FOR APPROVAL

AMENDMENTS TO

MODEL ENTITY TRANSACTIONS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-FIFTEENTH YEAR
PASADENA, CALIFORNIA
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AMENDMENTS TO

MODEL ENTITY TRANSACTIONS ACT

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[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [Act] may be cited as the ~~[State]~~ Model Entity Transactions Act.

SECTION 102. DEFINITIONS. In this [Act]:

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

(2) "Acquiring entity" means the entity that acquires all of one or more classes or series of interests of the ~~exchanging~~ acquired entity in an interest exchange.

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

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

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

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

(4) "Business corporation" means a corporation whose internal affairs are governed by [the Model Business Corporation Act].

~~(4)~~ (5) "Conversion" means a transaction authorized by [Article] 4.

~~(5)~~ (6) "Converted entity" means the converting entity as it continues in existence after a conversion.

~~(6)~~ (7) "Converting entity" means the domestic entity that approves a plan of conversion pursuant to Section 403 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of organization.

~~(7) "Dividing entity" means a domestic entity that approves a plan of division pursuant to Section 603 or a foreign entity that approves a division pursuant to the law of its jurisdiction of organization.~~

~~(8) "Division" means a transaction authorized by [Article] 6.~~

~~(9)~~ (8) "Domestic entity" means an entity whose internal affairs are governed by the law

of this state.

~~(10)~~ (9) "Domesticated entity" means the domesticating entity as it continues in existence after a domestication.

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

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

~~(13)~~ (12) "Entity" means ~~a~~:

(A) a business corporation;

(B) a nonprofit corporation;

(C) a general partnership, including a limited liability partnership;

(D) a limited partnership, including a limited liability limited partnership;

(E) a limited liability company;

(F) a statutory trust entity;

(G) an unincorporated nonprofit association;

(H) a cooperative; or

(I) any other person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:

~~(A)~~ (i) an individual;

~~(B)~~ (ii) a testamentary, inter vivos, or charitable trust, with the exception of a business trust or similar trust;

~~(C)~~ (iii) an association or relationship that is not a partnership solely by reason of [Section 202(c) of the Uniform Partnership Act (1997)] or a similar provision of the law of any other jurisdiction;

~~(D)~~ (iv) a decedent's estate; or

~~(E)~~ (v) a government, a governmental subdivision, agency, or instrumentality, or a quasi-governmental instrumentality.

~~(14)~~ (13) "Filing entity" means an entity that is created by the filing of a public organic document.

~~(15)~~ (14) "Foreign entity" means an entity other than a domestic entity.

~~(16)~~ (15) "Governance interest" means the right under the organic law or organic rules

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

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

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

(C) receive notice of or vote on any or all issues involving the internal affairs of the entity.

~~(17)~~ (16) "Governor" means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

~~(18)~~ (17) "Interest" means:

(A) a governance interest in an unincorporated entity;

(B) a transferable interest in an unincorporated entity; or

(C) a share or membership in a corporation.

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

~~(20)~~ (19) "Interest holder" means a direct holder of an interest.

~~(21)~~ (20) "Interest holder liability" means:

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

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

~~(B)~~ (ii) by the organic rules of the entity pursuant to a provision of the organic law authorizing the organic rules to make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

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

~~(22)~~ (21) "Jurisdiction of organization" of an entity means the jurisdiction whose law includes the organic law of the entity.

~~(23)~~ (22) "Liability" means a debt, obligation, or any other liability arising in any manner, whether or not it is secured or whether or not it is contingent.

~~(24)~~ (23) "Merger" means a transaction ~~authorized by [Article] 2~~ in which two or more merging entities are combined into a surviving entity pursuant to a filing with the [Secretary of State].

~~(25)~~ (24) "Merging entity" means an entity that is a party to a merger and exists immediately before the merger becomes effective.

(25) "Nonprofit corporation" means a corporation whose internal affairs are governed by [the Model Nonprofit Corporation Act].

(26) "Nonqualified foreign entity" means a foreign entity that is not a qualified foreign entity.

~~(26)~~ (27) "Organic law" means the statutes, if any, other than this [Act], governing the internal affairs of an entity.

~~(27)~~ (28) "Organic rules" means the public organic document and private organic rules of an entity.

~~(28)~~ (29) "Person" means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

~~(29)~~ (30) "Plan" means a plan of merger, interest exchange, conversion, or domestication~~, or division~~.

~~(30)~~ (31) "Private organic rules" mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.

~~(31)~~ (32) "Protected agreement" means:

(A) ~~a debt security, note, or similar evidence of~~ a record evidencing indebtedness ~~for money borrowed, whether secured or unsecured, issued or signed by an entity which is unpaid, in whole or in part,~~ and any related agreement in effect on the effective date of this [Act];

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

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

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

~~(32)~~ (33) "Public organic document" means the public record the filing of which creates an entity, and any amendment to or restatement of that record.

~~(33)~~ (34) "Qualified foreign entity" means a foreign entity that is authorized to transact

business in this state pursuant to a filing with the [Secretary of State].

~~(34)~~ (35) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(35) "Resulting entity" means an entity that continues in existence after, or is created by, a division.~~

(36) "Sign" means, with present intent to authenticate or adopt a record:

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

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

(37) "Surviving entity" means the entity that continues in existence after or is created by a merger.

(38) "Transferable interest" means the right under an entity's organic law to receive distributions from the entity.

(39) "Type," with regard to an entity, means a generic form of entity:

(A) recognized at common law; or

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

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

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

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

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

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

(2) if the corporation survives the transaction, the approval of the plan is by a

vote of the shareholders or directors which would be sufficient to create or impair the right or obligation directly under the provision.

SECTION 104. REQUIRED NOTICE OR APPROVAL.

(a) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer in order to ~~sell some or all of its assets,~~ be a party to a merger~~, or change its purposes or form of organization shall~~ must give the notice~~,~~ or obtain the approval~~,~~ in order to be a party to ~~a transaction under this [Act]~~ an interest exchange, conversion, or domestication.

(b) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this [Act] becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, or devised, unless the entity obtains an order of [name of court] [the attorney general] to the extent required by or pursuant to ~~[cite state statutory cy pres or other nondiversion law]~~ this state's cy pres or other law dealing with nondiversion of charitable assets specifying the disposition of the property.

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

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

SECTION 105. STATUS OF FILINGS. A filing under this [Act] signed by a domestic entity becomes part of the public organic document of the entity if the entity's organic law provides that similar filings under that law become part of the public organic document of the entity.

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

SECTION 107. REFERENCE TO EXTERNAL FACTS. A plan may refer to facts ascertainable outside of the plan if the manner in which the facts will operate upon the plan is

specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

SECTION 108. ALTERNATIVE MEANS OF APPROVAL OF TRANSACTIONS. Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this [Act] by the unanimous vote or consent of its interest holders satisfies the requirements of this [Act] for approval of the transaction.

~~[~~SECTION 109. APPRAISAL RIGHTS. ~~Except as otherwise provided in the entity's organic law or organic rules, an~~

(a) An interest holder of a domestic merging, acquired, converting, or domesticating~~, or dividing~~ entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights ~~if the entity were a party to a merger under its organic law.]~~ under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless:

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

(2) the organic rules provide such a limit.

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

(1) in the entity's organic rules;

(2) in the plan; or

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

(c) If an interest holder is entitled to contractual appraisal rights under subsection (b) and the entity's organic law does not provide procedures for the conduct of an appraisal rights proceeding, the provisions on [Chapter 13 of the Model Business Corporation Act] apply to the extent practicable or as otherwise provided in the entity's organic rules or the plan.

Legislative Note: *Section ~~109 is an optional provision that~~ 109(a) preserves appraisal rights (sometimes referred to as "dissenters' rights") granted by other laws. As an alternative to enacting ~~this section~~ subsection (a), a state may wish to amend the appraisal rights provisions of its organic laws to specify which transactions under this Act will give rise to appraisal rights. See the suggested amendments in Appendix 2. If that alternative approach is adopted, ~~the~~*

~~*references to Section 109 in other sections of this Act should be replaced with references to the appropriate provisions of the organic laws granting appraisal rights.*~~ *subsections (b) and (c) should be designated as a subsections (a) and (b).*

[SECTION 110. EXCLUDED ENTITIES AND TRANSACTIONS.

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

(1)

(2)

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

(1)

(2)

(3)].

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

Nonprofit entities may participate in transactions under this Act with for-profit entities, subject to compliance with Section 104(b). If a state desires, however, to exclude entities with a charitable purpose from the scope of the Act, that may be done by referring to those entities in subsection (a).

More limited provisions that exclude certain types of domestic entities just from certain provisions of this Act are set forth in Sections 201(d) (mergers), 301(e) (interest exchanges), 401(d) (conversions), *and* *501(e) (domestications*~~*), and 601(e) divisions*~~*.*

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

[ARTICLE] 2

MERGER

SECTION 201. MERGER AUTHORIZED.

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

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

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

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

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

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

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

(3) [Article 9 of the Uniform Partnership Act (1997)];

(4) [Article 11 of the Uniform Limited Partnership Act (2001)];

(5) [Article 12 of the Prototype Limited Liability Company Act];

(6) [Article 9 of the Uniform Limited Liability Company Act]; or

(7) [Cite provisions of any other organic laws that have merger provisions for entities of the same type.]

[(d) The following entities may not participate in a merger under this [Article]:

(1)

(2)]

Legislative Note: *The text of subsection (c) will depend on which choice a state makes with respect to the scope of the Act. Four options are outlined in paragraph 3 of the Legislative Note at the beginning of Appendix 2:*

1. *It is anticipated that most states will choose option (a) under which the state will retain all of the merger provisions for entities of the same type it currently has in its organic laws and will repeal any merger provisions for entities of different types in those laws. The end result will be that the merger provisions in the organic laws will apply to mergers of entities of the same type and this Act will apply to mergers involving entities of more than one type. The format of subsection (c) incorporates this option.*

2. *If a state chooses option (b), it will add merger provisions for entities of the same type to all of its organic laws and the list of statutes in subsection (c) will need to be expanded.*

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

4. *If a state were to choose option (c), which is very unlikely to be the case, subsection (c) will not be necessary because this Act will govern all mergers whether involving just the same type or entity or different types of entities.*

SECTION 202. PLAN OF MERGER.

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

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

(2) if the surviving entity is to be created in the merger, a statement to that effect and its name, jurisdiction of organization, and type;

(3) the manner of converting the interests in each party to the merger into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;

(4) if the surviving entity exists before the merger, any proposed amendments to its public organic document or to its private organic rules that are, or are proposed to be, in a record;

(5) if the surviving entity is to be created in the merger, its proposed public organic document, if any, and the full text of its private organic rules that are proposed to be in a record;

(6) the other terms and conditions of the merger; and

(7) any other provision required by the law of a merging entity's jurisdiction of organization or the organic rules of a merging entity.

(b) A plan of merger may contain any other provision not prohibited by law.

SECTION 203. APPROVAL OF MERGER.

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

(1) by a domestic merging entity:

(A) in accordance with the requirements, if any, in its organic law and organic rules for approval of ~~a transaction that has the effect of~~:

(i) in the case of an entity that is not a business corporation, a merger; or

(ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of that business corporation; or

(B) if neither its organic law nor organic rules provide for approval of ~~a transaction that has the effect of~~ such a merger, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic merging entity that will have interest holder liability for liabilities that arise after the merger becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:

(A) the organic rules of the entity provide in a record for the approval of ~~a transaction that has the effect of~~ a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

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

(b) A merger involving a foreign merging entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

SECTION 204. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.

(a) A plan of merger of a domestic merging entity may be amended:

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

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

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

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

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

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

(1) as provided in the plan; or

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

(c) If a plan of merger is abandoned after a statement of merger has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of a merging entity, must be filed with the [Secretary of State] before the time the statement of merger becomes effective. The statement of abandonment takes effect upon filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of each merging or surviving entity that is a domestic entity or a qualified foreign entity;

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

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

SECTION 205. STATEMENT OF MERGER; EFFECTIVE DATE.

(a) A statement of merger must be signed on behalf of each merging entity and filed with the [Secretary of State].

(b) A statement of merger must contain:

(1) the name, jurisdiction of organization, and type of each merging entity that is not the surviving entity;

(2) the name, jurisdiction of organization, and type of the surviving entity;

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

(4) a statement that the merger was approved by each domestic merging entity, if any, in accordance with this [Article] and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of organization;

(5) if the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic document approved as part of the plan of merger;

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

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

(8) if the surviving entity is a nonqualified foreign entity, a mailing address to which the [Secretary of State] may send any process served on the [Secretary of State] pursuant to Section 206(e).

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

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

(e) A plan of merger that is signed on behalf of all of the merging entities and meets all of the requirements of subsection (b) may be filed with the [Secretary of State] instead of a statement of merger and upon filing has the same effect. If a plan of merger is filed as provided in this subsection, references in this [Act] to a statement of merger refer to the plan of merger filed under this subsection.

(f) A statement of merger becomes effective upon the date and time of filing or the later date and time specified in the statement of merger.

SECTION 206. EFFECT OF MERGER.

(a) When a merger becomes effective:

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

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

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

(4) all liabilities of each merging entity are liabilities of the surviving entity;

(5) except as otherwise provided by law other than this [Act] or the plan of merger, all of the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

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

(A) all of its property continues to be vested in it without reversion or impairment;

(B) it remains subject to all of its liabilities; and

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

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

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

(A) its public organic document, if any, is amended as provided in the statement of merger and ~~remains~~ is binding on its interest holders; and

(B) its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger and ~~remain~~ are binding on and enforceable by:

(i) its interest holders; and

(ii) in the case of a surviving entity that is not a business corporation or a nonprofit corporation, any other person that is a party to an agreement that is part of the surviving entity's private organic rules;

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

(A) its public organic document, if any, is effective and is binding on its interest holders; and

(B) its private organic rules are effective and are binding ~~upon the~~ on and enforceable by:

(i) its interest holders ~~of the surviving entity~~; and

(ii) in the case of a surviving entity that is not a business corporation or a nonprofit corporation, any other person that was a party to an agreement that was part of the organic rules of a merging entity if that person has agreed to be a party to an agreement that is part of the surviving entity's private organic rules; and

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

(b) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the merging entity.

(c) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and that becomes subject to interest holder liability with respect to a domestic entity as a result of a merger has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the merger becomes effective.

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

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

(2) the person does not have interest holder liability under the organic law of the domestic merging entity for any liability that arises after the merger becomes effective;

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

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

(e) When a merger becomes effective, a foreign entity that is the surviving entity:

(1) may be served with process in this state for the collection and enforcement of any liabilities of a domestic merging entity; and

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities.

(f) When a merger becomes effective, the certificate of authority or other foreign qualification of any foreign merging entity that is not the surviving entity is canceled.

[ARTICLE] 3

INTEREST EXCHANGE

SECTION 301. INTEREST EXCHANGE AUTHORIZED.

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

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

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

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

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

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

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

(2)]

[(e) The following entities may not participate in an interest exchange under this [Article]:

(1)

(2)]

Legislative Note: *As pointed out in the Legislative Note to Appendix 2, it is ~~recommended~~ <u>anticipated</u> that <u>most</u> states <u>will choose to</u> limit any existing interest exchange provisions to same-type transactions, for example interest exchanges where all of the entities are corporations. Any interest exchange provisions added to entity statutes should similarly be limited to same-type transactions. The net effect will be that the interest exchange provisions in the various entity statutes will govern same-type interest exchanges and Chapter 3 will govern cross-type interest exchanges. In the event a state does not have any existing interest exchange*

legislation and chooses not to add interest exchange provisions to any of its entity statutes, Article 3 will govern and will cover both same-type and cross-type interest exchanges. See Section 2 of the Prefatory Note and Appendix 2.

SECTION 302. PLAN OF INTEREST EXCHANGE.

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

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

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

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

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

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

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

(b) A plan of interest exchange may contain any other provision not prohibited by law.

SECTION 303. APPROVAL OF INTEREST EXCHANGE.

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

(1) by a domestic acquired entity:

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

(B) except as otherwise provided in subsection (d), if neither its organic law nor organic rules provide for approval of an interest exchange, in accordance with the requirements, if any, in its organic law and organic rules for approval of ~~a transaction that has the effect of~~:

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

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

(C) if neither its organic law nor organic rules provide for approval of an interest exchange or ~~a transaction that has the effect of~~ such a merger, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic acquired entity that will have interest holder liability for liabilities that arise after the interest exchange becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:

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

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

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

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

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

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

It is important, therefore, that states review any differences in the merger approval requirements in their organic laws to determine if those differences are supported by appropriate policy considerations.

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

This Article permits the organic rules of an acquired entity to be amended in the context of an interest exchange. The other Articles in this Act also permit the organic rules to be amended in the contexts of the other types of transactions that may be accomplished under this Act. When states conduct the analysis described in this Legislative Note of what approval requirement to adopt, they should also evaluate that question from the perspective of what approval requirements they provide in their organic laws for amending the organic rules of each type of entity.

The analysis described in this Legislative Note needs to be performed with respect to Sections 403 and 503 as well.

See Appendix 2 for additional information about these issues.

SECTION 304. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST EXCHANGE.

(a) A plan of interest exchange of a domestic acquired entity may be amended:

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

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

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

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

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

(b) After a plan of interest exchange has been approved by a domestic acquired entity and before a statement of interest exchange becomes effective, the plan may be abandoned:

(1) as provided in the plan; or

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

(c) If a plan of interest exchange is abandoned after a statement of interest exchange has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of the acquired entity, must be filed with the [Secretary of State] before the time the statement of interest exchange becomes effective. The statement of abandonment takes effect upon filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the acquired entity;

(2) the date on which the statement of interest exchange was filed; and

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

SECTION 305. STATEMENT OF INTEREST EXCHANGE; EFFECTIVE DATE.

(a) A statement of interest exchange must be signed on behalf of a domestic acquired entity and filed with the [Secretary of State].

(b) A statement of interest exchange must contain:

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

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

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

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

(5) any amendments to the acquired entity's public organic document approved as part of the plan of interest exchange.

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

(d) A plan of interest exchange that is signed on behalf of a domestic acquired entity and meets all of the requirements of subsection (b) may be filed with the [Secretary of State] instead of a statement of interest exchange and upon filing has the same effect. If a plan of interest exchange is filed as provided in this subsection, references in this [Act] to a statement of interest exchange refer to the plan of interest exchange filed under this subsection.

(e) A statement of interest exchange becomes effective upon the date and time of filing or the later date and time specified in the statement of interest exchange.

SECTION 306. EFFECT OF INTEREST EXCHANGE.

(a) When an interest exchange becomes effective:

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

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

(3) the public organic document, if any, of the acquired entity is amended as provided in the statement of interest exchange and ~~remains~~ is binding on its interest holders; and

(4) the private organic rules of the acquired entity that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange and ~~remain~~ are binding on and enforceable by:

(A) its interest holders; and

(B) in the case of an acquired entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the acquired entity's private organic rules.

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

(c) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to the acquired entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange has interest holder

liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the interest exchange becomes effective.

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

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

(2) the person does not have interest holder liability under the organic law of the domestic acquired entity for any liability that arises after the interest exchange becomes effective;

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

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

[ARTICLE] 4

CONVERSION

SECTION 401. CONVERSION AUTHORIZED.

(a) Except as otherwise provided in this section, by complying with this [Article], a domestic entity may become:

(1) a domestic entity of a different type; or

(2) a foreign entity of a different type, if the conversion is authorized by the law of the foreign jurisdiction.

(b) Except as otherwise provided in this section, by complying with the provisions of this [Article] applicable to foreign entities a foreign entity may become a domestic entity of a different type if the conversion is authorized by the law of the foreign entity's jurisdiction of organization.

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

[(d) The following entities may not engage in a conversion:

(1)

(2)]

Legislative Note: *Many states have provisions in their corporate and unincorporated entity statutes that allow conversions. These statutes, however, vary greatly. A few allow conversion of one type of entity into any other type of entity. Most, however, allow only limited types of conversions, e.g., general partnerships to limited partnerships (and limited partnerships to general partnerships) but not to all other types of entities. If a state has conversion provisions, the recommended course of action is to repeal all those statutes. See Appendix 2. The net effect will be that this Act will apply to all conversions. Leaving the existing conversion provisions in place will create confusion for practitioners because in some cases there will be two applicable conversion statutes, the existing conversion statute and Article 4 of this Act, but in other situations only Article 4 of this Act will apply.*

SECTION 402. PLAN OF CONVERSION.

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

(1) the name and type of the converting entity;

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

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

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

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

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

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

(b) A plan of conversion may contain any other provision not prohibited by law.

SECTION 403. APPROVAL OF CONVERSION.

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

(1) by a domestic converting entity:

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

(B) if its organic rules do not provide for approval of a conversion, in accordance with the requirements, if any, in its organic law and organic rules for approval of ~~a transaction that has the effect of~~:

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

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

(C) if neither its organic law nor organic rules provide for approval of a conversion or ~~a transaction that has the effect of~~ such a merger, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic converting entity that will have interest holder liability for liabilities that arise after the conversion becomes effective, unless, in the case of an entity that is not a business or nonprofit corporation:

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

conversion or ~~a transaction that has the effect of~~ a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

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

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

Legislative Note: *The analysis of approval requirements set forth in the Legislative Note to Section 303 should also be performed with respect to conversions.*

SECTION 404. AMENDMENT OR ABANDONMENT OF PLAN OF CONVERSION.

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

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

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

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

(B) the public organic document or private organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

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

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

(1) as provided in the plan; or

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

(c) If a plan of conversion is abandoned after a statement of conversion has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of the entity, must be filed with the [Secretary of State] before the time the statement of conversion becomes effective. The statement of abandonment takes effect upon filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the converting entity;

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

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

SECTION 405. STATEMENT OF CONVERSION; EFFECTIVE DATE.

(a) A statement of conversion must be signed on behalf of the converting entity and filed with the [Secretary of State].

(b) A statement of conversion must contain:

(1) the name, jurisdiction of organization, and type of the converting entity;

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

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

(4) if the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with this [Article] or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of organization;

(5) if the converted entity is a domestic filing entity, the text of its public organic document, as an attachment; ~~and~~

(6) if the converted entity is a domestic limited liability partnership, the text of its [statement of qualification], as an attachment; and

(7) if the converted entity is a nonqualified foreign entity, a mailing address to which the [Secretary of State] may send any process served on the [Secretary of State] pursuant to Section 406(e).

(c) In addition to the requirements of subsection (b), a statement of conversion may

contain any other provision not prohibited by law.

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

(e) A plan of conversion that is signed on behalf of a domestic converting entity and meets all of the requirements of subsection (b) may be filed with the [Secretary of State] instead of a statement of conversion and upon filing has the same effect. If a plan of conversion is filed as provided in this subsection, references in this [Act] to a statement of conversion refer to the plan of conversion filed under this subsection.

(f) A statement of conversion becomes effective upon the date and time of filing or the later date and time specified in the statement of conversion.

SECTION 406. EFFECT OF CONVERSION.

(a) When a conversion becomes effective:

(1) the converted entity is:

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

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

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

(3) all liabilities of the converting entity continue as liabilities of the converted entity;

(4) except as provided by law other than this [Act] or the plan of conversion, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

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

~~(6) unless otherwise provided by the organic law of the converting entity, the conversion does not cause the dissolution of the converting entity;~~

~~(7)~~ (6) if a converted entity is a filing entity, its public organic document is effective and is binding on its interest holders;

~~(8)~~ (7) if the converted entity is a limited liability partnership, its [statement of qualification] is effective simultaneously;

~~(9)~~ (8) the private organic rules of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective and are binding on and enforceable by:

(A) its interest holders; and

(B) in the case of a converted entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the entity's private organic rules; and

~~(10)~~ (9) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion ~~[~~and to any appraisal rights they have under Section 109 and the converting entity's organic law~~]~~.

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

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

(d) When a conversion becomes effective:

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

(2) a person does not have interest holder liability under the organic law of a domestic converting entity for any liability that arises after the conversion becomes effective;

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

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

(e) When a conversion becomes effective, a foreign entity that is the converted entity:

(1) may be served with process in this state for the collection and enforcement of any of its liabilities; and

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities.

(f) If the converting entity is a qualified foreign entity, the certificate of authority or other foreign qualification of the converting entity is canceled when the conversion becomes effective.

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

[ARTICLE] 5

DOMESTICATION

SECTION 501. DOMESTICATION AUTHORIZED.

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

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

(c) When the term domestic entity is used in this [Article] with reference to a foreign jurisdiction, it means an entity whose internal affairs are governed by the law of the foreign jurisdiction.

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

~~[~~(e) The following entities may not engage in a domestication under this [Article]:

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

(2)~~]~~.

Legislative Note: ~~*As is pointed out in the Legislative Note to Appendix 2, it is recommended that a state enacting this Act repeal any existing domestication provision from its entity laws. If that is done, then Article 5 becomes the exclusive means for an entity to engage in a domestication transaction. To the extent existing domestication provisions are retained, there may well be two different procedures for accomplishing a domestication, which will cause unnecessary confusion, particularly if there are differences between those provisions and Article 5.*~~ *Only a few states have domestication provisions in their organic laws. The only uniform or model organic law authorizing domestications is Subchapter 9B of the Model Business Corporation Act. However, since a domestication is a transaction involving entities of the same type, as opposed to a transaction involving entities of different types, it is anticipated that states may elect to keep any existing domestication provisions in their organic laws and they may decide to add domestication provisions to their other organic laws. Any domestication provisions in other organic laws should be listed in subsection (e). The net result will be that Article 5 will only apply to domestications of entities where the entity's organic law does not authorize a*

domestication. If a state does not have any domestication provisions in any of its organic laws, subsection (e) should be omitted.

SECTION 502. PLAN OF DOMESTICATION.

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

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

(2) the name and jurisdiction of organization of the domesticated entity;

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

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

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

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

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

(b) A plan of domestication may contain any other provision not prohibited by law.

SECTION 503. APPROVAL OF DOMESTICATION.

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

(1) by a domestic domesticating entity:

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

(B) if its organic rules do not provide for approval of a domestication, in accordance with the requirements, if any, in its organic law and organic rules for approval of ~~a transaction that has the effect of:~~

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

(ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of that business corporation, as if the domestication

were such a merger; or

(C) if neither its organic law nor organic rules provide for approval of a domestication or ~~a transaction that has the effect of~~ such a merger, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

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

(A) the organic rules of the entity in a record provide for the approval of a domestication or ~~a transaction that has the effect of a~~ merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

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

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

Legislative Note: *The analysis of approval requirements set forth in the Legislative Note to Section 303 should also be performed with respect to domestications.*

SECTION 504. AMENDMENT OR ABANDONMENT OF PLAN OF DOMESTICATION.

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

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

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

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

(B) the public organic document or private organic rules of the

domesticated entity that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the interest holders of the domesticated entity under its organic law or organic rules; or

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

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

(1) as provided in the plan; or

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

(c) If a plan of domestication is abandoned after a statement of domestication has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of the entity, must be filed with the [Secretary of State] before the time the statement of domestication becomes effective. The statement of abandonment takes effect upon filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the domesticating entity;

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

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

SECTION 505. STATEMENT OF DOMESTICATION; EFFECTIVE DATE.

(a) A statement of domestication must be signed on behalf of the domesticating entity and filed with the [Secretary of State].

(b) A statement of domestication must contain:

(1) the name, jurisdiction of organization, and type of the domesticating entity;

(2) the name and jurisdiction of organization of the domesticated entity;

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

(4) if the domesticating entity is a domestic entity, a statement that the plan of domestication was approved in accordance with this [Article] or, if the domesticating entity is a foreign entity, a statement that the domestication was approved in accordance with the law of its

jurisdiction of organization;

(5) if the domesticated entity is a domestic filing entity, its public organic document, as an attachment; ~~and~~

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

(7) if the domesticated entity is a nonqualified foreign entity, a mailing address to which the [Secretary of State] may send any process served on the [Secretary of State] pursuant to Section 506(e).

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

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

(e) A plan of domestication that is signed on behalf of a domesticating domestic entity and meets all of the requirements of subsection (b) may be filed with the [Secretary of State] instead of a statement of domestication and upon filing has the same effect. If a plan of domestication is filed as provided in this subsection, references in this [Act] to a statement of domestication refer to the plan of domestication filed under this subsection.

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

SECTION 506. EFFECT OF DOMESTICATION.

(a) When a domestication becomes effective:

(1) the domesticated entity is:

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

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

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

(3) all liabilities of the domesticating entity continue as liabilities of the domesticated entity;

(4) except as provided by law other than this [Act] or the plan of domestication, all of the rights, privileges, immunities, powers, and purposes of the domesticating entity remain in the domesticated entity;

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

~~(6) unless otherwise provided by the organic law of the domesticating entity, the domestication does not cause the dissolution of the domesticating entity;~~

~~(7)~~ (6) if the domesticated entity is a filing entity, its public organic document is effective and is binding on its interest holders;

~~(8)~~ (7) if the domesticated entity is a limited liability partnership, its [statement of qualification] is effective simultaneously;

~~(9)~~ (8) the private organic rules of the domesticated entity that are to be in a record, if any, approved as part of the plan of domestication are effective and are binding on and enforceable by:

(A) its interest holders; and

(B) in the case of a domesticated entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the domesticated entity's private organic rules; and

~~(10)~~ (9) the interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the interest holders of the domesticating entity are entitled only to the rights provided to them under the plan of domestication ~~[~~and to any appraisal rights they have under Section 109 and the domesticating entity's organic law~~]~~.

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

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

(d) When a domestication becomes effective:

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

(2) a person does not have interest holder liability under the organic law of a domestic domesticating entity for any liability that arises after the domestication becomes effective;

(3) the organic law of a domestic domesticating entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the domestication had not occurred; and

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

(e) When a domestication becomes effective, a foreign entity that is the domesticated entity:

(1) may be served with process in this state for the collection and enforcement of any of its liabilities; and

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities.

(f) If the domesticating entity is a qualified foreign entity, the certificate of authority or other foreign qualification of the domesticating entity is canceled when the domestication becomes effective.

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

~~**[ARTICLE] 6**~~

~~**[DIVISION]**~~

[ARTICLE] ~~7~~ 6

MISCELLANEOUS PROVISIONS

SECTION ~~701~~ 601. CONSISTENCY OF APPLICATION. In applying and construing this [Act], consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

SECTION ~~702~~ 602. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [Act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.), but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

SECTION ~~703~~ 603. CONFORMING AMENDMENTS AND REPEALS. [See Appendix 2.]

~~**SECTION 704. EFFECTIVE DATE.** This [Act] takes effect [January 1, 20__.]~~

SECTION ~~705~~ 604. SAVINGS CLAUSE. This [Act] does not affect an action or proceeding commenced or right accrued before the effective date of this [Act].

SECTION 605. EFFECTIVE DATE. This [Act] takes effect [January 1, 20__.]

APPENDIX 1

FILINGS

SECTION A1-1. REQUIREMENTS FOR DOCUMENTS.

(a) To be entitled to filing by the [Secretary of State], a document must satisfy the following requirements and the requirements of any other provision of this [Act] that adds to or varies these requirements:

(1) This [Act] requires or permits filing the document in the office of the [Secretary of State].

(2) The document contains the information required by this [Act] and may contain other information.

(3) The document is in a record.

(4) The document is in the English language, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals.

(5) The document is signed:

(A) by an officer of a domestic or foreign corporation;

(B) by a person authorized by a domestic or foreign entity that is not a corporation; or

(C) if the entity is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(6) The document must state the name and capacity of the person that signed it. The document may contain a corporate seal, attestation, acknowledgment, or verification.

(7) The document must be delivered to the office of the [Secretary of State] for filing. Delivery may be made by electronic transmission if and to the extent permitted by the [Secretary of State]. If a document is filed in typewritten or printed form and not transmitted electronically, the [Secretary of State] may require one exact or conformed copy to be delivered with the document.

(b) When a document is delivered to the office of the [Secretary of State] for filing, the correct filing fee, and any franchise tax, license fee, or penalty required to be paid therewith by this [Act] or other law must be paid or provision for payment made in a manner permitted by the [Secretary of State].

SECTION A1-2. FORMS. The [Secretary of State] may prescribe and furnish on

request forms for documents required or permitted to be filed by this [Act] but their use is not mandatory.

SECTION A1-3. FILING, SERVICE, AND COPYING FEES.

(a) The [Secretary of State] shall collect a fee of $___ each time process is served on the [Secretary of State] under this [Act]. The party to a proceeding causing service of process may recover this fee as costs if the party prevails in the proceeding.

(b) The [Secretary of State] shall collect the following fees for copying and certifying the copy of any document filed under this [Act]:

(1) $____ a page for copying; and

(2) $____ for the certificate.

(c) The [Secretary of State] shall collect the following fees when the documents described are delivered for filing:

(1) Statement of merger ..... $____

(2) Statement of abandonment of merger..... $____

(3) Statement of interest exchange……..... $____

(4) Statement of abandonment of interest exchange……..... $____

(5) Statement of conversion ..... $____

(6) Statement of abandonment of conversion……..... $____

(7) Statement of domestication ..... $____

(8) Statement of abandonment of domestication……..... $____

~~(9) Statement of division..... $____~~

~~(10) Statement of abandonment of division..... $____~~

SECTION A1-4. EFFECTIVE TIME AND DATE OF DOCUMENT. Except as provided in Section A1-5, a document accepted for filing is effective:

(1) at the date and time of filing, as evidenced by the means used by the [Secretary of State] for recording the date and time of filing;

(2) at the time specified in the document as its effective time on the date it is filed;

(3) at a specified delayed effective time and date if permitted by this [Act]; or

(4) if a delayed effective date but no time is specified, at the close of business on the date specified.

SECTION A1-5. CORRECTING FILED DOCUMENT.

(a) A domestic or foreign entity may correct a document filed by the [Secretary of State] if:

(1) the document contains an inaccuracy;

(2) the document was defectively signed; or

(3) the electronic transmission of the document to the [Secretary of State] was defective.

(b) A document is corrected by filing with the [Secretary of State] a statement of correction that:

(1) describes the document to be corrected and states its filing date or has attached a copy of the document;

(2) specifies the inaccuracy or defect to be corrected; and

(3) corrects the inaccuracy or defect.

(c) A statement of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, a statement of correction is effective when filed.

SECTION A1-6. FILING DUTY OF [SECRETARY OF STATE].

(a) A document delivered to the office of the [Secretary of State] for filing that satisfies the requirements of Section A1-1 must be filed by the [Secretary of State].

(b) The [Secretary of State] files a document by recording it as filed on the date and time of receipt. After filing a document, the [Secretary of State] shall deliver to the domestic or foreign entity or its representative a copy of the document with an acknowledgement of the date and time of filing.

(c) If the [Secretary of State] refuses to file a document, the [Secretary of State] shall return the document to the domestic or foreign entity or its representative within five days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(d) The duty of the [Secretary of State] to file documents under this section is ministerial. The filing or refusal to file a document does not:

(1) affect the validity or invalidity of the document in whole or in part;

(2) relate to the correctness or incorrectness of information contained in the

document; or

(3) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

SECTION A1-7. APPEAL FROM REFUSAL TO FILE A DOCUMENT.

(a) If the [Secretary of State] refuses to file a document delivered for filing, the domestic or foreign entity that submitted the document for filing may appeal the refusal within 30 days after the return of the document to the [name or describe] court [of the county where the entity's principal office (or, if none in this state, its registered office) is or will be located] [of _____ county]. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the explanation of the [Secretary of State] for the refusal to file.

(b) The court may summarily order the [Secretary of State] to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

SECTION A1-8. EVIDENTIARY EFFECT OF COPY OF FILED DOCUMENT. A certificate from the [Secretary of State], delivered with a copy of a document filed by the [Secretary of State], conclusively establishes that the original document is on file with the [Secretary of State].

SECTION A1-9. PENALTY FOR SIGNING FALSE DOCUMENT. A person commits a [_____] misdemeanor [punishable by a fine of not to exceed $___] if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the [Secretary of State] for filing.

SECTION A1-10. POWERS OF [SECRETARY OF STATE]. The [Secretary of State] has the power reasonably necessary to perform the duties required by this [Act].

APPENDIX 2

CONFORMING AMENDMENTS AND REPEALS

Legislative Note: *This appendix provides a guide for amendments, repeals, and additions that must be made to existing statutes when the Act (referred to as META in the balance of this Legislative Note to differentiate it from the other acts referred to) is enacted in a particular state. This is a complex task because of the wide variation in current state statutes with respect to the types of entities that can engage in one or more of the transactions authorized by ~~the Act~~ META.*

1. Step One: Identify Existing Laws

The first step that must be taken is to identify all of the existing statutory provisions that allow for same-type (all of the entities involved are the same, e.g., a merger between two corporations) and cross-type (more than one type of entity is involved in the transaction, e.g., a merger between a corporation and a partnership), mergers, interest exchanges, conversions, and domestications for any kind of entity. An entity is defined in Section 102 to include all types of partnerships (general partnerships, limited liability partnerships, limited partnerships, and limited liability limited partnerships), limited liability companies, all types of corporations (including non-profit corporations, close corporations in those states that have separate statutes for close corporations, and professional corporations), business trusts, cooperatives, and unincorporated nonprofit associations (at least in states that have the Uniform Unincorporated Nonprofit Associations Act or have statutes that allow an unincorporated nonprofit organization to hold property in its own name). Many states have statutes governing other types of business organizations. Texas, for example, has special statutory provisions for real estate investment trusts (in most other states, REITs would be considered a type of business trust). These special types of entities should also be included in the review process.

2. Step Two: Analyze Existing Laws

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

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

The same-type and cross-type landscape with respect to unincorporated entities is even less complete. The Uniform Partnership Act (1997) (RUPA), which has been adopted in approximately 2/3 of the states (and in the District of Columbia, Puerto Rico and the Virgin Islands) only authorizes mergers and conversions of general partnerships and limited partnerships. It does not allow conversions into any other type of entity or mergers with any other type of entity; nor does it authorize interest exchange~~,~~ or domestication ~~or division~~ transactions. Several states that have adopted RUPA have provisions allowing same-type and cross-type conversions and mergers of general partnerships with not only limited partnerships but also with corporations and limited liability companies; and a few RUPA states have expanded the list to include any business entity (it is unclear in many of these states, however, whether these statutes apply to non-profit entities). With the exception of Ohio, which authorizes mergers and consolidations of general partnerships with other partnerships and "other domestic or foreign entities," there are apparently no same-type or cross-type provisions in the general partnership statutes of the approximately one-third of the states that still have the 1914 Uniform Partnership Act.

The statutory framework for limited partnership same-type and cross-type transactions is also quite varied. Most states have the Uniform Limited Partnership Act (1976 with 1985 Amendments). That ~~Act~~ act has no provisions dealing with merger, interest exchange, conversion, or domestication ~~or division~~ transactions. According to Volume 6A of Uniform Laws Annotated (Supp. 2004), 19 states have adopted provisions authorizing limited partnerships to merge with or convert into some other types of entities. Arizona, for example, only authorizes limited partnerships to convert into general partnerships, but also authorizes limited partnerships to merge with any other type of business entity. Some states allow conversions of limited partnerships into limited liability companies and a few states expand the conversion list to include corporations; most also allow mergers of limited partnerships into other limited partnerships and some other types of entities. Several states appear to exclude non-profit organizations, business trusts, and cooperatives from their cross-form list.

As of ~~August 2005~~ November 2006, the Uniform Limited Partnership Act (2001) ~~has~~ had been adopted in ~~Florida, North Dakota, Hawaii, Iowa, Minnesota, and Illinois~~ ten states. It authorizes a conversion of a limited partnership into any other type of organization, conversion of any other organization into a limited partnership, a merger of a limited partnership with any other type of organization and a domestication (which is a type of conversion under ULPA (2001)). It does not, however, have any specific provisions for interest exchanges ~~or divisions~~.

Most limited liability company statutes have provisions authorizing mergers and conversions, although the scope of coverage is quite varied. The Uniform Limited Liability Company Act (1997) (ULLCA), which has been adopted in eight states and the Virgin Islands, authorizes the conversion of a limited liability company into a general or limited partnership (but not into a corporation or any other type of entity) and a merger of a limited liability company with other limited liability companies or any "other domestic or foreign entities." ULLCA does not, however, have any provisions authorizing limited liability companies to enter into interest exchange~~,~~ or domestication ~~or division~~ transactions. In the other 42 states there are substantial differences from the ULLCA scheme with respect to same-type and cross-type transactions. The recently-adopted revised Uniform Limited Liability Company Act (2006)

authorizes cross-type mergers and conversions, but does not provide for interest exchanges or domestications.

There are no same-type or cross-type provisions in the Uniform Unincorporated Nonprofit Associations Act. Moreover, there are very few same-type or cross-type provisions in statutes governing all the other types of entities that exist under state law. There are some exceptions, however, such as the Delaware Statutory Trust Act which allows mergers and conversions of business trusts into other entities, and the Minnesota cooperative statute which allows farm cooperatives to convert into limited liability companies.

3. Step Three: Prepare Amendments and Repeals

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

1. *avoiding any potential inconsistency between META's provisions and similar provisions in the state's entity statutes; and*

2. *making the interplay between META and the state's various entity laws relatively easy to navigate.*

There are ~~two ways a statute could~~ at least four ways to achieve these goals.

~~*(a) Limit the Act to Cross-Type Transactions*~~

~~*One method to achieve these goals would be to delete from any existing entity statutes provisions that deal with cross-type transactions and add same-type merger, interest exchange, domestication, and division provisions to every type of entity statute that does not currently have these provisions. Thus all same-type entity transactions would be governed by the state's entity statutes and all cross-type transactions would be governed by META. This approach will require a large number of changes to existing entity statutes in most states because same-type merger, interest exchange, conversion, domestication, and division provisions would have to be added to the state's entity statutes, including its unincorporated nonprofit, cooperative, and business trust statutes.*~~

~~*(b)*~~ ***(a) Limit Existing Laws to Same-Type ~~Mergers~~ Transactions***

~~*A second*~~ *One method, which ~~reduces somewhat the number of state entity laws that have to be amended is,~~ it is anticipated will be the method chosen by most states, is as follows:*

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

~~a.~~ (i) Repeal any cross-type provisions from the state's corporation merger statutes. The amendments necessary for this purpose in a state that has adopted the Model Business Corporation Act and the Model Nonprofit Corporation Act are found in Sections A2-1 and A2-2, respectively, In states whose corporate codes do not have any cross-type merger provisions no amendments to the state's corporate merger provisions will be necessary. Most state also may not have interest exchange provisions in their corporate codes. If that is the case, same-type provisions for interest exchanges do not need to be added to the corporate codes because under META the requirements for approval of a merger and other rights that a shareholder would have in a merger, for example, dissenters' rights, apply. See Sections 203(a) (mergers) and 303(a) (interest exchange).

~~b.~~ (ii) Repeal any conversion provisions in the state's corporation statutes. Article 3 of META will, therefore, govern all conversions.

~~c.~~ (iii) ~~Repeal~~ Retain any ~~domestications~~ existing domestication provisions in the ~~corporate statutes, unless the state has domestication provisions in all of its entity statutes, which is very unlikely to be the case, except possibly in Delaware. See Section A2-1(b) (repeal of domestication provisions in the Model Business Corporation Act). Under Section 503(a), the approval requirements for a merger apply to a domestication, which is the rule in the Model Business Corporation Act domestication provisions and, presumably, in all other existing state entity domestication provisions~~. state's organic laws. As is pointed out in the Legislative Note to META Section 501, these entity specific domestication provisions will be listed in Section 501(e) with the result being that Article 5 of META will apply to those types of entities whose organic laws do not already have domestication provisions.

~~d. If the state corporation codes have any division provisions, and very few do, limit them to divisions where the dividing entity and the resulting entities are all the same type of entity.~~

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

(i) Amend all the merger, interest exchange, and conversion~~, domestication, and division~~ provisions in the state's other entity statutes by stripping out all of the cross-type provisions in the merger provisions, and by repealing any interest exchange, or conversion~~, domestication, and division~~ provisions. Any existing domestication provisions would be retained and an appropriate reference to those provisions would be included in Section 501(e). The appropriate amendments for states that have adopted the

Uniform Partnership Act (1997), the Uniform Limited Partnership Act (2001), the Uniform Limited Liability Company Act (1996) or the ABA Prototype Limited Liability Company Act are found in Sections A2-3, A2-4, A2-5, and A2-6, respectively.

(ii) The existing requirements for approval of mergers, interest exchanges, conversions, domestications, and amendment of the organic rules in the state's existing organic laws for unincorporated entities need to be carefully reviewed. If they require unanimity (or they are silent on what vote is required), then the suggested amendments in this appendix will make all the voting requirements for both same-type and cross-type transactions involving unincorporated entities consistent. The situation is more complicated, however, if there is not complete consistency among those organic laws; for example, as is sometimes the case, if the state's partnership statutes require unanimity but its LLC statute requires only a majority vote for some or all transactions. If there is not complete consistency, decisions will need to be made whether to retain the differences or to make all of the voting requirements either unanimous or majority. Other issues that will need to be resolved are what the appropriate vote should be for transactions other than mergers (i.e., interest exchanges, conversions, and domestications) where there are no existing voting provisions other than for mergers; what is the appropriate voting requirement for a transaction under META where an unincorporated entity organic law does not have any same-type or cross-type provisions for that type of transaction; and how the voting requirements under META relate to the vote required to amend an unincorporated entity's organic rules. Once this analysis is completed, it will be possible to construct the appropriate amendments to the state's existing unincorporated entity organic laws.

(b) Limit META to Cross-Type Transactions

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

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

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

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

A fourth method to integrate META with a state's existing organic laws could be achieved by repealing any provisions for cross-type transactions from the corporation laws (see Sections A2-1 and A2-2 for the appropriate amendments in a state that has enacted the Model Business Corporation Act and the Model Nonprofit Corporation Act) and, in addition by repealing all of the provisions for same-type and cross-type transactions in all of the state's unincorporated entity organic laws. This approach, which is a variant of (c), avoids the problem of incorporating the corporation law voting requirements and related provisions such as appraisal rights. It will work best, however, in a state where all of the existing unincorporated entity organic laws require unanimity for approval of a merger or similar transaction (and where unanimity is also required to amend each type of entity's organic rules), since that is the ultimate default rule in META. This approach will be quite cumbersome if the state's unincorporated entity organic laws require less than unanimous consent for some types of entities, because the less than unanimous approval requirements would have to be incorporated into META.

4. Step Four: Add appropriate cross references.

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

(Replace current Section A2-1 in its entirety with the following text:)

Legislative Note to Section A2-1: *The amendments to the Model Business Corporation Act in Section A2-1 delete provisions relating to mergers involving entities other than corporations, but retain certain provisions relating to those types of entities so that interests in those entities can be used as consideration in a merger between or among corporations. For example, in a triangular merger in which a limited liability company is acquiring a target corporation by merging it with a corporate subsidiary of the LLC, the parties may wish to give the shareholders of the target interests in the LLC in exchange for their shares in the target. To accomplish that result, some of the provisions in the Model Business Corporation Act relating to unincorporated entities need to be retained even though they are no longer needed with respect to mergers between a corporation and an unincorporated entity which are now subject to this Act.*

SECTION A2-1. MODEL BUSINESS CORPORATION ACT.

(a) Section 1.40 (7B) ("eligible entity"), (9B) ("filing entity"), (13B) ("interest holder"), (14B) ("nonfiling entity"), (15A) ("organic document"), (17A) ("private organic document"), and (17B) ("public organic document") of the [Model Business Corporation Act] are repealed.

(b) The title of Chapter 9 of the [Model Business Corporation Act] is amended as follows:

Domestication ~~and Conversion~~

(c) Subchapters 9A, C, D, and E of the [Model Business Corporation Act] are repealed.

(d) Sections 11.01, 11.02, 11.03, 11.04, 11.06, 11.07, and 11.08 of the [Model Business Corporation Act] are amended as follows:

§ 11.01. Definitions.

As used in this chapter:

(a.1) "Acquired corporation" means the domestic or foreign corporation whose shares are acquired in a share exchange.

(a.2) "Acquiring corporation" means the domestic or foreign corporation that acquires shares in a share exchange.

(a) "Merger" means a business combination pursuant to section 11.02.

(b) "Party to a merger" or "party to a share exchange" means any domestic or foreign corporation ~~or eligible entity~~ that will:

(1) merge under a plan of merger;

(2) acquire shares ~~or eligible interests~~ of another corporation ~~or an eligible entity~~ in a share exchange; or

(3) have all of its shares ~~or eligible interests~~ or all of one or more classes or series of its shares ~~or eligible interests~~ acquired in a share exchange.

(c) "Share exchange" means a business combination pursuant to section 11.03.

(d) "Survivor" in a merger means the corporation ~~or eligible entity~~ into which one or more other corporations ~~or eligible entities~~ are merged. A survivor of a merger may preexist the merger or be created by the merger.

§ 11.02. Merger.

(a) One or more domestic business corporations may merge with one or more domestic or foreign business corporations ~~or eligible entities~~ pursuant to a plan of merger, or two or more foreign business corporations ~~or domestic or foreign eligible entities~~ may merge into a new domestic business corporation to be created in the merger in the manner provided in this chapter.

(b) A foreign business corporation~~, or a foreign eligible entity,~~ may be a party to a merger with a domestic business corporation, or may be ~~created by the terms of the plan of merger, only~~ the survivor in such a merger, if the merger is permitted by the laws under which the foreign business corporation ~~or eligible entity is organized or by which it is governed~~ is incorporated.

~~(b.1) If the organic law of a domestic eligible entity does not provide procedures for the approval of a merger, a plan of merger may be adopted and approved, the merger effectuated, and appraisal rights exercised in accordance with the procedures in this chapter and chapter 13. For the purposes of applying this chapter and chapter 13:~~

~~(1) the eligible entity, its members or interest holders, eligible interests and organic documents taken together shall be deemed to be a domestic business corporation, shareholders, shares and articles of incorporation, respectively and vice versa as the context may require; and~~

~~(2) if the business and affairs of the eligible entity are managed by a group of persons that is not identical to the members or interest holders, that group shall be deemed to be the board of directors.~~

(c) The plan of merger must include:

(1) the name of each domestic or foreign business corporation ~~or eligible entity~~ that will merge and the name of the domestic or foreign business corporation ~~or eligible entity~~ that will be the survivor of the merger;

(2) the terms and conditions of the merger;

(3) the manner and basis of converting the shares of each merging domestic or foreign business corporation ~~and eligible interests of each merging domestic or foreign eligible entity~~ into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property, or any combination of the foregoing;

(4) the articles of incorporation of any domestic or foreign business ~~or nonprofit~~ corporation~~, or the organic documents of any domestic or foreign unincorporated entity,~~ to be created by the merger, or if a new domestic or foreign business ~~or nonprofit~~ corporation ~~or unincorporated entity~~ is not to be created by the merger, any amendments to the survivor's articles of incorporation ~~or organic documents~~; and

(5) any other provisions required by the laws under which any party to the merger is ~~organized or by which it is governed~~ incorporated, or by the articles of incorporation ~~or organic document~~ of any such party.

(d) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with section 1.20(k).

(e) The plan of merger may also include a provision that the plan may be amended ~~prior to filing articles of merger, but if the shareholders of a domestic corporation that is a party to the~~

~~merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to change:~~ by the directors or shareholders of a domestic business corporation, except that the shareholders who were entitled to vote on the plan shall be entitled to vote on any amendment of the plan that will change:

(1) the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property to be received under the plan by the shareholders of ~~or owners of eligible interests in~~ any party to the merger;

(2) the articles of incorporation of any corporation~~, or the organic documents of any unincorporated entity,~~ that will survive or be created as a result of the merger, except for changes permitted by section 10.05 ~~or by comparable provisions of the organic laws of any such foreign corporation or domestic or foreign unincorporated entity~~; or

(3) any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(f) A merger in which a business corporation and another form of entity are parties is governed by [the Model Entity Transactions Act].

§ 11.03. Share exchange.

(a) Through a share exchange:

(1) a domestic business corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign business corporation~~, or all of the interests of one or more classes or series of interests of a domestic or foreign other entity,~~ in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange, or

(2) all of the shares of one or more classes or series of shares of a domestic business corporation may be acquired by another domestic or foreign business corporation ~~or other entity,~~ in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

(b) A foreign business corporation ~~or eligible entity,~~ may be a party to a share exchange only if the share exchange is permitted by the laws under which the corporation ~~or other entity is organized or by which it is governed~~ is incorporated.

~~(b.1) If the organic law of a domestic other entity does not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved, and the share exchange effectuated, in accordance with the procedures, if any, for a merger. If the organic law of a domestic other entity does not provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may be adopted and approved, the share exchange effectuated, and appraisal rights exercised, in accordance with the procedures in this chapter and chapter 13. For the purposes of applying this chapter and chapter 13:~~

~~(1) the other entity, its interest holders, interests and organic documents taken together shall be deemed to be a domestic business corporation, shareholders, shares and articles of incorporation, respectively and vice versa as the context may require; and~~

~~(2) if the business and affairs of the other entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.~~

(c) The plan of share exchange must include:

(1) the name of ~~each~~ the acquired corporation ~~or other entity whose shares or interests will be acquired~~ and the name of the acquiring corporation ~~or other entity that will acquire those shares or interests~~;

(2) the terms and conditions of the share exchange;

(3) the manner and basis of exchanging shares of ~~a~~ the acquired corporation ~~or interests in an other entity whose shares or interests will be acquired under the share exchange~~ into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, other property, or any combination of the foregoing; and

(4) any other provisions required by the laws under which any party to the share exchange is ~~organized~~ incorporated or by the articles of incorporation ~~or organic document~~ of any such party.

(d) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with section 1.20(k).

(e) The plan of share exchange may also include a provision that the plan may be amended ~~prior to filing articles of share exchange, but if the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to change:~~ by the directors or shareholders of a domestic acquired corporation, except that the shareholders who were entitled to vote on the plan shall be entitled to vote on any amendment of the plan that will change:

(1) the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property to be issued by the corporation or to be received under the plan by the shareholders of ~~or owners of interests in any party to the share exchange~~ the acquired corporation; or

(2) any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(f) Section 11.03 does not limit the power of a domestic corporation to acquire shares of another corporation ~~or interests in another entity~~ in a transaction other than a share exchange.

(g) A share exchange or interest exchange in which a business corporation and another form of entity are parties is governed by [the Model Entity Transactions Act].

§ 11.04. Action on a plan of merger or share exchange.

In the case of a domestic corporation that is a party to a merger or share exchange:

(a) The plan of merger or share exchange must be adopted by the board of directors.

(b) Except as provided in subsection (g) and in section 11.05, after adopting the plan of merger or share exchange the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.

(c) The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

(d) If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation must notify each

shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. ~~If the corporation is to be merged into an existing corporation or other entity, the~~ The notice shall also include or be accompanied by a copy or summary of the articles of incorporation ~~or organizational documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or other entity.~~ of the survivor.

(e) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (c), requires a greater vote or a greater number of votes to be present, approval of the plan of merger or share exchange requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the merger or share exchange by that voting group is present.

(f) Separate voting by voting groups is required:

(1) on a plan of merger, by each class or series of shares that:

(i) are to be converted under the plan of merger into other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property, or any combination of the foregoing; or

(ii) would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under section 10.04;

(2) on a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(3) on a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

(g) Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if:

(1) the corporation will survive the merger or is the acquiring corporation in a share exchange;

(2) except for amendments permitted by section 10.05, its articles of incorporation will not be changed;

(3) each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, limitations, and relative rights, immediately after the effective date of ~~change~~ the merger or share exchange; and

(4) the issuance in the merger or share exchange of shares or other securities convertible into or rights exercisable for shares does not require a vote under section 6.21(f).

(h) If as a result of a merger or share exchange one or more shareholders of a domestic business corporation would become subject to owner liability for the debts, obligations or liabilities of any other person or entity, approval of the plan of merger or share exchange shall

require the execution, by each such shareholder, of a separate written consent to become subject to such owner liability.

§ 11.06. Articles of merger or share exchange.

(a) After a plan of merger or a plan of share exchange involving a domestic acquired corporation has been adopted and approved as required by this Act, articles of merger or share exchange shall be executed on behalf of each party to the merger or the acquired corporation in the share exchange by any officer or other duly authorized representative. The articles shall set forth:

(1) the names of the parties to the merger or share exchange;

(2) if the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;

(3) if the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this Act and the articles of incorporation;

(4) if the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect; and

(5) as to each foreign corporation ~~or eligible entity~~ that was a party to the merger or share exchange, a statement that the participation of the foreign corporation ~~or eligible entity~~ was duly authorized as required by the ~~organic law of the corporation or eligible entity~~ laws of the foreign jurisdiction.

(b) Articles of merger or share exchange shall be delivered to the secretary of state for filing by the survivor of the merger or the acquiring corporation in a share exchange, and shall take effect at the effective time provided in section 1.23. ~~Articles of merger or share exchange filed under this section may be combined with any filing required under the organic law of any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.~~

§ 11.07. Effect of merger or share exchange.

(a) When a merger becomes effective:

(1) the corporation ~~or eligible entity~~ that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(2) the separate existence of every corporation ~~or eligible entity~~ that is merged into the survivor ceases;

(3) all property owned by, and every contract right possessed by, each corporation ~~or eligible entity~~ that merges into the survivor is vested in the survivor without reversion or impairment;

(4) all liabilities of each corporation ~~or eligible entity~~ that is merged into the survivor are vested in the survivor;

(5) the name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(6) the articles of incorporation ~~or organic documents~~ of the survivor are amended to the extent provided in the plan of merger;

(7) the articles of incorporation ~~or organic documents~~ of a survivor that is created by the merger become effective; and

(8) the shares of each corporation that is a party to the merger~~, and the interests in an eligible entity that is a party to a merger,~~ that are to be converted under the plan of merger into shares, other securities, eligible interests, obligations, rights to acquire ~~securities,~~ shares, other securities, or eligible interests, cash, other property, or any combination of the foregoing, are converted, and the former holders of such shares ~~or eligible interests~~ are entitled only to the rights provided to them in the plan of merger or to any rights they may have under chapter 13 ~~or the organic law of the eligible entity~~.

(b) When a share exchange becomes effective, the shares of ~~each domestic~~ the acquired corporation that are to be exchanged for shares or other securities, eligible interests, obligations, rights to acquire shares ~~or~~, other securities, or eligible interests, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under chapter 13.

(c) A person who becomes subject to owner liability for some or all of the debts, obligations or liabilities of any entity as a result of a merger or share exchange shall have owner liability only to the extent provided in the organic law of the entity and only for those debts, obligations and liabilities that arise after the effective time of the articles of merger or share exchange.

(d) Upon a merger becoming effective, a foreign corporation~~, or a foreign eligible entity,~~ that is the survivor of the merger is deemed to:

(1) appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights, and

(2) agree that it will promptly pay the amount, if any, to which such shareholders are entitled under chapter 13.

~~[(e) The effect of a merger or share exchange on the owner liability of a person who had owner liability for some or all of the debts, obligations or liabilities of a party to the merger or share exchange shall be as follows:~~

~~(1) The merger or share exchange does not discharge any owner liability under the organic law of the entity in which the person was a shareholder or interest holder to the extent any such owner liability arose before the effective time of the articles of merger or share exchange.~~

~~(2) The person shall not have owner liability under the organic law of the entity in which the person was a shareholder or interest holder prior to the merger or share exchange for any debt, obligation or liability that arises after the effective time of the articles of merger or share exchange.~~

~~(3) The provisions of the organic law of any entity for which the person had owner liability before the merger or share exchange shall continue to apply to the collection or discharge of any owner liability preserved by paragraph (1), as if the merger or share exchange had not occurred.~~

~~(4) The person shall have whatever rights of contribution from other persons are provided by the organic law of the entity for which the person had owner liability with respect to any owner liability preserved by paragraph (1), as if the merger or share exchange had not occurred.]~~

§ 11.08. Abandonment of a merger or share exchange.

(a) Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign business corporation ~~or a domestic or foreign eligible entity~~ that is a party to a merger or a share exchange is ~~organized or by which it is governed~~, after the plan has been adopted and approved as required by this chapter, and at any time before the merger or share exchange has become effective, it may be abandoned by a domestic business corporation that is a party thereto without action by its shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the merger or share exchange.

(b) If a merger or share exchange is abandoned under subsection (a) after articles of merger or share exchange have been filed with the secretary of state but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, executed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

§ 13.02. Right to appraisal.

(a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

* * *

(2) consummation of a share exchange ~~to~~ in which the corporation is ~~a party as the corporation whose shares will be~~ the acquired corporation if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

* * *

(5) any other amendment to the articles of incorporation, merger, share exchange or disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the board of directors; or

(6) consummation of a domestication if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation, as the shares held by the shareholder before the domestication;

(7) consummation of a conversion of the corporation to ~~nonprofit status pursuant to subchapter 9C; or~~

~~(8) consummation of a conversion of the corporation to a form of other entity pursuant to subchapter 9E~~ a different form of entity under [the Model Entity Transactions Act].

(b) Notwithstanding subsection (a), the availability of appraisal rights under subsection (a)(1), (2), (3), (4)~~, (6) and (8)~~ and (6) shall be limited in accordance with the following provisions:

* * *

~~(d)~~ (c) Sections 15.21 (automatic withdrawal upon certain conversions), 15.22

(withdrawal upon conversion to a nonfiling entity) and 15.23 (relating to transfer of authority) of the [Model Business Corporation Act] are repealed.

(No change to the remaining sections of Appendix 2.)