

Memorandum

To: Harmonization Drafting Committee

From: Harry Haynsworth

Re: Consent/Vote Issue

This issue surfaced after the 2011 Annual Meeting and the review of all 9 acts by the Committee on Style. I have no recollection that we discussed this issue at all during the Drafting Committee meetings. We did, however decide to substitute META for the existing merger, etc provisions in all the spoke acts. META uses “vote” twice in the definition of “governance interest” and “vote on or “consent” 8 times. These formulations were in all the 2011 annual Meeting Drafts.

The 2011 Annual Meeting drafts non-META provisions in the spoke acts were not uniform. ULLCA, UPA, and ULPA used the term “consent” consistently. USTEA uses “vote” or “voted consent” in its governance provisions. ULCAA uses “voting”, “voting power”, “voting rights”, and “percentage of votes” throughout. And UNAA uses the terms “affirmative majority of the votes cast” and “consent without a meeting or casting of ballots” in the one non-META applicable section.

It seemed to me that this was essentially a harmonization issue and that, to the extent possible, consistent terminology should be used in all the acts (with the exception of ULCAA, which has a corporate framework and we decided to harmonize only minimally). It seems to me that “vote or consent” would be the best choice, especially since the META provisions in the spokes are eliminated in the UBOC. We (Bill, Dan and I) thought that adding the word “affirmative” before “vote” would emphasize the necessity of unanimity of the vote or consent. In short, I viewed this as a minor harmonization issue and not as an attempt to corporatize the Code acts. That is why I did not include it in the list of issues for the Drafting Committee’s review.

Using only the term “consent” throughout in all the acts, which I think was the majority view at our February conference call, will not work, in my opinion. Since META, either as a stand- alone act, or as Article 2 of the UBOC includes transactions involving corporations as well as unincorporated entities, , the term “vote” is necessary because that is the way corporations conduct business. The term “consent” without reference to voting is clearly inappropriate in ULCAA and is also contrary to the way trust entities and unincorporated nonprofit associations traditionally conduct business.

One possibility would be to use “consent” everywhere in the stand-alone versions of ULLCA, UPA, and ULPA but have “affirmative vote or consent” in Article 2 of the UBOC; and retain whatever existed in the 2011 drafts of USTEA, ULCAA, and UUNAA.

Another alternative is to keep whatever formulation the 2011 Annual Meeting drafts contained. A third alternative is to authorize the Chairs and Reporters to make the decision on the grounds that this is a minor, non-substantive style issue. Members of the Drafting Committee may have other suggestions.

A final decision on this issue needs to be made in our next conference call. I hope the discussion will not take up the entire allotted time of the call.