

D R A F T
FOR DISCUSSION ONLY

**SERIES OF UNINCORPORATED BUSINESS
ENTITIES ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

January 31 – February 2, 2014 Drafting Committee Meeting

With Reporter's Introductory Note

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ON UNIFORM STATE LAWS

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January 15, 2014

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ENTITIES ACT**

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1 characterizing the legal status of a series: undefined (as with the first draft),⁵ a person,
2 and an entity.

3 **Two Key Substantive Premises**

4 **A.**

- 5 • The term of art for the “thing”⁶ ~~will be~~ is “protected series” because: (i) usage in the
6 series/asset-partitioning realm requires that the act refer to “series,” while (ii) usage
7 elsewhere makes the term confusing when standing alone.

8
9 ~~B. Series provisions will scrupulously avoid stating that a protected series is an entity or a person~~
10 ~~in its own right, even though a series will have many of the most important powers of a legal~~
11 ~~entity/person.~~

12 **Drafting Assumptions**

- 15 • As to the relationship between a limited liability company and a protected series, this
16 draft in most instances refers to the latter as being “of” the former – i.e., “a protected
17 series of the [a] limited liability company.” Where that formulation is awkward, this draft
18 uses “a protected series the limited liability company has established”⁷ or similar
19 formulation.⁸

20 **1.**

21 ~~2. Except as explained in #3, below, Article 11 will:~~

22 ~~a. include series specific provisions; and~~

23 ~~b. incorporate by reference from the main body of ULLCA provisions that can be easily~~
24 ~~extrapolated to series.~~

25
26
27 ~~3. Series specific provisions will be inserted as revisions into the main body of ULLCA when:~~

28 ~~a. for substantive reasons, the LLC and series specific provisions should be in one~~
29 ~~place—e.g., the liability shield provisions;⁹ or~~

30 ~~b. as a matter of clear drafting, incorporating by reference would be impractical—e.g.,~~
31 ~~statements of authority.¹⁰~~

⁵ The Prefatory Note to the first draft stated: “Series provisions will scrupulously avoid stating that a protected series is an entity or a person in its own right, even though a series will have many of the most important powers of a legal entity/person.”

⁶ As suggested by a participant in the drafting process, “thing” is a placeholder, pending the Drafting Committee’s decision on how to characterize a protected series.

⁷ The past tense is necessary, because most provisions of the statute apply to a series already in existence at the moment the statute applies.

⁸ An ~~earlier~~ early version of ~~the~~ this Fall 2013 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.

⁹ Section 304.

1 ~~4. Within Article 11:~~

2 ~~a. series-specific provisions will be:~~

3 ~~i. sequenced roughly in accord with the sequencing of the main body of the act;~~

4 ~~—and~~

5 ~~ii. to the extent practicable, drafted using the same wording and formulations as—~~

6 ~~—used in the main body of the act; and~~

7 ~~b. incorporations by reference will be at the end of the article.~~

8
9 **Abbreviations**

10
11 “~~Spring~~ Fall 2013 ~~M~~meeting” refers to the Drafting Committee meeting in ~~April~~ September,

12 2013 in Minneapolis.

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

⁴⁰ Sections 302 and 303.

1 **SERIES OF UNINCORPORATED BUSINESS ENTITIES ACT**

2 **Section 102**

3 **Changes to Definitions**

4 **SECTION 102. DEFINITIONS.** ¹¹

5 * * *

6 ¹²(24) “Transferable interest” means the right, as initially owned by a person in
7 the person’s capacity as a member or member associated with a protected series to receive
8 distributions from a limited liability company or from a protected series of the company, whether
9 or not the person remains dissociates as a member, remains associated with the series,¹³ or
10 continues to own any part of the right. The term applies to any fraction of the interest, by
11 whomever owned regardless of who owns the interest.¹⁴

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

16 (b) With regard to a protected series:

17 (1) “Associated”¹⁵ means with respect to:

¹¹ Many of these definitions have been relocated to Article 11, where they are not underscored except to the extent that language has been revised.

¹² In order to prevent duplication of ULLCA’s provisions on transfer restrictions (including charging orders), it appears necessary to revise these definitions rather than create “piggy back” definitions in Article 11.

¹³ To distinguish ceasing to be a member from ceasing to be associated with a protected series, this draft refers to the former as “dissociation” (following ULLCA) and the latter as “ceasing to be associated”.

¹⁴ Style changed to moot the question of whether “whomever” should be “whoever”. [COSL] Due to the Drafting Committee’s decision to locate all series provisions in one article, this draft omits this style correction.

¹⁵ Even if the act were to define “associate” as a verb, the concept of association would be used far more

1 ~~(A) property, property that under Section 1109 has become associated~~
2 ~~with the series;~~¹⁶

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 structure~~¹⁷ ~~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.~~¹⁸

12 **Alternative B**

13 ~~(3) "Protected series" means a structure~~¹⁹ ~~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~~

often in adjectival form. Therefore, this draft defines the adjectival form.

¹⁶ Passive used here to parallel the next provision, which cannot easily be stated in the active voice.

¹⁷ Earlier draft used "arrangement" as the term of art.

¹⁸ 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.

¹⁹ "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;²⁰ 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.²¹

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.

²⁰ A comment will indicate that a series specific term can be incorporated by reference and still remain series specific.

²¹ 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 ~~(8) “Supplemental agreement” means an agreement adopted under Section~~
2 ~~1104(a) or (b) and pertaining solely to one protected series.~~

3 * * *

4 [ARTICLE] 11

5 PROTECTED SERIES

6 [PART 1] [CAPTION TBD]

7 SECTION 1101. DEFINITIONS.²² ~~In As used in~~ this [article]:

8 Alternative A

9 (1) “Associated”²³ means with respect to:

10 (A) property, property that under Section 1109 has become associated with ~~the a~~
11 protected series;²⁴

12 (B) a member, a member that under Section 1110²⁵ has become associated ~~under~~
13 ~~Section TBD~~ with ~~the a~~ protected series; and

14 (C) a transferable interest, ~~part of~~²⁶ a transferable interest comprising a person’s
15 rights to receive distributions from ~~the a~~ protected series.

16 Alternative B

17 (1) “Associated” means have become associated with a protected series:

²² In the Fall 2013 draft, many of these definitions were located in ULLCA § 102(b). Such relocated provisions are not underscored except to the extent that language has been revised. The same is true for relocated footnotes.

²³ 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.

²⁴ Passive used here to parallel the next provision, which cannot easily be stated in the active voice.

²⁵ Change made to make syntax parallel to parallel parts of the definition. COSL – Query – which is the proper location?

²⁶ The Fall 2013 draft relied on a revised definition of “transferable interest” in Section 102. In this draft, Section 1101 defines “transferable interest” for the purposes of Article 11.

- 1 (A) under Section 1109 as property;
2 (B) under Section 1110 as a member; or
3 (C) as a transferable interest.

4 **End of Alternatives**

5 ²⁷ (2) “Distribution” means a transfer of money or other property from a protected series
6 to a person on account of an associated transferable interest or in the person’s capacity as an
7 associated member. The term:

8 (A) includes:

9 (i) a redemption or other purchase by a series of an associated transferable
10 interest; and

11 (ii) a transfer to an associated member in return for the member’s
12 relinquishment of any right to participate as an associated member in the management or conduct
13 of the series’ activities and affairs or to have access to records or other information concerning
14 the series’ activities and affairs; and

15 (B) does not include amounts constituting reasonable compensation for present or
16 past service or payments made in the ordinary course of business under a bona fide retirement
17 plan or other bona fide benefits program.²⁸

²⁷ The decision to confine all series provisions to one article necessitates redefining this term for the purposes of this article.

²⁸ The Reporter considered but rejected the idea of providing an alternative definition to the following effect: “Distribution” has the meaning stated in Section 102(4), except that: (1) “limited liability company” is applied as if the phrase referred to “protected series”; (2) “member” is applied as if the word referred to “member associated with the protected series”; and (3) “transferable interest is applied as if ...” Although superficially appealing, this approach is actually quite complicated; the “as applied redefinition” of “distribution” includes “transferable interest”, which, under this approach, would also be an “as applied redefinition”. Here and with the definition of transferee, a comment will express the intent to apply the Article 1 extrapolated definitions to a series rather than the parallel Article 1 definition. Query: Is it necessary to indicate somehow that the Article 1 definitions of “transferee” and “distribution” do not apply in Article 11?

1 (5) “Series manager” means a person³⁵ that manages a protected series under
2 Section ~~1113~~ ~~1111~~, a relevant supplemental agreement, or relevant series-specific terms of or
3 the operating agreement.³⁶

4 ³⁷ (7) “Transferable interest” means, with respect to a protected series, the right,
5 as initially owned by a person in the person’s capacity as an associated member, to receive
6 distributions from the series, whether or not the person remains a member, remains associated
7 with the series, or continues to own any part of the right. The term applies to any fraction of the
8 interest, by whomever owned.

9 ~~(6) “Type of entity” has the meaning stated in Section 1002(38).~~³⁸

10 **SECTION ~~1101~~ 1102. NATURE, PURPOSE, AND DURATION OF PROTECTED**
11 **SERIES.**

12 (a) A protected series is [distinct³⁹ from] [a person distinct from] [an entity distinct from]⁴⁰

longer necessary.

³⁵ Query: “person” or entity? Query: May the operating agreement provide that one protected series manages another? (This draft does not exclude that arrangement.)

³⁶ In the Fall 2013 draft, this provision appears at ULLCA § 102(b)(7). (At its Fall 2013 meeting, the Drafting Committee rejected the concepts of series-specific provisions of the operating agreement and supplemental agreements.)

³⁷ The decision to confine all series provisions to one article necessitates redefining this term for the purposes of this article.

³⁸ ~~By its terms, Section 1002 provides definitions applicable only to Article 10 (entity transactions; e.g. mergers).~~

³⁹ The word “distinct” derives from Section 108(a): “A limited liability company is an entity distinct from its member or members.” Merriam Webster (on line), provides as the word’s first definition “distinguishable to the eye or mind as discrete : separate <a distinct cultural group> <teaching as distinct from research>”. <http://www.merriam-webster.com/dictionary/distinct>; last visited 8-23-13.

⁴⁰ In addition to the much discussed questions of bankruptcy law, Article 9, and title insurance, this characterization issue has less obvious implications. For example, May one series conspire with another civilly? Criminally? Is a series subject to criminal prosecution? E.g., U.S. v. ITT Blackburn Co., a Div. of ITT, 824 F.2d 628, 631 (8th Cir. 1987) (“[A]n unincorporated division cannot be sued or indicted, as it is not a legal entity.... See United States v. Computer Sciences Corp., 689 F.2d 1181, 1190 (4th Cir.1982), cert. denied, 459 U.S. 1105, 103 S.Ct. 729, 74 L.Ed.2d 953 (1983) (“The RICO ‘enterprise’ was identified in the indictment as the Infonet Division of CSC, an organization which had no corporate

- 1 (1) any member associated with it;
2 (2) the limited liability company that established the series; and
3 (3) any other protected series of the company.

4 (b) A protected series may have any lawful purpose

5 **Alternative A**

6 , regardless of whether for profit.

7 **Alternative B**

8 , regardless of whether for profit, which the limited liability company that established the series
9 has.⁴¹

10 **Alternative C**

11 that the limited liability company that established the series has.⁴²

12 **End of Alternatives**

13 (c) Except as otherwise provided in Section ~~4102~~ 1103(b)(1)(A), termination of a limited
14 liability company terminates the existence of a protected series of the company.⁴³

existence separate and apart from that of CSC itself”); *Spearing v. National Iron Co.*, 770 F.2d 87, 88-89 (7th Cir.1985) (“The complaint also names as defendants ... National Iron Company, which being an unincorporated division of Pettibone Corporation is not suable in its own right”). (Words not underscored are merely relocated from a nearby footnote.”

⁴¹ Alternative B conforms this provision to Section 1103(b) (stating that “a protected series has the same powers as the limited liability company that established the series”). Query: Should this conformity be maintained? For example, Alternatives B and C would likely preclude a for-profit LLC establishing a non-profit series.

⁴² Alternative C has the same effect as Alternative B. Given the link between the purpose(s) of the LLC and the permitted purpose(s) of the protected series, the phrase “whether or not for profit” is unnecessary (as would be explained in a comment). Deleting the phrase make the provision much more readable.

⁴³ At the Fall 2013 meeting, a participant suggested this article define “termination.” However, the main act does not provide a definition, so a definition here would be inappropriate.

1 or (3) establish another protected series.

2 **Alternative B**

3 (b) Except as otherwise provided in subsection (c), to ~~to~~ carry on its activities and
4 affairs, a protected series has the same powers as the limited liability company that established
5 the series, [including the power to own and hold title to property,]⁵⁰

6 (c) A protected series may not:

7 (1) continue [continue in existence] after the company has:

8 (A) ceased to exist,⁵¹ dissolved and completed its winding up, or filed a
9 statement of termination under Section 702(b)(2)(F), unless the company has been merged into
10 an entity that may establish a protected series ~~of~~ of foreign protected series; or

11 (B) converted or domesticated, unless the converted or domesticated entity
12 may establish a protected series or foreign protected series;⁵²

13 (2) be a party to ~~in~~ a merger,⁵³ interest exchange, conversion, domestication, or
14 any comparable transaction,⁵⁴ except indirectly when the company participates in the
15 transaction; or

⁵⁰ The bracketed language seeks to provide comfort as to the concerns stated by the title insurance experts who addressed the Drafting Committee at the Fall 2013 meeting.

⁵¹ As in a merger – typically without winding up.

⁵² In these circumstances, a protected series may continue in existence but whether the series actually does so depends on the plan of merger, conversion, or domestication.

⁵³ META uses “party to a merger” as a term of art.

⁵⁴ At its Fall 2013 meeting, the Drafting Committee discussed whether to include this exclusion, but time constraints prevented even a tentative decision.

At least one participant tied this exclusion to the decision not to characterize a protected series as an entity – i.e., “only an entity can merge.” That analysis is, however, at odds with META. In META, “entity” is indeed the term of art for permissible participants in a merger, but META defines “entity” to include (subject to exceptions not relevant here) “any other person that has: (I) a legal existence separate from any interest holder of that person; or (II) the power to acquire an interest in real property in its own name”. See ULLCA § 1001(11)(A)(x).

1 (3) establish another protected series.

2 **End of Alternatives**

3 **SECTION ~~1103~~ 1104. GOVERNING LAW.** The law of this state governs:

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

5 (2) the relations ~~relationship~~ of between⁵⁵ a protected series ~~to~~ and

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

7 (B) any other protected series of the company; and

8 (C) any member not associated with the series;⁵⁶

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

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

13 (5) the liability for the debts, obligations, or other liabilities of a protected series of:

14 **Alternative A**

15 (A) a member as such;

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

17 (C) a manager as such; and

18 (D) a series manager as such.⁵⁷

⁵⁵ The changes made in this line (of => between and to => and) are to cover each relationship in both directions. The change from “relationship” to “relations” is for consistency’s sake. See e.g. ULLCA § 105(a)(1) (referring to “relations among the members ...”).

⁵⁶ As a comment will indicate, the relationship of a protected series to an associated member is an internal affair.

⁵⁷ Alternative A was in the Fall 2013 draft, except that items (C) and (D) have been exchanged so that the same pattern (general to specific) applies to managers as well as members.

1 **Alternative B**

2 (A) a member ~~as such~~ in that capacity;

3 (B) a member associated with a series ~~as such~~ in that capacity;

4 (C) a manager ~~as such~~ in that capacity; and

5 (D) a series manager ~~as such~~ in that capacity.

6 **Alternative C**

7 a person in the person's capacity of a member, member associated with a series, a manager, or a
8 series manager.⁵⁸

9 **End of Alternatives**

10 **SECTION ~~1104~~ 1105. ~~SERIES SUPPLEMENTAL AGREEMENT; SERIES-~~
11 ~~SPECIFIC TERMS OF~~ RELATIONSHIP OF OPERATING AGREEMENT TO
12 PROTECTED SERIES.**

13 (a) ~~If a protected series has no associated members:~~⁵⁹

14 (1) ~~as a matter [not]~~⁶⁰ ~~in the ordinary course of the activities and affairs of the~~
15 ~~limited liability company that established the series, the company may adopt a relevant~~
16 ~~supplemental agreement or relevant series-specific terms of the operating agreement; and~~

17 (2) ~~the members~~⁶¹ ~~may by unanimous consent:~~

18 (A) ~~amend the operating agreement by adopting or amending relevant~~
19 ~~series-specific terms; and~~

⁵⁸ Same alternatives presented in Section 1130 re: a foreign protected series.

⁵⁹ 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).

⁶⁰ Is/Is Not—determines how the decision is made. See Section 407(b)(3) and (4) and (c)(3)(a).

⁶¹ N.b.—the members as members of the LLC, not as associated members.

1 ~~(B) adopt or amend a relevant supplemental agreement.~~

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

5 **Alternative A**

6 ~~the members.~~

7 **Alternative B**

8 ~~the members associated with the series.~~⁶²

9 **End of Alternatives**

10 ~~(e) Except as otherwise provided in Sections 105 and 107(b)(2)⁶³ and subsections (e) and~~

11 ~~(f) (b), a supplemental the operating agreement governs:~~

12 (1) relations among the members associated with ~~the relevant~~ a protected series in
13 their capacity as associated members and between the associated members and the series;

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

16 (3) the activities and affairs of the series and the conduct of those activities and
17 affairs; ~~and~~

18 (4) the relations among the series, the company, and any other protected series of
19 the company; and

20 (5) the relations among a member associated with a series in that capacity with the

⁶² 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.~~

⁶³ Query: Is the reference to Sections 105 and 107 necessary, or would a comment suffice?

1 company, any other protected series, and any member not associated with the series.⁶⁴

2 the means and conditions for amending the agreement.

3 ~~(d) Subject to Section 105, if a protected series has no relevant supplemental agreement~~
4 ~~or the relevant supplemental agreement does not provide for a matter described in subsection (c),~~
5 ~~the relevant series-specific terms of the operating agreement govern the matter.~~⁶⁵ ~~To the extent~~
6 ~~neither a relevant supplement agreement nor the relevant series-specific terms of the operating~~
7 ~~agreement provide for a matter described in subsection (b), this [act] governs the matter.~~

8 ~~(e) A supplement agreement is subject to Sections 105 through 107 as if the supplemental~~
9 ~~agreement were an operating agreement.~~⁶⁶

10 ~~(f b) A supplemental~~ The operating agreement may not:⁶⁷

11 (1) vary the capacity of a protected series under Section ~~1102~~ 1103(a) to sue and
12 be sued in the name of the series;

13 **Alternative A**

14 (2) vary the powers of a series under Section ~~1102~~ 1103, except to limit those
15 powers;

16 **Alternative B**

17 add to, increase, or otherwise expand the powers stated in Section 1103;

18 **End of Alternatives**

⁶⁴ The last category includes other members *qua* members and members *qua* members associated with another series.

⁶⁵ ~~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.~~

⁶⁶ ~~Arguably, this provision should appear in Section 1117(b). OTOH, the concept is integral to this section.~~

⁶⁷ COSL – Query: Is it necessary or at least acceptable to state that these strictures are in addition to the requirements stated in Sections 105-107, or would/should a comment suffice?

1 (3) ~~except as otherwise provided in Sections 106 and 107(b),~~⁶⁸ restrict the rights
2 under this [act] of a person other than a member associated with the relevant protected series or
3 series manager of that series, except to the same extent that Sections 105(c)(15), 106 and 107(b)
4 permit the operating agreement to restrict the rights under this [act] of a person other than a
5 member or manager;⁶⁹

6 (4) vary the provisions of Section 805, as made applicable by Section 1129 to a
7 protected series, but the operating agreement may provide that the protected series may not have
8 a special litigation committee or.

9 (5) vary Section (TBA)⁷⁰.

10 **SECTION ~~1105~~ 1106. NAME.** The name of a protected series

11 **Alternative A**

12 ~~need not contain the name of the limited liability company that establishes~~⁷¹ ~~the series~~
13 ~~and~~⁷² ~~must~~ comply with Section 112 and contain the phrase “Protected Series”.^{73 74}

14 **Alternative B**

15 must:

16 (1) comply with Section 112;

⁶⁸ Section 104(e) makes these sections applicable to supplemental agreements.

⁶⁹ Arguably, Section 106 need not be included, but there is less risk in needlessly including the section than in erroneously excluding it.

⁷⁰ Placeholder for further items.

⁷¹ Here the present tense is correct.

⁷² The “need not” phrase is deleted as unnecessary. A comment will make the point.

⁷³ At its Fall 2013 meeting, the Drafting Committee (provisionally) accepted the Reporter’s recommendation against allowing an abbreviation to function as a designator. The Reporter recommends not permitting abbreviation. Because (Rationale – because the series concept is so new, an abbreviation is unlikely to function effectively as a signifier.)

⁷⁴ 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 (2) contain the name of the of the limited liability company that establishes the
2 series; and

3 (3) contain the phrase “Protected Series”.⁷⁵

4 **End of Alternatives**

5 **SECTION 1107. [ESTABLISHMENT⁷⁶ OF] [ESTABLISHING] PROTECTED**
6 **SERIES; STATEMENT OF DESIGNATION; AMENDMENT AND CANCELLATION**
7 **OF STATEMENT.**

8 (a) With the affirmative vote or consent of all the members,⁷⁷ a limited liability company
9 may establish one or more protected series pursuant to subsections (b) through (d).

10 (b) A limited liability company may establish a protected series by delivering to the
11 [Secretary of State] for filing a protected series designation, signed by the company,⁷⁸ stating:

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

⁷⁵ See notes 73 and 74.

⁷⁶ “ESTABLISHMENT OF” rather than “ESTABLISHING” to follow the style of Section 201 – Formation.

⁷⁷ On instructions from the Chair of the Drafting Committee, the Reporter notes that Chair: (i) considers “affirmative vote” unnecessary (to put his views mildly); and (ii) consents to the phrase’s inclusion in this article only because the phrase is used repeatedly in ULLCA.

⁷⁸ See ULLCA § 203(a)(1) (providing that, with exceptions not relevant here, “a record signed by a limited liability company must be signed by a person authorized by the company”). Query: Once the certificate of designation becomes effective, who controls its amendment or cancellation – 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).

An operating agreement can restrict the limited liability company’s right to amend or cancel the certificate of designation, but such restrictions are not binding on the filing office. See ULLCA § 203(a)(i), comment (“The filing office will not check whether a person who purports to be authorized to sign a record on behalf of an LLC actually has that authority, even if a statement of authority pertaining to the matter is in effect. “). If the company amends or cancels a certificate in breach of the operating agreement: (i) the company may be liable for damages; and (ii) the individual who signed the record for the company may be guilty of perjury. See ULLCA §§ 203(c) (“A person that signs a record as an agent or legal representative affirms as a fact that the person is authorized to sign the record.”); 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.”).

1 (2) the name of the series; and

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

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

7 (d) A protected series is established when the protected series designation becomes
8 effective ~~[and the limited liability company has associated property with the protected series as~~
9 ~~provided in Section 1110].~~⁷⁹

10 (e) A limited liability company may amend or cancel a certificate of designation by
11 delivering to the [Secretary of State] for filing a statement of change⁸⁰ that states the name of the
12 company and the protected series to which the certificate pertains;⁸¹ and

13 (1) for amendment, the information that is to be in effect as a result of the filing of
14 the statement of change; and

15 (2) for cancellation, that the certificate is canceled.⁸²

16 **SECTION 1108. [ANNUAL] [BIENNIAL] REPORTS.**^{83 84} In addition to the

⁷⁹ The ~~second prerequisite [bracketed]~~ deviates from deleted language sought to parallel this formation process with the process for forming an LLC. The deletion conforms to the Committee's ~~tentative~~ decision made tentatively at the Spring 2013 meeting and reaffirmed at the Fall 2013 meeting ~~but is consistent with ULLCA's approach to the formation of a limited liability company.~~

⁸⁰ Note that Section 116 also uses the term "statement of change" for a different effect in a different context: Change of Registered Agent or Address for Registered Agent by Limited Liability Company.

⁸¹ It would be possible, though more complicated, to empower the series manager to sign records after the certificate of designation is filed. However, we achieve the same effect (and more) if we state at least that a protected series is a person. In that case, ULLCA §203(a)(5) would apply: "(5) Any other record delivered on behalf of a person to the [Secretary of State] for filing must be signed by that person." Also, there is some rationale for keeping the LLC in charge of all filed records which pertain to it.

⁸² Query: What is the effect of cancellation?

⁸³ The Drafting Committee has not yet decided whether to require annual/biennial reports . It would be

1 information required by Section 212,⁸⁵ a limited liability company or foreign limited liability
2 company must in its [annual] [biennial] report include for each protected series or foreign
3 protected series of the company for which a certification of designation or statement of foreign
4 qualification is in effect.⁸⁶

5 (1) the name of the series; and

6 (2) the name and street and mailing address of the registered agent for the series.⁸⁷

7 ~~**⁸⁸SECTION 1108. NO AGENCY POWER OF MEMBER ASSOCIATED WITH**~~
8 ~~**PROTECTED SERIES.⁸⁹**~~

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

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

possible to require each protected series to file its own report, but that approach would increase filing costs.

⁸⁴ Likewise, the Drafting Committee has not yet decided whether to provide for a certificate of good standing for a protected series. Query: is the certificate desirable (or perhaps even necessary) for the purposes of writing opinions?

⁸⁵ This section is properly located in Part 1, although the section does refer to a section in another article. Part 2 is for sections that involve *incorporation by reference* at least in part and not for sections that merely *add on* to provisions in other articles.

⁸⁶ The phrase “for which a certificate of designation is in effect” is arguably redundant. A protected series can only exist while its certificate of designation is in effect. The phrase is included to achieve parallel syntax.

⁸⁷ Because this section requires information to be included in an LLC's or foreign LLC's regular annual report, ULLCA § 212(d) and (e) will by their terms apply to the information required by this section.

⁸⁸ This section is relocated, not deleted. See Section 1111.

~~⁸⁹ Derived essentially verbatim from Section 301.~~

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

2 (a) Property of a limited liability company or protected series⁹⁰ becomes associated with
3 ~~a protected~~ the series of the company when the company⁹¹ identifies in a record:⁹²

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,⁹³ 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~~ any other protected series of the
9 company.^{94 95}

10 (b) Property of a limited liability company which becomes associated with a protected
11 series vests in the series without transfer, reversion, or impairment.⁹⁶

⁹⁰ A protected series can acquire property from third parties.

⁹¹ ~~Query—should the A~~ protected series should not be able to maintain the records? because the records typically will encompass property owned by the limited liability company or another series. Query: Is it necessary to state that the LLC has a duty to properly maintain the records? At least a comment should address this issue, including the question of standing (i.e., series not associated member).

⁹² 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.”)

⁹³ 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.

⁹⁴ A comment will note that different means may be necessary depending on whether the type of property is subject to a public recording system.

⁹⁵ Under this subsection, property might be owned by a protected series with being associated with the series. That result is intentional. The category of “associated property” provides support for the horizontal shields, see subsection (d), and the proper record is the only entryway into that protected situation.

⁹⁶ This language derives from the META provisions of ULLCA. See e.g. ULLCA § 1026(a)(3) (stating that, when a merger becomes effective, “ all property of each merging entity vests in the surviving entity

1 A limited liability company⁹⁷ satisfies subsection (a)(2) with regard to a protected series of the
2 company if the company maintains written records so that the property of the series can be
3 reasonably identified by specific listing, category, type, quantity, or computational or
4 allocational formula or procedure, including a percentage or share of any property, or by any
5 other method by which the identity of the property can be objectively determined.⁹⁸

6 (c) ~~Once associated with a protected series, Associated property:~~

7 (1) ~~is the property of the series unless subsequently transferred to another~~
8 ~~person;~~⁹⁹ and

9 **Alternative A**

10 (2) must be held in the name of the relevant protected series, except to the extent
11 that law other than this act permits otherwise¹⁰⁰ a person's property to be held in the name of
12 another person.

without transfer, reversion, or impairment”).

⁹⁷ ~~See note 61 same issue.~~

⁹⁸ At the Fall 2013 meeting, concern was voiced about how this subsection fit with subsection (a).
Subsection (b) language mirrors the language in UCC § 9-108(b):

[Examples of reasonable identification.] Except as otherwise provided in subsection (d), a
description of collateral reasonably identifies the collateral if it identifies the collateral by: (1)
specific listing; (2) category; (3) except as otherwise provided in subsection (e), a type of
collateral defined in [the Uniform Commercial Code]; (4) quantity; (5) computational or
allocational formula or procedure; or (6) except as otherwise provided in subsection (c), any other
method, if the identity of the collateral is objectively determinable.

In the Reporter's view, this list does not extrapolate well to the context of protected series. In UCC,
Article 9, the list functions to characterize *different categories* of property *owned by the same person*. In
the context of series, the task is to distinguish *all types* of property *owned by one*
[“thing”][person][entity] *from various types* of property *owned by another* [“thing”][person][entity].

⁹⁹ Struck language is no longer necessary, given the revision to the first line of subsection (a) and the new
text for subsection (b).

¹⁰⁰ This draft does not delineate the mechanics for transferring ownership of associated property.
Characterizing protected series as entities would simplify matters considerably. Cf. UPA (1914)
(providing detailed rules for the transfer of property owned by a partnership).

1 **Alternative B**

2 may be held directly or indirectly, including in the name of the relevant protected
3 series, in the name of the limited liability company, through a nominee or otherwise. ¹⁰¹

4 (d) Property associated with a protected series is not subject to the enforcement of a
5 judgment against the limited liability company or another series and property of a limited
6 liability company is not subject to the enforcement of a judgment against a series, regardless of
7 whether enforcement is sought by levy, attachment, execution, judicial sale, or other comparable
8 procedure. ¹⁰²

9 **End of Alternatives**

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

11 (a) Only a member¹⁰³ may become associated with a protected series of a limited liability
12 company.

13 (b) A member becomes associated with a protected series when the member is so
14 identified in or pursuant to ~~a relevant supplemental agreement or relevant series-specific terms of~~
15 the operating agreement.¹⁰⁴

¹⁰¹ Some states seem to provide special rules regarding titling. The language here is taken essentially from *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 property associated with a series is held in the name of the LLC, what is the LLC’s relationship to the property and what are the LLC’s duties to the series with regard to the property. This query is one reason the Reporter prefers the “other law” approach. The same law that permits the different method of holding the property will supply the rules determining the participants’ rights and duties vis a vis the property.

¹⁰² This subsection: (i) buttresses the horizontal shields; (ii) does not apply to property owned by a protected series but not properly associated with the series under subsection (a); and (iii) is not intended to preclude other claims such as piercing and fraudulent transfer.

¹⁰³ ~~An earlier~~ early version of ~~this Draft~~ the Fall 2013 draft included “of a limited liability company”. That phrase is redundant, given the definition of member. Section 102(11).

¹⁰⁴ ~~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(e)(1) (incorporating by~~

1 **SECTION ~~1108~~ 1111. NO AGENCY POWER OF MEMBER ASSOCIATED**
2 **WITH PROTECTED SERIES.**¹⁰⁵

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

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

8 **SECTION 1112. LIMITED LIABILITY.** ^{106 107}

9 (a) A debt, obligation, or other liability of a protected series is solely the debt, obligation,
10 or other liability of the series.

11 (b) A member associated with a protected series, the series manager, a member, or
12 manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a
13 debt, obligation, or other liability of the series solely by reason of being or acting as an
14 associated member, the series manager, a member or manager.¹⁰⁸

15 (c) A limited liability company is not personally liable, directly or indirectly, by way of
16 contribution or otherwise, for a debt, obligation, or other liability of a protected series of the

reference Section 404).

¹⁰⁵ Derived essentially verbatim from Section 301. This language has been moved without any other revision. Hence, only the new section number is underlined.

¹⁰⁶ This section is derived from ULLCA § 304. Given the Drafting Committee’s decision to locate all series provisions in one article (to the extent possible), the Committee needs to closely consider whether stating the main shield separately from the series shield leaves any gaps.

¹⁰⁷ ULLCA § 304 is captioned “Liability of Members and Managers” but in fact provides a shield against liability. ULLCA (2006) adopted its caption to parallel the comparable captions in UPA (1997) and ULPA (2001). The caption suits the partnership acts, because they both contemplate general partner liability. Like ULLCA § 304, this section limits liability.

¹⁰⁸ Arguably, protecting unassociated members and LLC managers is unnecessary, but “better safe than sorry.”

1 company solely by reason of the company having established or managed the series.

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

6 (e) The failure of a protected series or a limited liability company¹⁰⁹ to observe
7 formalities relating to the exercise of its powers or management of its activities and affairs is not
8 a ground for imposing liability on:

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

11 (2) except as to the requirements of Section 1109(a):¹¹⁰

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

14 (B) a protected series for a debt, obligation, or other liability of:

15 (i) the limited liability company that established the series; or

16 (ii) another protected series of the company.

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

¹⁰⁹ It is necessary to include the limited liability company itself in this shield; otherwise a gap might exist.

¹¹⁰ The cross-reference provision requires records to clearly indicate what property is associated with a series. This formulation does not automatically dissolve the shield for failure to maintain the records. Rather, that failure of formalities can be a ground for piercing. In addition, the buttress provided by Section 1109(d) applies only to properly described property. Compare Del. Code Ann. § 18-215(b) (establishing, as one of several preconditions for erecting the series shield, that “the records maintained for any such series account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof”).

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

3 ¹¹⁶ ~~SECTION 1112. DISTRIBUTIONS IF PROTECTED SERIES HAS NO~~
4 ~~ASSOCIATED TRANSFERABLE INTERESTS.~~ If a protected series has no associated
5 transferable interests, a distribution from the series is paid to the limited liability company that
6 established the series.

7 ¹¹⁷ ~~SECTION 1113. CEASING TO BE ASSOCIATED; DISSOCIATION.~~

8 (a) A member associated with a protected series ceases to be associated if the person is
9 dissociated as a member of the limited liability company that established the series; or

10 (2) as provided in Section 1117(c)(2).¹¹⁸

11 (d) A person's ceasing to be associated¹¹⁹ with a protected series does not dissociate the
12 person from the limited liability company that established the series.

13 ~~SECTION 1114. DISSOLUTION.~~ If a dissolved protected series has no associated
14 members, the limited liability company that established the series shall wind up the activities and
15 affairs of the series.¹²⁰

16 ¹²¹ ~~SECTION 1115. GOVERNING LAW OF FOREIGN PROTECTED SERIES.~~

¹¹⁶ This provision has been relocated to Section 1122(b).

¹¹⁷ This provision has been relocated to Part 2, Section 1127.

¹¹⁸ The cited, struck provision incorporated by reference the causes of dissociation under Section 602. That incorporation is unnecessary, because each incorporated event would trigger dissociation, which would automatically cause the person to cease to be associated with the series.

¹¹⁹ 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.

¹²⁰ 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.

¹²¹ This section has been relocated to Part 2, Section (1130)(a).

1 **[PART 2] [CAPTION TBD]**

2 **SECTION ~~1117~~ 1114. OTHER PROVISIONS OF [ACT] MADE APPLICABLE**
3 **TO PROTECTED SERIES.**¹²²

4 (a) Subject to Section 1130,¹²³ ~~for the For~~ purposes of ~~subsections (b), (c), (d), and (e)~~

5 **Alternative A**

6 provisions in this [part] which make provisions of other [articles] applicable to a protected series
7 or foreign protected series,

8 **Alternative B**

9 Sections 1115 to 1129,¹²⁴

10 **End of Alternatives**

11 the following words and phrases defined in [Section] 102 are applied as follows.¹²⁵

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

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

16 (3) “dissociates” and “dissociation” as if each word referred to “ceasing to be
17 associated with a protected series”;

¹²² 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.”).

¹²³ Section 1130 pertains to foreign protected series and therefore requires slightly different “as if” definitions.

¹²⁴ This alternative reads far better. However, some of the subsections do not apply Article 1 provisions to protected series. Query: Is it necessary to be more specific – i.e., including only those subsections that do apply Article 1 provisions?

¹²⁵ COSL – Query: Consistent with COS rules, after the first use in a paragraph of a multiword defined term, subsequent references use a shortened form. For example, the second reference in a paragraph to “limited liability company” would be “company”. Is I necessary for these “as is” provisions to contemplate the Style rule?

1 (b) To the extent this [article] makes provisions of other [articles] applicable to a
2 protected series, Section 105(c) and (d) and Section 107(b) apply to the operating agreement as
3 the agreement applies to a protected series.¹²⁸

4 (c) This [article] and provisions of other [articles] ~~that to which~~ this section ~~incorporates~~
5 ~~by reference~~ [part] refers must be construed wherever reasonable as consistent with each other.
6 If that construction is not possible, this [article] governs.¹²⁹

7 ~~The following provisions apply to a protected series:~~

8 (1)

9 **SECTION ~~1106~~ 1115. REGISTERED AGENT; SERVICE OF PROCESS,**
10 **NOTICE, OR DEMAND.**

11 (a) Sections 115 through 119 apply to a protected series or foreign protected series ~~as if~~
12 ~~the series were a limited liability company or foreign limited liability company.~~¹³⁰

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

16 (1) noting conspicuously¹³¹ on the process, notice, or demand that the series is the
17 addressee; and

18 (2) serving the limited liability company or foreign limited liability company that
19 established the series.

¹²⁸ Query: Necessary? Understandable? Review after the Drafting Committee decides which ULLCA provisions to incorporate into Part 2.

¹²⁹ Safety net provision. Query: retain?

¹³⁰ ~~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).~~

¹³¹ Query: Is “conspicuous” necessary? If so, need we define the word? At its Fall 2013 meeting, the Drafting Committee decided to delete “conspicuously”.

1 (c) Subject to other law:

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

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

6 (A) the limited liability company or foreign limited liability company that
7 established the series; or

8 (B) another protected series of the company.

9 **SECTION 1116. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.**

10 Section 204(b) applies to a protected series and foreign protected series.¹³²

11 **SECTION 1117. LIABILITY FOR INACCURATE INFORMATION IN FILED**

12 **RECORD.** Section 205(a) applies to a protected series.^{133 134}

13 **SECTION 1118. STATEMENT OF AUTHORITY; STATEMENT OF DENIAL.**

14 (a) Sections 302 and 303 apply to a protected series

15 (b) Except as provided in subsection (c), a statement of authority, an¹³⁵ amendment, or a
16 cancellation under this section pertains only to the protected series on whose behalf the
17 statement, amendment, or cancellation was delivered to the [Secretary of State] for filing.

¹³² Section 204(a) applies by its terms, and a comment will so note.

¹³³ ~~Section 205 is captioned “LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD”~~
The caption here is the same as for Section 205. Subsection (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.

¹³⁴ Query whether to include certificate of good standing for series? annual report for series?

¹³⁵ Indefinite articles included here and before “cancellation” to indicate that “a statement” applies only to “of authority”. [COSL agrees.]

1 (c) 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.¹³⁶

4 **SECTION 1119. CONTRIBUTIONS AND DISTRIBUTIONS.**

5 (a) Except as stated in subsection (b), Sections 402 through 406, except for Section
6 406(b), apply to a protected series.

7 ¹³⁷(b) If a protected series has no associated transferable interests,¹³⁸ a distribution from
8 the series is [paid] [made] [due] to

9 **Alternative A**

10 the limited liability company that established the series.¹³⁹

11 **Alternative B**

12 the members, as if the distribution were [being paid] [being made] [due] directly by the limited
13 liability company.¹⁴⁰

14 **End of Alternatives**

¹³⁶ Query: should we empower the LLC to deliver a statement, etc. that pertains solely to one or more protected series? Query for IACA – will the filing office want conformed copies for each protected series involved?

¹³⁷ Relocated from Section 1112 of the Fall 2013 draft.

¹³⁸ This provision reflects a decision made at the Fall 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. For a protected series with one or more associated members, subsection (a) makes the act's default rule applicable (Section 404).

¹³⁹ At the Fall 2013 meeting, the members of the Drafting Committee tentatively chose this approach by a vote of 5 to 3.

¹⁴⁰ At the Fall 2013 meeting, a learned commissioner and a learned advisor forcefully advocated this approach. Under both alternatives, the distribution is subject to clawback provision (unlawful distributions) and fraudulent transfer claims. Note to Reporter – once decision finally made, make sure to clarify which clawback provisions applies – those of the main act or those stated in Part 2.

1 **SECTION 1120. REIMBURSEMENT; INDEMNIFICATION; ADVANCEMENT;**

2 **AND INSURANCE.** Section 408 applies to a protected series.

3 **SECTION 1121. STANDARDS OF CONDUCT FOR SERIES MANAGERS.**

4 Section 409(i) applies to a protected series.¹⁴¹

5 **SECTION 1122. INFORMATION RIGHTS OF ASSOCIATED MEMBERS AND**
6 **PERSONS FORMERLY ASSOCIATED WITH A PROTECTED SERIES.** Section 410,

7 subsections (b) through (h) apply to a protected series.¹⁴²

8 ¹⁴³**SECTION 1123. NATURE OF TRANSFERABLE INTEREST.** Section 501
9 applies to a protected series.

10 **SECTION 1124. TRANSFER OF TRANSFERABLE INTEREST.** Section 502

11 applies to a protected series.¹⁴⁴

¹⁴¹ The omission of Section 407 and most of Section 409 reflects the Drafting Committee’s tentative decision, made at the Fall 2013 meeting, to provide that as a default rule the LLC manages each protected series of the LLC. A comment to the definition of series manager will note that the term would encompass all members associated with a series if the operating agreement were to provide for “associated member management” of a series.

Note that this section provides for management by the limited liability company, which means that those who manage the company will have responsibility for managing the series. As to whether those who manage the LLC owe a duty to the series, this draft takes no position. Compare *In re USACafes, L.P. Litigation*, 600 A.2d 43, 49–50 (Del.Ch. 1991) (recognizing such a duty in an analogous context with *1515 N. Wells, L.P. v. 1513 N. Wells, L.L.C.*, 392 Ill. App. 3d 863, 872-73, 913 N.E.2d 1, 10 (Ill. App. Ct. 2009) (rejecting *USACafes*). See also Section 1113(b) (contemplating a multimanager LLC whose operating agreement makes one of the LLC’s managers responsible solely for one protected series and eliminating the manager’s fiduciary duties with regard to other protected series; stating that such an arrangement is not manifestly unreasonable).

¹⁴² A comment will indicate that the information rights of a person no longer associated with a series are the same regardless of whether the person has remained a member.

¹⁴³ In the alternative, we could combine this and the following three sections into one, captioned “TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS”.

¹⁴⁴ ULLCA § 502(g) states: “Except as otherwise provided in Section 602(5)(B), if a member transfers a transferable interest, the transferor retains the rights of a member other than the transferable interest transferred and retains all the duties and obligations of a member.” The application of subsection (g) to protected series works as is, despite the reference to Section 602(5)(B), which does not apply to protected series. Section 602(5)(B) provides for expulsion by unanimous consent if “there has been a transfer of all the person’s transferable interest in the company, other than: (i) a transfer for security purposes; or (ii) a

1 **SECTION 1125. CHARGING ORDER.** Section 503 applies to a protected series,
2 except that subsection (f) applies only if the limited liability company has only one member.¹⁴⁵

3 ¹⁴⁶

4 **SECTION 1126. POWER OF LEGAL REPRESENTATIVE OF DECEASED**
5 **MEMBER.** Section 504 applies to a protected series.¹⁴⁷

6 **SECTION 1127. CEASING TO BE ASSOCIATED; CONSEQUENCES.**

7 (a) A member associated with a protected series ceases to be associated if the person is
8 dissociated as a member of the limited liability company that established the series;~~or~~

9 ~~(2) as provided in Section 1117(e)(2).~~¹⁴⁸

10 (b) A member:

11 (1) has the power to cease to be associated with a protected series at any time,
12 rightfully or wrongfully;¹⁴⁹ and

13 (2) ceases to be associated with a protected series when the series knows or has

charging order in effect under Section 503 which has not been foreclosed.” This type of expulsion is automatically relevant to a protected series because dissociation from the LLC automatically ends the member’s association with the series.

¹⁴⁵ This exception is necessary because a person must be a member in order to be associated with a series. If Section 503(f) were to apply without the exception, then the purchaser at foreclosure (unless already a member) would as a result of the foreclosure (i) become a member of the LLC, or (ii) be able to be associated with the series without being a member of the LLC.

¹⁴⁶ 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, and the Fall 2013 draft so provided. Because that decision resulted in a gap in the internal shields, the decision is to be revisited. Pending that revisiting, this draft does not implement the decision.

¹⁴⁷ Section 504 cross references two other sections, each of them applicable to protected series. A comment will so note here and wherever else the same situation exists.

¹⁴⁸ The cited, struck provision incorporated by reference the causes of dissociation under Section 602. That incorporation is unnecessary, because each incorporated event would trigger dissociation, which would automatically cause the person to cease to be associated with the series.

¹⁴⁹ ULLCA permits the operating agreement to eliminate the power as well as the right of a member to dissociate. This Article takes the same approach with regard to ceasing to be associated with a protected series.

1 notice of the member’s express will to cease being associated.¹⁵⁰

2 (c) A person’s ceasing to be associated¹⁵¹ with a protected series does not dissociate the
3 person from the limited liability company that established the series.

4 (d) Section 603 applies to a protected series.¹⁵²

5 **SECTION 1128. DISSOLUTION.**

6 (a) As part of its winding up, a dissolved limited liability company shall dissolve and
7 wind up any protected series.¹⁵³

8 (b) [Article] 7 applies to a protected series,¹⁵⁴ except that:

9 (1) the following provisions do not apply:

10 (A) Section 701(a)(5)¹⁵⁵ and (5);^{156 157}

11 (B) Section 702(c), (d), and (e)(2);¹⁵⁸ and

12 (C) Sections 708 through 710;¹⁵⁹ ~~do not apply~~; and

13 ~~(B) (2) if a protected series has no associated members,~~ the affirmative vote or

¹⁵⁰ Subsection (b) is derived from ULLCA §§ 601(a) and 602(1).

¹⁵¹ 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.

¹⁵² Section 603 is captioned “Effect of Dissociation.”

¹⁵³ Some participants in the drafting process have expressed concern about applying the concept of dissolution to a “thing” that is not an entity. If the Drafting Committee opts to characterize a protected series as an entity (or perhaps even as a person), the concern is moot. If not, the Committee will need to consider: (i) how much more complicated Subsection (b) will be if “dissolution” may not be used; and whether the dissolution concept may be at least marginally helpful to protect the shields.

¹⁵⁴ Article 7 pertains to dissolution

¹⁵⁵ The cited provision pertains to dissolution when an LLC has no members.

¹⁵⁶ Paragraph 5 pertains to administrative dissolution, and the Committee has not yet decided whether administration dissolution applies to series.

¹⁵⁷ Query: should judicial dissolution of a series due to oppression be non-waivable?

¹⁵⁸ 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.

¹⁵⁹ Administrative dissolution – undetermined whether such applies to a series.

1 consent required by Section 703(b)(1)¹⁶⁰ ~~requires a decision by~~ is the consent of the limited
2 liability company that established the series and the decision is [not]¹⁶¹ ~~a matter in the ordinary~~
3 ~~course of the activities and affairs of the company.~~¹⁶²

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

5 (1) ~~Sections 402 through 406, 408, 409(i),~~¹⁶³ ~~and 410(b) through (h);~~¹⁶⁴ ~~–~~¹⁶⁵ ~~166~~

6 (2) ~~Sections 601 and Section 602 except Section 602(12) through (15);~~¹⁶⁷ ~~–~~¹⁶⁸ ~~and~~

7 (3)

8 **SECTION ~~1132~~ 1129. ACTIONS BY MEMBERS.** [Article] 8 applies to a protected
9 series.

10 **SECTION ~~1133~~ 1130. FOREIGN PROTECTED SERIES.**

11 (a) The law of the jurisdiction of formation of a foreign limited liability company
12 governs:

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

¹⁶⁰ Rescinding dissolution. In the default mode, the LLC has plenipotentiary management authority over a protected series.

¹⁶¹ ~~Is/Is Not~~ determines how the decision is made. See Section 407(b)(3) and (4) and (c)(3)(a).

¹⁶² ~~This approach is a placeholder to be revisited when the Drafting Committee considers the default management rules for a protected series.~~

¹⁶³ 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.

¹⁶⁴ ~~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.~~

¹⁶⁵ Article 5 applies by its terms, except for § 503 which is revised to encompass those aspects of a transferable interest pertaining to protected series.

¹⁶⁶ Relocated to Sections 1121 through 1125.

¹⁶⁷ ~~Paragraphs 12 through 15 refer to META-type transactions, in which a protected series may not participate. See Section 1102(b)(2).~~

¹⁶⁸ ~~Reporter to revisit the incorporation of Section 603 after the Drafting Committee has revisited the issue of series management.~~

1 (2) the relationship ~~of~~ between a ~~the~~ foreign protected series of the company ~~to~~
2 and.¹⁶⁹

3 (A) the company; ~~and~~

4 (B) any other protected series of the company; and

5 (C) any member¹⁷⁰ not associated with the series;¹⁷¹

6 (3) the liability of ~~a foreign limited liability~~ the company for a debt, obligation, or other
7 liability of a foreign protected series of the company;

8 (4) the liability of a foreign protected series of ~~a foreign limited liability~~ the company for
9 a debt, obligation, or other liability of the company or any other protected series of the company.

10 (5) the liability for ~~the debts, obligations, or other liabilities~~ a debt, obligation, or other
11 liability of the company ~~and~~ or¹⁷² a foreign protected series of the company of:

12 **Alternative A**¹⁷³

13 (A) a member as such;¹⁷⁴

14 (B) a member associated with the series as such;

15 (C) a manager of the foreign company as such; and

16 (D) a manager of the series as such.

¹⁶⁹ The changes made in this line (of => between and to => and) are to cover each relationship in both directions.

¹⁷⁰ ULLCA § 102(11) defines “member” as pertaining only to a domestic limited liability company. However, the usage here parallels the usage in ULLCA § 901(a). The same issue exists with regard to “manager” and “series manager.”

¹⁷¹ The addition parallels the addition to Section 1104(2). As a comment will indicate, the relationship of a protected series to an associated member is an internal affair.

¹⁷² COSL Query: “and”?

¹⁷³ The alternatives presented here parallel the alternates presented for Section 1104.

¹⁷⁴ 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 **Alternative B**

2 (A) a member ~~as such~~ in that capacity;

3 (B) a member associated with a series ~~as such~~ in that capacity;

4 (C) a manager ~~as such~~ in that capacity; and

5 (D) a series manager ~~as such~~ in that capacity.

6 **Alternative C**

7 a person in the person's capacity of a member of a foreign limited liability company, member
8 associated with a foreign protected series, a person managing the company or a series.

9 **End of Alternatives**

10 (a ~~b~~) Subsections (b ~~c~~) and (e ~~d~~) apply for purposes of determining whether:

11 (1) ~~a limited liability company or protected series has transacted business in~~
12 ~~another jurisdiction;~~

13 (2) a foreign limited liability company or foreign protected series has transacted
14 business in this state;

15 (3) ~~another jurisdiction has personal jurisdiction over a limited liability company~~
16 ~~or a protected series of the company; and~~

17 (4 ~~2~~) this state has personal jurisdiction over a foreign limited liability company
18 or foreign protected series of the foreign company.

19 (b ~~c~~) The conduct of ~~a protected series or~~ a foreign protected series of a foreign limited
20 liability company is not attributable to:

21 (1) the company solely by reason¹⁷⁵ of the company having established¹⁷⁶ the

¹⁷⁵ This Draft uses “solely by reason of” instead of “because” to track language used elsewhere. See Sections 301(a), 304(a), and ~~408~~ 1111(a).

¹⁷⁶ Note the omission of “managed”. Compare Section 304(b).

1 series; or

2 (2) ~~another~~ any other protected series of the company solely by reason of the
3 company having established the two series.

4 (e ~~d~~) The conduct of a ~~limited liability company~~ or foreign limited liability company is
5 not attributable to a ~~protected series~~ or foreign protected series of the company solely by reason
6 of the foreign company having established the series.

7 **Alternative A**¹⁷⁷

8 (e) Section 901~~(a) and~~ (b)¹⁷⁸ and Sections 902¹⁷⁹ through 906 and 910 through 912 apply
9 to a foreign protected series as if:¹⁸⁰

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;

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

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

18 **Alternative B**¹⁸¹

19 (e) Section 901~~(a) and~~ (b)¹⁸² and Sections 902¹⁸³ through 906 and 910 through 912 apply

¹⁷⁷ Items in the list are in conceptual rather than alphabetical order.

¹⁷⁸ Subsection (a) addresses the issues addressed by Section 901(a).

¹⁷⁹ The Fall 2013 draft excluded Section 902(c).

¹⁸⁰ The Reporter and COSL are continuing to think about the formulations in this subsection. See also note 54. The Reporter is contemplating how, if at all, to make ULLCA §§ 907 – 909 applicable to a foreign protected series and invites advice from any participant who needs a very good headache.

¹⁸¹ This alternative follows the structure used in Section 1114(a).

1 to a foreign protected series and for that purpose the following words and phrases are applied as
2 follows.

3 (1) “foreign limited liability company” as if the phrase referred to “series”;

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

6 (3) “manager” as if the word referred to referred to a person managing either the
7 company or the series;

8 (4) “member” as if the word referred either to a member of the company or a
9 member associated with the series; and

10 (5) “the company’s principal office” as if the phrase referred to the principal
11 office of the company that established the series.

12 **End of Alternatives**

13 ~~(e) This [article] and provisions of other [articles] that this section incorporates by~~
14 ~~reference must be construed wherever reasonable as consistent with each other. If that~~
15 ~~construction is not possible, this [article] governs.~~^{184 185}

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

¹⁸² Subsection (a) addresses the issues addressed by Section 901(a).

¹⁸³ The Fall 2013 draft excluded Section 902(c).

¹⁸⁴ Safety net provision. Query: retain?

¹⁸⁵ Relocated to Section 1114(c).

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.~~¹⁸⁶

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]~~

¹⁸⁶ Relocated to Section 1105(b)(4).

1 ~~for filing must be signed by a series manager¹⁸⁷ 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.**¹⁸⁸~~

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:~~

¹⁸⁷ In the default mode [at least per a tentative decision at the Spring 2013 meeting], the LLC manages its protected series. See Section 1111.

¹⁸⁸ 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 a¹⁸⁹ 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.~~

¹⁸⁹ 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,¹⁹⁰ a limited liability the company or series may deliver to the~~
10 ~~[Secretary of State] for filing and, if appropriate, may record a statement of authority that is~~
11 ~~designated as a post-dissolution statement of authority. The statement operates as provided in~~
12 ~~subsections (f) 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, an¹⁹¹ 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.~~

¹⁹⁰ Under Section 1117(b)(2), a dissolved protected series may file a statement of dissolution.

¹⁹¹ 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.¹⁹²

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.**¹⁹³

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

¹⁹² Query for IACA – will the filing office want conformed copies for each protected series involved?

¹⁹³ 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):¹⁹⁴~~

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~~

¹⁹⁴ 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 guarantor¹⁹⁵ for compliance by the series with~~
15 ~~the lien under subsection (a) and any order issued to the series under subsection (c).¹⁹⁶~~

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,~~

¹⁹⁵ 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.

¹⁹⁶ 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.~~¹⁹⁷

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~~

¹⁹⁷ 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 up~~¹⁹⁸ ~~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).~~

¹⁹⁸ 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];¹⁹⁹~~

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;²⁰⁰~~

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~~

¹⁹⁹ Not yet determined whether this requirement applies to a foreign series.

²⁰⁰ 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] 11:²⁰¹~~

²⁰¹ 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.