5 unincorporated entity's organic rules. Once this analysis is completed, it
6 will be possible to construct the appropriate amendments to the state's
7 existing unincorporated entity organic laws.

8
9 **(b) Limit META to Cross-Type Transactions**

10
11 A second method of integrating META with a state's organic laws is to delete from the
12 existing organic laws any provisions that deal with cross-type transactions and add same-type
13 merger and interest exchange, and domestication provisions to every organic law that does not
14 currently have these provisions. Thus all same-type entity transactions would be governed by
15 the state's organic laws and all cross-type transactions would be governed by META. This
16 approach will require a large number of changes to existing organic laws in most states because
17 same-type merger and interest exchange, and domestication provisions would have to be added
18 to many of the state's organic laws, including its unincorporated nonprofit, cooperative, and
19 business trust statutes. Article 5 of META would also not be enacted because the organic laws
20 for each type of entity would have domestication provisions.

21
22 **(c) Make META the Exclusive Statute for Both Same-type and Cross-type**
23 **Transactions**

24
25 A third method to integrate META with a state's existing organic laws is to repeal all the
26 existing same-type and cross-type transaction provisions in all of the organic laws and add to
27 META all the corporate merger approval and related statutory provisions such as appraisal
28 rights, as well as substantially modifying Sections 203, 303, 403, and 503 so that there will be
29 one set of approval provisions for a corporation engaging in a META transaction and a second
30 set of approval provisions for unincorporated entities engaging in a META transaction.

31
32 **(d) Have META Apply to a Corporation Engaging in a Cross-type Transaction and be**
33 **the Exclusive Statute for Both Same-type and Cross-type transactions for Unincorporated**
34 **Entities**

35
36 A fourth method to integrate META with a state's existing organic laws could be
37 achieved by repealing any provisions for cross-type transactions from the corporation laws and,
38 in addition by repealing all of the provisions for same-type and cross-type transactions in all of
39 the state's unincorporated entity organic laws. This approach, which is a variant of (c), avoids
40 the problem of incorporating the corporation law voting requirements and related provisions
41 such as appraisal rights. It requires far fewer amendments to existing statutes than (a). This
42 method will work best, however, in a state where all of the existing unincorporated entity
43 organic laws require unanimity for approval of a merger or similar transaction (and where
44 unanimity is also required to amend each type of entity's organic rules), since that is the
45 ultimate default rule in META. This approach will be quite cumbersome if the state's
46 unincorporated entity organic laws require less than unanimous consent for some types of
47 entities, because the less than unanimous approval requirements would have to be incorporated

1 into META.

2
3 **4. Step Four: Add appropriate cross references.**

4
5 Finally, this appendix suggests that a reference to META should be placed in the state's
6 entity statutes specifying the transactions that are governed by META. As an alternative to the
7 statutory references proposed in this appendix, legislative notes could be used in those states
8 that follow that practice. A note would be placed in the corporate statutes at the end of the
9 merger and share exchange provisions stating that META is the primary statute that applies to
10 reorganization transactions involving a corporation and another form of entity. For other
11 entities whose organic laws have merger provisions, the legislative notes would appear at the
12 end of those provisions stating META is the primary statute for any cross-type merger involving
13 that type of entity and also is the primary statute governing both same-type and cross-type
14 interest exchange and domestication transactions where that type of entity is a party. Finally, if
15 there are no merger provisions for a particular type of entity, a legislative note should be placed
16 at the end of the governing statute stating that META is the statute that governs merger, interest
17 exchange, conversion and domestication transactions where that type of entity is involved.