

DRAFT
FOR DISCUSSION ONLY

SERIES OF UNINCORPORATED BUSINESS ENTITIES ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For September 27 – 28, 2013 Drafting Committee Meeting

With Prefatory Note

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August 29, 2013

**DRAFTING COMMITTEE ON SERIES OF UNINCORPORATED BUSINESS
ENTITIES ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

STEVE FROST, 111 W. Monroe St., Chicago, IL 60603-4080, *Chair*

JOHN FOX ARNOLD, 714 Locust St., St. Louis, MO 63101

DAVID J. CLARK, 353 Bel Marin Keys Blvd., Suite 1, Novato, CA 94949

WILLIAM H. CLARK, JR., One Logan Square, 18th and Cherry Sts., Philadelphia, PA 19103-6996

LOUIS T. M. CONTI, 100 N. Tampa St., Suite 4100, Tampa, FL 33602

HARRY J. HAYNSWORTH, 108 Addingtons, Williamsburg, VA 23188

LISA R. JACOBS, One Liberty Place, 1650 Market St., Suite 4900, Philadelphia, PA, 19103-7300

DAVID C. McBRIDE, 1000 King St., P.O. Box 391, Wilmington, DE 19899

JAMES C. McKAY, JR., 441 4th St., NW, Suite 630, Washington, DC, 20001

ROBERT H. SITKOFF, Harvard Law School, 1575 Massachusetts Ave., Cambridge, MA 02138

DAVID S. WALKER, Drake University Law School, 2507 University Ave., Des Moines, IA 50311

DANIEL S. KLEINBERGER, William Mitchell College of Law, 875 Summit Ave., St. Paul, MN 55105, *Reporter*

EX OFFICIO

HARRIET LANSING, 1 Heather Pl., St. Paul, MN 55102-2615, *President*

STEVEN N. LEITESS, 10451 Mill Run Cir., Suite 1000, Baltimore, MD 21117, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

ALLAN G. DONN, Wells Fargo Center, 440 Monticello Ave., Suite 2200, Norfolk, VA 23510-2243, *ABA Advisor*

CARTER G. BISHOP, Suffolk University Law School, 120 Tremont St., Boston, MA 02108-4977, *ABA Section Advisor*

ROBERT R. KEATINGE, 555 17th St., Suite 3200, Denver, CO 80202-3979, *ABA Section Advisor*

GREG LADNER, One Rodney Square, 920 N. King St., Wilmington, DE 19801, *ABA Section Advisor*

KYUNG S. LEE, Two Houston Center, 909 Fanin St., 15th Floor, Houston, TX 77010, *ABA Section Advisor*

ELIZABETH S. MILLER, Baylor Law School, 1114 S. University Parks Dr., One Bear Place #97288, Waco, TX 76798, *ABA Section Advisor*

SANDRA K. MILLER, Widener University, School of Business Administration, One University Place, Chester, PA 19013-5792, *ABA Section Advisor*

MARLA H. NORTON, 222 Delaware Ave., Suite 900, P.O. Box 25130, Wilmington, DE 19899, *ABA Section Advisor*

NORMAN M. POWELL, P.O. Box 391, Wilmington, DE 19899, *ABA Section Advisor*

THOMAS E. RUTLEDGE, 2000 PNC Plaza, 500 W. Jefferson St., Louisville, KY 40202-2874, *ABA Section Advisor*

ALLEN SPARKMAN, 1200 Binz St., Suite 650, Houston, TX 77004, *ABA Section Advisor*

JAMES J. WHEATON, 222 Central Park Ave., Suite 200, Virginia Beach, VA 23462, *ABA
Section Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org

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|--|----|

1 **SERIES OF UNINCORPORATED BUSINESS ENTITIES ACT**

2
3 **Prefatory Note**

4 **Series Provisions for ULLCA (2013)**

5
6 **Sequence of Presentation**

- 7 • Definitions, presented in Section 102 as revisions to two existing definitions and eight
8 new series-specific definitions;¹
9 • Series-specific provisions, presented in a new [Article] 11;²
10 • Revisions to existing ULLCA provisions (other than Section 102).
11

12 **Two Key Substantive Premises**

13 A. The term of art for the “thing” will be “protected series”, because: (i) usage in the
14 series/asset-partitioning realm requires that the act refer to “series”, while (ii) usage elsewhere
15 makes the term confusing when standing alone.
16

17 B. Series provisions will scrupulously avoid stating that a protected series is an entity or a person
18 in its own right, even though a series will have many of the most important powers of a legal
19 entity/person.
20

21 **Drafting Assumptions**

- 22
23 1. As to the relationship between a limited liability company and a protected series, this draft in
24 most instances refers to the latter as being “of” the former – i.e., “a protected series”. Where
25 that formulation is awkward, this draft uses “a protected series the limited liability company
26 has established”³ or similar formulation.⁴

¹ Series-specific definitions will be included in Section 102, because: (i) necessary revisions to two existing definitions presuppose some series-specific definitions; (ii) those latter definitions in turn presuppose other series-specific definitions; (iii) as a result, Section 102 must include almost all the series-specific definitions; and (iv) placing series-specific definitions in two places would be confusing.

² To minimize re-numbering, the Series Article will be the penultimate article of ULLCA (2013) [Article 11], displacing only the article on “Miscellaneous Provisions”.

³ The past tense is necessary, because most provisions of the statute apply to series already in existence at the moment the statute applies.

⁴ An earlier version of this draft referred to a protected series as “belonging to” the limited liability company. That usage was rejected as having inappropriate connotations. The next version referred to “a protected series a limited liability company establishes”. That usage was accurate but in most instances cumbersome. Consonant with the Drafting Committee’s current approach, the preposition “of” denotes a relationship but does not particularly characterize it.

- 1 2. Except as explained in #3, below, Article 11 will:
2 a. include series-specific provisions; and
3 b. incorporate by reference from the main body of ULLCA provisions that can be easily
4 extrapolated to series.
5
- 6 3. Series-specific provisions will be inserted as revisions into the main body of ULLCA when:
7 a. for substantive reasons, the LLC and series-specific provisions should be in one
8 place – e.g., the liability shield provisions;⁵ or
9 b. as a matter of clear drafting, incorporating by reference would be impractical – e.g.,
10 statements of authority.⁶
11
- 12 4. Within Article 11:
13 a. series-specific provisions will be:
14 i. sequenced roughly in accord with the sequencing of the main body of the act;
15 and
16 ii. to the extent practicable, drafted using the same wording and formulations as
17 used in the main body of the act; and
18 b. incorporations by reference will be at the end of the article.
19

20 **Abbreviations**

21
22 “Spring 2013 Meeting” refers to the Drafting Committee meeting in April, 2013.

23 “COSL” refers to the Committee on Style Liaison to the Drafting Committee, John Stieff.

⁵ Section 304.

⁶ Sections 302 and 303.

1 **SERIES OF UNINCORPORATED BUSINESS ENTITIES ACT**

2 **Section 102**

3 **Changes to Definitions**

4 **SECTION 102. DEFINITIONS.**

5 (a) In this [act]:⁷

6 * * *

7 (24) “Transferable interest” means the right, as initially owned by a person in the
8 person’s capacity as a member or member associated with a protected series to receive
9 distributions from a limited liability company or from a protected series of the company, whether
10 or not the person ~~remains~~ dissociates as a member, remains associated with the series,⁸ or
11 continues to own any part of the right. The term applies to any fraction of the interest, ~~by~~
12 ~~whomever owned~~ regardless of who owns the interest.⁹

13 (25) “Transferee” means a person to which all or part of a transferable interest has
14 been transferred, whether or not the transferor is a member. The term includes a person that
15 owns a transferable interest under Section 603(a)(3) and a person to whom has been transferred a
16 transferable interest associated with a protected series.

17 (b) With regard to a protected series:

18 (1) “Associated”¹⁰ means with respect to:

⁷ Note 1 explains to why series-specific definitions must be included in Section 102. Breaking the section into subsections will preserve numbering uniformity between states that enact the series provisions and states that do not.

⁸ To distinguish ceasing to be a member from ceasing to be associated with a protected series, this draft refers to the former as “dissociation” and the latter as “ceasing to be associated”.

⁹ Style changed to moot the question of whether “whomever” should be “whoever”. [COSL]

¹⁰ Even if the act were to define “associate” as a verb, the concept of association would be used far more often in adjectival form. Therefore, this draft defines the adjectival form.

1 (A) property, property that under Section 1109 has become associated
2 with the series;¹¹

3 (B) a member, a member that has become associated under Section 1110
4 with the series; and

5 (C) a transferable interest, the part of a transferable interest comprising a
6 person’s rights to receive distributions from the series.

7 (2) “Foreign protected series” means a structure¹² of a foreign limited liability
8 company which would be a protected series if the company were formed under this [act].

9 **Alternative A**

10 (3) “Protected series” means a partitioning under Section 1108 of any of a limited
11 liability company’s property.¹³

12 **Alternative B**

13 (3) “Protected series” means a structure¹⁴ of a limited liability company
14 established under Section 1108.

15 **End of Alternatives**

16 (4) “Relevant protected series” means, with respect to a:

17 (A) member, the series with which the member is associated; and

18 (B) supplemental agreement, the series to which the supplemental

¹¹ Passive used here to parallel the next provision, which cannot easily be stated in the active voice.

¹² Earlier draft used “arrangement” as the term of art.

¹³ This alternative presupposes following ULLCA’s approach to the formation of an LLC. See Section 201(d) (“A limited liability company is formed when the certificate of organization becomes effective and at least one person has become a member.”). FWIW, the Reporter (tentatively, currently) prefers this approach because the approach emphasizes the unique aspect of a protected series – asset partitioning.

¹⁴ “Structure” is also the term of art used in the definition of “foreign protected series.” See Section 102(b)(2).

1 agreement pertains.

2 (5) “Relevant series-specific terms of the operating agreement” means, with
3 respect to a protected series, terms of the operating agreement that expressly apply to the series,
4 its associated property, its associated members, or its series manager and not:

5 (A) generally to the members in their capacity merely as members;¹⁵ and

6 (B) to the limited liability company, except terms specific to the
7 relationship between the company and;

8 (i) the series;

9 (ii) its associated property;

10 (iii) its associated members;

11 (iv) its associated transferable interests; or

12 (v) its series manager.¹⁶

13 (6) “Relevant supplemental agreement” means, with respect to a:

14 (A) member, the supplemental agreement, if any, pertaining to a protected
15 series with which the member is associated; and

16 (B) protected series, the series to which the agreement pertains.

17 (7) “Series manager” means a person that manages a protected series under
18 Section 1111, a relevant supplemental agreement, or relevant series-specific terms of the
19 operating agreement.

¹⁵ A comment will indicate that a series-specific term can be incorporated by reference and still remain series-specific.

¹⁶ Recall that, in the default mode, amending the operating agreement requires the unanimous consent of all members. Therefore, so long as that default rule remains in place, the operating agreement cannot tyrannize over a protected series. Query whether conversely the adoption/amendment of a supplemental agreement should require consent of all the members, just the members associated with the relevant protected series, or the latter plus the LLC.

1 (b) To carry on its activities and affairs, a protected series has the same powers as the
2 limited liability company that established the series, except to:

3 (1) continue¹⁹ after the company has:

4 (A) ceased to exist, unless the company has been merged into an entity
5 permitted by the law of its jurisdiction of formation to have a structure substantially equivalent to
6 a protected series; or

7 (B) converted or domesticated, unless the converted or domesticated entity
8 is permitted by the law of its jurisdiction of formation to have a structure substantially equivalent
9 to a protected series;²⁰

10 (2) participate in a merger, interest exchange, conversion, domestication, or any
11 comparable transaction, except indirectly when the company participates in the transaction; or

12 (3) establish another protected series.

13 **SECTION 1103. GOVERNING LAW.** The law of this state governs:

14 (1) the internal affairs of a protected series;

15 (2) the relationship of a protected series to:

16 (A) the limited liability company that established the series; and

17 (B) any other protected series of the company;

18 (3) the liability of a limited liability company for a debt, obligation, or other liability of a
19 protected series of the company;

20 (4) the liability of a protected series for a debt, obligation, or other liability of the limited
21 liability company or any other protected series of the company; and

¹⁹ An earlier draft stated “continue in existence”. As part of the LLCs winding up, the LLC must dissolve and terminate each protected series. Section 702(b)(1).

²⁰ In such circumstances, a protected series *may* continue in existence but whether the series actually does so depends on the plan of merger, conversion, or domestication.

1 (5) the liability for the debts, obligations, or other liabilities of a limited liability company
2 or a protected series of the company of:

3 (A) a member as such;

4 (B) a member associated with a series as such;

5 (C) a series manager as such; and

6 (D) a manager as such.

7 **SECTION 1104. SERIES SUPPLEMENTAL AGREEMENT; SERIES-SPECIFIC**
8 **TERMS OF OPERATING AGREEMENT.**

9 (a) If a protected series has no associated members:²¹

10 (1) as a matter [not]²² in the ordinary course of the activities and affairs of the
11 limited liability company that established the series, the company may adopt a relevant
12 supplemental agreement or relevant series-specific terms of the operating agreement; and

13 (2) the members²³ may by unanimous consent:

14 (A) amend the operating agreement by adopting or amending relevant
15 series-specific terms; and

16 (B) adopt or amend a relevant supplemental agreement.

17 (b) If a protected series has at least one associated member, a relevant supplemental
18 agreement may be adopted and an existing supplemental agreement amended by the unanimous
19 consent or affirmative vote of

²¹ Subsection (a) encompasses a series that never has had, does not yet have, or no longer has associated members. In the last-named situation, action taken by the LLC could prejudice the rights of transferees holding associated transferable interests. This result parallels the results for transferees generally under Section 107(b).

²² Is/Is Not – determines how the decision is made. See Section 407(b)(3) and (4) and (c)(3)(a).

²³ N.b. – the members as members of the LLC, not as associated members.

1 **Alternative A**

2 the members.

3 **Alternative B**

4 the members associated with the series.²⁴

5 **End of Alternatives**

6 (c) Except as otherwise provided in subsections (e) and (f), a supplemental agreement
7 governs:

8 (1) relations among the members associated with the relevant protected series in
9 their capacity as associated members and between the associated members and the series;

10 (2) the rights and duties under this [act] of a person in the capacity of series
11 manager;

12 (3) the activities and affairs of the series and the conduct of those activities and
13 affairs; and

14 (4) the means and conditions for amending the agreement.

15 (d) Subject to Section 105, if a protected series has no relevant supplemental agreement
16 or the relevant supplemental agreement does not provide for a matter described in subsection (c),
17 the relevant series-specific terms of the operating agreement govern the matter.²⁵ To the extent
18 neither a relevant supplement agreement nor the relevant series-specific terms of the operating

²⁴ N.b. – the members associated with a protected series cannot amend the relevant series specific provisions of the operating agreement unless the member comprise all the members of the LLC. However, if the associated members include in the relevant supplemental agreement a term that contradicts a term in relevant series-specific terms in the operating agreement, under Section 1104(d) the supplemental agreement governs.

²⁵ Thus, on series-specific matters, the supplemental agreement trumps any series-specific terms of the operating agreement. Query: should the statute make the point more directly? The rule is a default rule, which a supplemental agreement can reverse. Trying to do so in the operating agreement might be problematic.

1 agreement provide for a matter described in subsection (b), this [act] governs the matter.

2 (e) A supplement agreement is subject to Sections 105 through 107 as if the supplemental
3 agreement were an operating agreement.²⁶

4 (f) A supplemental agreement may not:

5 (1) vary the capacity of a protected series under Section 1102(a) to sue and be
6 sued in the name of the series;

7 (2) vary the powers of a series under Section 1102, except to limit those powers;

8 or

9 (3) except as otherwise provided in Sections 106 and 107(b),²⁷ restrict the rights
10 under this [act] of a person other than a member associated with the relevant protected series or
11 series manager of that series.

12 **SECTION 1105. NAME REQUIREMENTS.** The name of a protected series need not
13 contain the name of the limited liability company that establishes²⁸ the series and must comply
14 with Section 112 and contain the phrase “Protected Series”.^{29 30}

15 **SECTION 1106. REGISTERED AGENT; SERVICE OF PROCESS, NOTICE, OR**
16 **DEMAND.**

17 (a) Sections 115 through 119 apply to a protected series or foreign protected series as if

²⁶ Arguably, this provision should appear in Section 1117(b). OTOH, the concept is integral to this section.

²⁷ Section 104(e) makes these sections applicable to supplemental agreements.

²⁸ Here the present tense is correct.

²⁹ The Reporter recommends not permitting abbreviation. Because the series concept is so new, an abbreviation is unlikely to function effectively as a signifier.

³⁰ Query: necessary to state that the designator suffices to distinguish the name of a protected series from the otherwise identical name of the LLC?

1 the series were a limited liability company or foreign limited liability company.³¹

2 (b) In addition to the means of service authorized in Section 119(b) and (c), if a protected
3 series or registered foreign protected series ceases to have a registered agent, or if its registered
4 agent cannot with reasonable diligence be served, the series may be served by:

5 (1) noting conspicuously³² on the process, notice, or demand that the series is the
6 addressee; and

7 (2) serving the limited liability company or foreign limited liability company that
8 established the series.

9 (c) Subject to other law:

10 (1) except as provided in subsection (b), service on a limited liability company or
11 foreign limited liability company is not service on a protected series or foreign protected series
12 of the company; and

13 (2) service on a protected series or foreign protected services is not service on:

14 (A) the limited liability company or foreign limited liability company that
15 established the series; or

16 (B) another protected series of the company.

17 **SECTION 1107. ESTABLISHMENT³³ OF PROTECTED SERIES; STATEMENT**
18 **OF DESIGNATION.**

19 (a) With the affirmative vote or consent of all the members, a limited liability company
20 may establish one or more protected series pursuant to subsections (b) through (d).

³¹ This incorporation by reference is not in the general list – Section 1117 – because the incorporation works better as an accompaniment to subsections (b) and (c).

³² Query: Is “conspicuous” necessary? If so, need we define the word?

³³ “ESTABLISHMENT OF” rather than “ESTABLISHING” to follow the style of Section 201 – Formation.

1 (b) A limited liability company may establish a protected series by delivering to the
2 [Secretary of State] for filing a protected series designation stating:³⁴

3 (1) the name of the limited liability company;

4 (2) the name of the series; and

5 (3) the name and street and mailing address of the registered agent for the series.

6 (c) A protected series designation may contain statements as to matters other than those
7 required by subsection (b), but may not vary or otherwise affect the provisions specified in
8 Sections 105(c) and (d) and 1104(f) in a manner inconsistent with those sections. A statement in
9 a designation is not effective as a statement of authority.

10 (d) A protected series is established when the protected series designation becomes
11 effective [and the limited liability company has associated property with the protected series as
12 provided in Section 1110].³⁵

13 **SECTION 1108. NO AGENCY POWER OF MEMBER ASSOCIATED WITH**
14 **PROTECTED SERIES.**³⁶

15 (a) A member is not an agent of a protected series solely by reason of being associated
16 with the series.

17 (b) A person's status as a member associated with a protected series does not prevent or
18 restrict law other than this [act] from imposing liability on the series because of the person's
19 conduct.

³⁴ Query: Once the certificate of designation becomes effective, who controls its amendment – the LLC or the series? The answer will not be a default rule, because amendment pertains to the filing office. See Section 105(3)(c)(B).

³⁵ The second prerequisite [bracketed] deviates from the Committee's tentative decision at the Spring 2013 meeting but is consistent with ULLCA's approach to the formation of a limited liability company.

³⁶ Derived essentially verbatim from Section 301.

1 **SECTION 1109. PROPERTY ASSOCIATED WITH PROTECTED SERIES.**

2 (a) Property becomes associated with a protected series of a limited liability company
3 when the company³⁷ identifies in a record:³⁸

4 (1) the series by name; and

5 (2) the property with sufficient specificity to permit a reasonable person that is not
6 a member,³⁹ manager, or series manager to identify the property and distinguish it from:

7 (i) property of the company; and

8 (ii) property associated with another protected series of the company.

9 (b) A limited liability company⁴⁰ satisfies subsection (a)(2) with regard to a protected
10 series of the company if the company maintains written records so that the property of the series
11 can be reasonably identified by specific listing, category, type, quantity, or computational or
12 allocational formula or procedure, including a percentage or share of any property, or by any
13 other method by which the identity of the property can be objectively determined.

14 (c) Once associated with a protected series, property:⁴¹

15 (1) is the property of the series unless subsequently transferred to another person;

³⁷ Query – should the series be able to maintain the records?

³⁸ Non-record designation (“the memory of man runneth not to the contrary”) could not possibly satisfy the specificity requirement stated in Section 109(a)(2). *But see* Anderson v. City of Huntington, 40 Ind. App. 130, 81 N.E. 223, 224 (1907) (“If the fence lines at this point have been maintained as they now are, so long that ‘the mind of man runneth not to the contrary,’ we take it no one would contend that the county commissioners could declare that said road was 60 feet wide at such place and appropriate sufficient land from the adjoining property owners to make said road 60 feet wide without any legal proceedings or process.”)

³⁹ In this context, “member” encompasses both general status as a member and status as a member associated with the series. That is, the standard excludes members, regardless of whether associated with the series.

⁴⁰ See note 37 – same issue.

⁴¹ For the purposes of discussion, this subsection takes a position on two issues the Drafting Committee discussed at length at the Spring 2013 meeting but did not decide. These issues are material to at least three important areas of other law: bankruptcy; UCC Article 9; title insurance.

1 and

2 (2) must be held in the name of the series, except to the extent that law other than
3 this act permits a person's property to be held in the name of another person.⁴²

4 **SECTION 1110. MEMBER ASSOCIATED WITH PROTECTED SERIES.**

5 (a) Only a member⁴³ may become associated with a protected series of a limited liability
6 company.

7 (b) A member becomes associated with a protected series when the member is so
8 identified in or pursuant to a relevant supplemental agreement or relevant series-specific terms of
9 the operating agreement.⁴⁴

10 **SECTION 1111. MANAGEMENT OF PROTECTED SERIES.**

11 **Alternative A**

12 A protected series is managed by the limited liability company that establishes the series.⁴⁵

13 **Alternative B**

14 (a) If a protected series has a series manager, the manager manages the series.

15 (b) If a protected series has an associated member and no series manager, the member
16 manages the series.

⁴² Some states seem to provide special rules regarding titling. *See e.g.* Del. Code Ann. tit. 6 § 18-215(b) (“Assets associated with a series may be held directly or indirectly, including in the name of such series, in the name of the limited liability company, through a nominee or otherwise.”). Query: Under such language, if the LLC holds property associated with a series, what is the LLC’s relationship to the property and what are the LLC’s duties to the series with regard to the property.

⁴³ An earlier version of this Draft included “of a limited liability company”. That phrase is redundant, given the definition of member. Section 102(11).

⁴⁴ This Draft provides some default rights to a member associated with a protected series, including the right to share per capita in distributions from the series. See Section 1117(c)(1) (incorporating by reference Section 404).

⁴⁵ Alternative A reflects a tentative decision made at the Spring 2013 meeting.

1 **SECTION 1112. DISTRIBUTIONS IF PROTECTED SERIES HAS NO**

2 **ASSOCIATED TRANSFERABLE INTERESTS.** If a protected series has no associated
3 transferable interests, a distribution from the series is paid to the limited liability company that
4 established the series.⁴⁶

5 **SECTION 1113. CEASING TO BE ASSOCIATED; DISSOCIATION.**

6 (a) A member associated with a protected series ceases to be associated if:

7 (1) the person is dissociated as a member of the limited liability company that
8 established the series; or

9 (2) as provided in Section 1117(c)(2).⁴⁷

10 (b) A person’s ceasing to be associated⁴⁸ with a protected series does not dissociate the
11 person from the limited liability company that established the series.

12 **SECTION 1114. DISSOLUTION.** If a dissolved protected series has no associated

13 members, the limited liability company that established the series shall wind up the activities and
14 affairs of the series.⁴⁹

15 **SECTION 1115. GOVERNING LAW OF FOREIGN PROTECTED SERIES.** The

16 law of the jurisdiction of formation of a foreign limited liability company governs:

17 (1) the internal affairs of a foreign protected series of the company;

18 (2) the relationship of the foreign protected series to:

⁴⁶ This provision reflects a decision made at the Spring 2013 meeting. A protected series might have no associated members but still be obligated to transferees of members that were formerly associated with the series.

⁴⁷ The cited provision incorporates by reference the causes of dissociation under Section 602.

⁴⁸ The term “ceasing to be associated with” could be replaced with “dissociating”. The Reporter tentatively prefers the former, so as to separate the two analogous but separate rearrangements.

⁴⁹ This approach is a placeholder, to be further considered after the Drafting Committee determines the default rule for managing a protected series. See Section 1111.

- 1 (A) the company; and
- 2 (B) any other protected series of the company;
- 3 (3) the liability of a foreign limited liability company for a debt, obligation, or other
- 4 liability of a foreign protected series of the company;
- 5 (4) the liability of a protected series of a foreign limited liability company for a debt,
- 6 obligation, or other liability of the company or any other protected series of the company.
- 7 (5) the liability for the debts, obligations, or other liabilities of the company and a foreign
- 8 protected series of the company of:
- 9 (A) a member as such;⁵⁰
- 10 (B) a member associated with the series as such;
- 11 (C) a manager of the series as such; and
- 12 (D) a manager of the foreign company as such.

13 **SECTION 1116. NON-ATTRIBUTION.**

- 14 (a) Subsections (b) and (c) apply for purposes of determining whether:
- 15 (1) a limited liability company or protected series has transacted business in
- 16 another jurisdiction;
- 17 (2) a foreign limited liability company or foreign protected series has transacted
- 18 business in this state;
- 19 (3) another jurisdiction has personal jurisdiction over a limited liability company
- 20 or a protected series of the company; and
- 21 (4) this state has personal jurisdiction over a foreign limited liability company or
- 22 foreign protected series of the foreign company.

⁵⁰ With regard to the foreign limited liability company, Paragraph 5(A) is redundant of Section 901(a)(2). The redundancy seems preferable to the more complicated structure needed to eliminate the redundancy.

1 (b) The conduct of a protected series or a foreign protected series of a foreign limited
2 liability company is not attributable to:

3 (1) the company solely by reason⁵¹ of the company having established⁵² the
4 series; or

5 (2) another series of the company solely by reason of the company having
6 established the two series.

7 (c) The conduct of a limited liability company or foreign limited liability company is not
8 attributable to a protected series or foreign protected series of the company solely by reason of
9 the company having established the series.

10 **SECTION 1117. OTHER PROVISIONS OF [ACT] MADE APPLICABLE TO**
11 **PROTECTED SERIES.**⁵³

12 (a) For purposes of subsections (b), (c), (d), and (e) the following words and phrases
13 defined in [Section] 102 are applied as follows.⁵⁴

14 (1) “certificate of formation” as if the phrase referred to “certificate of
15 designation”;

16 (2) “contribution” as if the word referred to “contributions made, promised, or
17 otherwise pertaining to a protected series”;

18 (3) “dissociates” and “dissociation” as if each word referred to “ceasing to be

⁵¹ This Draft uses “solely by reason of” instead of “because” to track language used elsewhere. See Sections 301(a), 304(a), and 1108(a).

⁵² Note the omission of “managed”. Compare Section 304(b).

⁵³ Many provisions of the Act do not need to be “made applicable”; they apply by their terms as stated. E.g., § 205(c) (“An individual who signs a record authorized or required to be filed under this [act] affirms under penalty of perjury that the information stated in the record is accurate.”).

⁵⁴ The Reporter and COSL are continuing to think about the formulations in this subsection. See also note 68.

1 associated with a protected series”;

2 (4) “limited liability company” as if the phrase referred to “protected series”;

3 (5) “member” as if the word referred to “member associated with the protected
4 series”;

5 (6) “member of a member-managed limited liability company” and “manager of a
6 manager-managed limited liability company” as if each phrase referred to “series manager”;

7 (7) “operating agreement” as if the phrase referred to “relevant series-specific
8 terms of the operating” and “relevant supplemental agreement”; and

9 (8) “transferable interest” as if the phrase referred to “relevant transferable
10 interest”.

11 (b) The following provisions apply to a protected series:

12 (1) Section 205(a);^{55 56}

13 (2) [Article] 7, except:

14 (A) Sections 701(5),⁵⁷ 702(c), (d), and (e)(2),⁵⁸ and 708 through 710⁵⁹ do
15 not apply; and

⁵⁵ Subsection 205(b) is inapposite: “(b) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the company to the [Secretary of State] for filing under this [act] and imposes that responsibility on one or more other members, the liability stated in subsection (a)(2) applies to those other members and not to the member that the operating agreement relieves of the responsibility.” Subsection (c) applies by its terms.

⁵⁶ Query whether to include certificate of good standing for series? annual report for series?

⁵⁷ Paragraph 5 pertains to administrative dissolution, and the Committee has not yet decided whether administration dissolution applies to series.

⁵⁸ The cited provisions pertain to a dissolved LLC that has no members. A dissolved protected series without members will be wound up by the LLC.

⁵⁹ Administrative dissolution – undetermined whether such applies to a series.

1 (B) if a protected series has no associated members, Section 703(b)(1)⁶⁰
2 requires a decision by the limited liability company that established the series and the decision is
3 [not]⁶¹ a matter in the ordinary course of the activities and affairs of the company.⁶²

4 (c) The following provisions apply to a protected series that has an associated member:

5 (1) Sections 402 through 406, 408, 409(i),⁶³ and 410(b) through (h),^{64 65}

6 (2) Sections 601 and Section 602 except Section 602(12) through (15);^{66 67} and

7 (3) [Article] 8;

8 (d) Section 901(a) and (b) and Sections 902 through 906 apply to a foreign protected
9 series as if:⁶⁸

10 (1) the series were a foreign limited liability company;

11 (2) “member” referred to a member of the company and a person associated with
12 the series;

13 (3) “manager” referred to a person managing either the company or the series;

⁶⁰ Rescinding dissolution.

⁶¹ Is/Is Not – determines how the decision is made. See Section 407(b)(3) and (4) and (c)(3)(a).

⁶² This approach is a placeholder to be revisited when the Drafting Committee considers the default management rules for a protected series.

⁶³ The omission of Section 407 and most of Section 409 reflects the Drafting Committee’s tentative decision, made at the Spring 2013 meeting, to provide, as a default rule, that the LLC manages each protected series of the LLC.

⁶⁴ Not included: default management rules (§ 407), because the Series Provisions default to management by the LLC. Establishing “in case” default rules seems (i) difficult, b/c difficult to figure out the proper approach; and (ii) not worth the trouble and resulting drafting complexity.

⁶⁵ Article 5 applies by its terms, except for § 503 which is revised to encompass those aspects of a transferable interest pertaining to protected series

⁶⁶ Paragraphs 12 through 15 refer to META-type transactions, in which a protected series may not participate. See Section 1102(b)(2).

⁶⁷ Reporter to revisit the incorporation of Section 603 after the Drafting Committee has revisited the issue of series management.

⁶⁸ The Reporter and COSL are continuing to think about the formulations in this subsection. See also note 54.

1 (4) “jurisdiction of formation” referred to the jurisdiction of formation of the
2 company that established the series; and

3 (5) “the company’s principal office” referred to the principal office of the
4 company that established the series.

5 (e) This [article] and provisions of other [articles] that this section incorporates by
6 reference must be construed wherever reasonable as consistent with each other. If that
7 construction is not possible, this [article] governs.⁶⁹

8 ***Legislative Note Re: Fraudulent Transfer*** will advise enacting states that have not enacted the
9 UFTA revisions to enact the revisions pertaining to series.

⁶⁹ Safety net provision. Query: retain?

1 **SERIES OF UNINCORPORATED BUSINESS ENTITIES ACT**

2 **Further Revisions to ULLCA (2013)**

3 **SECTION 105. OPERATING AGREEMENT; SCOPE, FUNCTION, AND**
4 **LIMITATIONS.**

5 * * *

6 (c) An operating agreement may not:

7 (1) vary the law applicable under Section 104 or 1103;

8 (2) vary:

9 (A) a limited liability company’s capacity under Section 109 or the
10 capacity of a protected series under Section 1102(a) to sue and be sued in its own name; or

11 (B) the powers of a protected series, except as permitted by Section
12 1104(f)(2);

13 * * *

14 (12) vary the provisions of Section 805, but the operating agreement may provide
15 that the company or a protected series may not have a special litigation committee.

16 * * *

17 **SECTION 203. SIGNING OF RECORDS TO BE DELIVERED FOR FILING TO**
18 **[SECRETARY OF STATE].**

19 (a) A record delivered to the [Secretary of State] for filing pursuant to this [act] must be
20 signed as follows:

21 * * *

22 (5) A record delivered on behalf of a protected series to the [Secretary of State]

1 for filing must be signed by a series manager⁷⁰ of the series.

2 (6) Any other record delivered on behalf of a person to the [Secretary of State] for
3 filing must be signed by that person.

4 **SECTION 204. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.**

5 (a)

6 (b) If a petitioner under subsection (a) is not the limited liability company, protected
7 series, ~~or~~ foreign limited liability company, or foreign protected series to which the record
8 pertains, the petitioner shall make the company, protected series, ~~or~~ foreign company, or foreign
9 protected series a party to the action.

10 (c)

11 * * *

12 **SECTION 302. STATEMENT OF AUTHORITY.⁷¹**

13 (a) A limited liability company or protected series may deliver to the [Secretary of State]
14 for filing a statement of authority. The statement:

15 (1) must include the name of the company or series and the name and street and
16 mailing addresses of its registered agent;

17 (2) with respect to any position that exists in or with respect to the company or
18 series, may state the authority, or limitations on the authority, of all persons holding the position
19 to:

⁷⁰ In the default mode [at least per a tentative decision at the Spring 2013 meeting], the LLC manages its protected series. See Section 1111.

⁷¹ This section is already almost overwhelming complex. The Reporter advises against incorporating it by reference into the Series article. However, it would be possible to do so using language to this effect, plus the language from proposed subsections (l) and (m): “A protected series may effect, limit, otherwise amend, and cancel a statement of authority under the procedures stated in Section 302 and with the same effect with regard to the series.” [COSL agrees with current approach.]

1 (A) execute an instrument transferring real property held in the name of
2 the company or series; or

3 (B) enter into other transactions on behalf of, or otherwise act for or bind,
4 the company or series; and

5 (3) may state the authority, or limitations on the authority, of a specific person to:

6 (A) execute an instrument transferring real property held in the name of
7 the company or series; or

8 (B) enter into other transactions on behalf of, or otherwise act for or bind,
9 the company or series.

10 (b) To amend or cancel a statement of authority filed by the [Secretary of State], a limited
11 liability company or series must deliver to the [Secretary of State] for filing an amendment or
12 cancellation stating:

13 (1) the name of the company or series;

14 (2) the name and street and mailing addresses of the ~~company's~~ registered agent
15 of the company or series;

16 (3) the date the statement being affected became effective; and

17 (4) the contents of the amendment or a declaration that the statement is canceled.

18 (c) A statement of authority pertaining to a limited liability company affects only the
19 power of a person to bind a limited liability company to persons that are not members. A
20 statement of authority pertaining to a protected series affects only the power of a person to bind
21 the series to persons that are not members associated with the series.

22 (d) Subject to subsection (c) and Section 103(d), and except as otherwise provided in
23 subsections (f), (g), and (h), a limitation on the authority of a person or a position contained in an

1 effective statement of authority is not by itself evidence of any person’s knowledge or notice of
2 the limitation.

3 (e) Subject to subsection (c), a grant of authority not pertaining to transfers of real
4 property and contained in an effective statement of authority is conclusive in favor of a person
5 that gives value in reliance on the grant, except to the extent that when the person gives value:

6 (1) the person has knowledge to the contrary;

7 (2) the statement has been canceled or restrictively amended under subsection (b);

8 or

9 (3) a limitation on the grant is contained in another statement of authority that
10 became effective after the statement containing the grant became effective.

11 (f) Subject to subsection (c), an effective statement of authority that grants authority to
12 transfer real property held in the name of ~~the~~ a⁷² limited liability company or protected series, a
13 certified copy of which statement is recorded in the office for recording transfers of the real
14 property, is conclusive in favor of a person that gives value in reliance on the grant without
15 knowledge to the contrary, except to the extent that when the person gives value:

16 (1) the statement has been canceled or restrictively amended under subsection (b),
17 and a certified copy of the cancellation or restrictive amendment has been recorded in the office
18 for recording transfers of the real property; or

19 (2) a limitation on the grant is contained in another statement of authority that
20 became effective after the statement containing the grant became effective, and a certified copy
21 of the later-effective statement is recorded in the office for recording transfers of the real
22 property.

⁷² Style change. [COSL agrees.]

1 (g) Subject to subsection (c), if a certified copy of an effective statement containing a
2 limitation on the authority to transfer real property held in the name of a limited liability
3 company or protected series is recorded in the office for recording transfers of that real property,
4 all persons are deemed to know of the limitation.

5 (h) Subject to subsection (i), an effective statement of dissolution or termination is a
6 cancellation of any filed statement of authority for the purposes of subsection (f) and is a
7 limitation on authority for the purposes of subsection (g).

8 (i) After a statement of dissolution pertaining to a limited liability company or protected
9 series becomes effective,⁷³ ~~a limited liability~~ the company or series may deliver to the [Secretary
10 of State] for filing and, if appropriate, may record a statement of authority that is designated as a
11 post-dissolution statement of authority. The statement operates as provided in subsections (f)
12 and (g).

13 (j) Unless earlier canceled, an effective statement of authority is canceled by operation of
14 law five years after the date on which the statement, or its most recent amendment, becomes
15 effective. This cancellation operates without need for any recording under subsection (f) or (g).

16 (k) An effective statement of denial operates as a restrictive amendment under this
17 section and may be recorded by certified copy for purposes of subsection (f)(1).

18 (l) Except as provided in subsection (m), a statement of authority, an⁷⁴ amendment, or a
19 cancellation under this section pertains only to the limited liability company or protected series
20 on whose behalf the statement, amendment, or cancellation was delivered to the [secretary of
21 state] for filing.

⁷³ Under Section 1117(b)(2), a dissolved protected series may file a statement of dissolution.

⁷⁴ Indefinite articles included here and before “cancellation” to indicate that “a statement” applies only to “of authority”. [COSL agrees.]

1 (m) A limited liability company may deliver to the [Secretary of State] for filing a
2 statement of authority, an amendment, or a cancellation that pertains both to the company and a
3 protected series of the company.⁷⁵

4 **SECTION 303. STATEMENT OF DENIAL.** A person named in a filed statement of
5 authority granting that person authority may deliver to the [Secretary of State] for filing a
6 statement of denial that:

7 (1) provides, with respect to ~~the name of the limited liability company and the caption of~~
8 the statement of authority to which the statement of denial pertains:

9 (A) the name of the limited liability company or protected series on whose behalf
10 the statement of authority was delivered to the [Secretary of State] for filing;

11 (B) the caption of the statement of authority; and

12 (2) denies the grant of authority.

13 **SECTION 304. LIABILITY OF MEMBERS AND MANAGERS SHIELDS.**⁷⁶

14 (a) A debt, obligation, or other liability of a limited liability company or a protected
15 series is solely the debt, obligation, or other liability of the company or series.

16 **(b)** A member, member associated with a protected series, manager, or series manager is
17 not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt,
18 obligation, or other liability of the company or a series solely by reason of being or acting as a
19 member, member associated with a series, manager, or series manager. ~~This subsection applies~~
20 ~~regardless of the dissolution of the company.~~

21 (c) A limited liability company is not personally liable, directly or indirectly, by way of

⁷⁵ Query for IACA – will the filing office want conformed copies for each protected series involved?

⁷⁶ Separating the series-specific provisions and placing them in the Series article would be far more complicated.

1 contribution or otherwise, for a debt, obligation, or other liability of a protected series of the
2 company solely by reason of the company having established or managed the series.

3 (d) A protected series of a limited liability company is not personally liable, directly or
4 indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the
5 company or another protected series of the company solely by reason of being a protected series
6 of the company.

7 (e) The failure of a limited liability company or a protected series to observe formalities
8 relating to the exercise of its powers or management of its activities and affairs is not a ground
9 for imposing liability on:

10 (1) a member, member associated with a protected series, manager, or series
11 manager for a debt, obligation, or other liability of the company or series; and

12 (2) except as otherwise provided in Section 1109(a)(2):⁷⁷

13 (A) a limited liability company for a debt, obligation, or other liability of
14 protected series of the company; and

15 (B) a protected series for a debt, obligation, or other liability of the limited
16 liability company that established the series or another protected series of the company.

17 (f) This section applies regardless of the dissolution of a limited liability company or any
18 protected series.

19 * * *

20 **SECTION 503. CHARGING ORDER.**

21 (a) On application by a judgment creditor of a member or transferee, a court may enter a
22 charging order against the transferable interest of the judgment debtor for the unsatisfied amount

⁷⁷ Requiring records to clearly indicate what property is associated with a series.

1 of the judgment. Except as otherwise provided in subsection (f), a charging order constitutes a
2 lien on a judgment debtor’s transferable interest and requires the limited liability company and
3 any protected series of the company with which the debtor is associated to pay over to the person
4 to which the charging order was issued any distribution that otherwise would be paid to the
5 judgment debtor.

6 (b)

7 (c) Upon a showing that distributions under a charging order will not pay the judgment
8 debt within a reasonable time, the court may foreclose the lien and order the sale of the
9 transferable interest. Except as otherwise provided in subsection (f), the purchaser at the
10 foreclosure sale obtains only the transferable interest, does not thereby become a member or a
11 member associated with a protected series, and is subject to Section 502.

12 * * *

13 (g) If a charging order under subsection (a) applies to a transferable interest associated
14 with a protected series, the company is liable as a guarantor⁷⁸ for compliance by the series with
15 the lien under subsection (a) and any order issued to the series under subsection (c).⁷⁹

16 Re-letter (g) to (h) and (h) to (i).

17 * * *

18 **SECTION 702. WINDING UP.**

19 (a) A dissolved limited liability company shall wind up its activities and affairs and,

⁷⁸ At the Spring 2013 meeting, the Drafting Committee tentatively decided that an LLC is responsible for the compliance by a protected series with a charging order. Query whether: (i) this liability is an exception to the internal shields; and (ii) the Committee should re-visit its decision on this issue.

⁷⁹ This language reflects a decision made at the Spring 2013 meeting. Subsection (c) states: “To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a), the court may:(1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and (2) make all other orders necessary to give effect to the charging order.”

1 except as otherwise provided in Section 703, the company continues after dissolution only for
2 the purpose of winding up.

3 (b) In winding up its activities and affairs, a limited liability company:

4 (1) shall discharge the company's debts, obligations, and other liabilities, settle
5 and close the company's activities and affairs, dissolve, wind up, and terminate all protected
6 series of the company, and marshal and distribute the assets of the company; and

7 (2) may:

8 * * *

9 **SECTION 907. WITHDRAWAL DEEMED ON CONVERSION TO DOMESTIC**
10 **FILING ENTITY OR DOMESTIC LIMITED LIABILITY PARTNERSHIP.** A If a
11 registered foreign limited liability company ~~that~~ converts to a domestic limited liability
12 partnership or to a domestic entity whose formation requires delivery of a record to the
13 [Secretary of State] for filing:

14 (1) the company is deemed to have withdrawn its registration on the effective date of the
15 conversion; and

16 (2) with regard to a registered foreign protected series of the converting foreign company,
17 if as a result of the conversion the series is to:

18 (A) be dissolved and its activities and affairs wound up, Section 908 applies; and

19 (B) continued as a protected series of the converted entity, Section 909 applies.⁸⁰

20 **SECTION 908. WITHDRAWAL ON DISSOLUTION OR CONVERSION TO**
21 **NONFILING ENTITY OTHER THAN LIMITED LIABILITY PARTNERSHIP.**

22 (a) A registered foreign limited liability company or registered foreign protected series

⁸⁰ Revising Section 909 to accommodate series will be very complicated. The Reporter seeks guidance from the Drafting Committee as to whether "the game is worth the candle."

1 that has dissolved and completed winding up⁸¹ ~~or~~ and a registered foreign company that has
2 converted to a domestic or foreign entity whose formation does not require the public filing of a
3 record, other than a limited liability partnership, shall deliver a statement of withdrawal to the
4 [Secretary of State] for filing. The statement must state:

5 (1) in the case of a company that has completed winding up:

6 (A) its name and jurisdiction of formation;

7 (B) that the company surrenders its registration to do business in this state;

8 (2) in the case of a series that has dissolved and completed winding up:

9 (A) the name and jurisdiction of formation of the limited liability company
10 that established the series;

11 (B) that the series surrenders its registration to do business in this state;

12 and

13 (3) in the case of a company that has converted:

14 (A) the name of the converting company and its jurisdiction of formation;

15 (B) the type of entity to which the company has converted and its
16 jurisdiction of formation;

17 (C) that the converted entity surrenders the converting company's
18 registration to do business in this state and revokes the authority of the converting company's
19 registered agent to act as registered agent in this state on behalf of the company or the converted
20 entity; and

21 (D) a mailing address to which service of process may be made under
22 subsection (b).

⁸¹ This phrase encompasses dissolution necessitated by the merger, conversion, or domestication of a foreign LLC into a resulting entity that may not have series. See Section 1102(b)(1).

1 (b) After a withdrawal under this section is effective, service of process in any action or
2 proceeding based on a cause of action arising during the time the foreign limited liability
3 company or foreign protected series was registered to do business in this state may be made
4 pursuant to Section 119.

5 * * *

6 **SECTION 910. TERMINATION OF REGISTRATION.**

7 (a) The [Secretary of State] may terminate the registration of a registered foreign limited
8 liability company or registered foreign protected series in the manner provided in subsections (b)
9 and (c) if the company or series does not:

10 (1) pay, not later than [60] days after the due date, any fee, tax, interest, or penalty
11 required to be paid to the [Secretary of State] under this [act] or law other than this [act];⁸²

12 (2) deliver to the [Secretary of State] for filing, not later than [60] days after the
13 due date, [an annual] [a biennial] report required under Section 212;⁸³

14 (3) have a registered agent as required by Section 115; or

15 (4) deliver to the [Secretary of State] for filing a statement of a change under
16 Section 116 not later than [30] days after a change has occurred in the name or address of the
17 registered agent.

18 (b) The [Secretary of State] may terminate the registration of a registered foreign limited
19 liability company or registered foreign protected series by:

20 (1) filing a notice of termination or noting the termination in the records of the
21 [Secretary of State]; and

22 (2) delivering a copy of the notice or the information in the notation to the

⁸² Not yet determined whether this requirement applies to a foreign series.

⁸³ Not yet determined whether this requirement applies to a foreign series.

1 ~~company's~~ registered agent of the company or series or;

2 (A) if the company does not have a registered agent, to the company's

3 principal office; and

4 (B) if the series does not have a registered agent, to the principal office of

5 the company that established the series, noting conspicuously on the notice or information that

6 the series is the addressee.

7 (c) The notice must state or the information in the notation must include:

8 (1) the effective date of the termination, which must be at least [60] days after the

9 date the [Secretary of State] delivers the copy; and

10 (2) the grounds for termination under subsection (a).

11 (d) The authority of a registered foreign limited liability company or registered foreign

12 protected series to do business in this state ceases on the effective date of the notice of

13 termination or notation under subsection (b), unless before that date the company or series cures

14 each ground for termination stated in the notice or notation. If the company or series cures each

15 ground, the [Secretary of State] shall file a record so stating.

16 **SECTION 911. WITHDRAWAL OF REGISTRATION OF REGISTERED**
17 **FOREIGN LIMITED LIABILITY COMPANY.**

18 (a) A registered foreign limited liability company or registered foreign protected series

19 may withdraw its registration by delivering a statement of withdrawal to the [Secretary of State]

20 for filing. The statement of withdrawal must state:

21 (1) the name of the company and its jurisdiction of formation or the name of the

22 series and the jurisdiction of formation of the company that established the series;

23 (2) that the company or series is not doing business in this state and that it

1 withdraws its registration to do business in this state;

2 (3) that the company or series revokes the authority of its registered agent to
3 accept service on its behalf in this state; and

4 (4) an address to which service of process may be made under subsection (b).

5 (b) After the withdrawal of the registration of a foreign limited liability company or
6 registered foreign protected series, service of process in any action or proceeding based on a
7 cause of action arising during the time the company or series was registered to do business in this
8 state may be made pursuant to Section 119.

9 **SECTION 912. ACTION BY [ATTORNEY GENERAL].** The [Attorney General]
10 may maintain an action to enjoin a foreign limited liability company or foreign protected series
11 from doing business in this state in violation of this [article].

12 **[ARTICLE] 10**

13 **MERGER, INTEREST EXCHANGE, CONVERSION, AND DOMESTICATION**

14 **[PART] 1**

15 **GENERAL PROVISIONS**

16 **SECTION 1001. DEFINITIONS.** In this [article] and [article] 11:⁸⁴

⁸⁴ Article 11 needs only a few of Article 10’s defined terms – merger, conversion, domestication and related adjectives. Alternatives (which seem to the Reporter largely a style issue): Move the definition of those terms into Section 102; Include those terms in Section 102 but cross reference to Article 10 – e.g., “Merger” has the meaning stated in Section . . .” The Reporter, in his capacity of Co-Reporter for the Harmonization Project, prefers the latter approach, for the sake of harmonization between acts that adopt the Series provisions and acts that do not.