

CHAPTER 355
FORMERLY
HOUSE BILL NO. 364

AN ACT TO AMEND CHAPTER 38, TITLE 12 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC STATUTORY TRUSTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3803(d), Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(d) No obligation of a beneficial owner or trustee of a statutory trust to the statutory trust, or to a beneficial owner or trustee of the statutory trust, arising under the governing instrument or a separate agreement in writing, and no note, instrument or other writing evidencing any such obligation of a beneficial owner or trustee, shall be subject to the defense of usury, and no beneficial owner or trustee shall interpose the defense of usury with respect to any such obligation in any action.

Section 2. Amend § 3806(b), Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(b) A governing instrument may contain any provision relating to the management of the business and affairs of the statutory trust, and the rights, duties and obligations of the trustees, beneficial owners and other persons, which is not contrary to any provision or requirement of this subchapter and, without limitation:

(1) May provide for classes, groups or series of trustees or beneficial owners, or classes, groups or series of beneficial interests, having such relative rights, powers and duties as the governing instrument may provide, and may make provision for the future creation in the manner provided in the governing instrument of additional classes, groups or series of trustees, beneficial owners or beneficial interests, having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior or subordinate to existing classes, groups or series of trustees, beneficial owners or beneficial interests;

(2) May establish or provide for the establishment of designated series of trustees, beneficial owners, assets or beneficial interests having separate rights, powers or duties with respect to specified property or obligations of the statutory trust or profits and losses associated with specified property or obligations, and, to the extent provided in the governing instrument, any such series may have a separate business purpose or investment objective;

(3) May provide for the taking of any action, including the amendment of the governing instrument, the accomplishment of a merger, conversion or consolidation, the appointment of one or more trustees, the sale, lease, exchange, transfer, pledge or other disposition of all or any part of the assets of the statutory trust or the assets of any series, or the dissolution of the statutory trust, or may provide for the taking of any action to create under the provisions of the governing instrument a class, group or series of beneficial interests that was not previously outstanding, in any such case without the vote or approval of any particular trustee or beneficial owner, or class, group or series of trustees or beneficial owners;

(4) May grant to (or withhold from) all or certain trustees or beneficial owners, or a specified class, group or series of trustees or beneficial owners, the right to vote, separately or with any or all other classes, groups or series of the trustees or beneficial owners, on any matter, such voting being on a per capita, number, financial interest, class, group, series or any other basis;

(5) May, if and to the extent that voting rights are granted under the governing instrument, set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on, waiver of any such notice, action by consent without a meeting, the establishment of record dates, quorum requirements, voting in person, by proxy or in any other manner, or any other matter with respect to the exercise of any such right to vote;

(6) May provide for the present or future creation of more than 1 statutory trust, including the creation of a future statutory trust to which all or any part of the assets, liabilities, profits or losses of any existing statutory trust will be transferred, and for the conversion of beneficial interests in an existing statutory trust, or series thereof, into beneficial interests in the separate statutory trust, or series thereof;

(7) May provide for the appointment, election or engagement, either as agents or independent contractors of the statutory trust or as delegates of the trustees, of officers, employees, managers or other persons who may manage the business and affairs of the statutory trust and may have such titles and such relative rights, powers and duties as the governing instrument shall provide. Except to the extent otherwise provided in the governing instrument of a statutory trust, the trustees shall choose and supervise such officers, managers, employees and other persons;

(8) May provide rights to any person, including a person who is not a party to the governing instrument, to the extent set forth therein; ~~or~~

(9) May provide for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the governing instrument or the satisfaction of conditions, and to the extent the governing instrument provides for the manner in which it may be amended such governing instrument may be amended only in that manner or as otherwise permitted by law, including as permitted by § 3815(f) of this title (provided that the approval of any person may be waived by such person and that any such conditions may be waived by all persons for whose benefit such conditions were intended). Unless otherwise provided in a governing instrument, a supermajority amendment provision shall only apply to provisions of the governing instrument that are expressly included in the governing instrument. As used in this section, "supermajority amendment provision" means any amendment provision set forth in a governing instrument requiring that an amendment to a provision of the governing instrument be adopted by no less than the vote or consent required to take action under such latter provision. If a governing instrument does not provide for the manner in which it may be amended, the governing instrument may be amended with the approval of all of the beneficial owners and trustees or as otherwise permitted by law, including as permitted by § 3815(f) of this chapter; or

(10) May provide for specific trustees, a certain number of trustees or a threshold percentage of trustees required to vote in favor of any action in order for such action to be considered approved by the trustees; except that, if the governing instrument is silent as to the specific trustees, number of trustees or threshold percentage of trustees so required, then unless otherwise provided in this chapter or in the governing instrument, the vote of a majority of the trustees (or, in the event that such action requires the approval of a particular class, group, or series of trustees, then a majority of such class, group, or series) shall be sufficient to approve such action.

Section 3. Amend § 3806(f), Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(f) Unless otherwise provided in the governing instrument of a statutory trust, meetings of beneficial owners may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. Unless otherwise provided in the governing instrument of a statutory trust, on any matter that is to be voted on by the beneficial owners:

(1) The beneficial owners may take such action without a meeting, without a prior notice and without a vote if consented to, in writing, or by electronic transmission by beneficial owners having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all interests in the statutory trust entitled to vote thereon were present and voted; and

(2) The beneficial owners may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission; or as otherwise permitted by applicable law.

Unless otherwise provided in a governing instrument, a consent transmitted by electronic transmission by a beneficial owner or by a person or persons authorized to act for a beneficial owner shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process. Unless otherwise provided in a governing instrument, if a person (whether or not then a beneficial owner) consenting as a beneficial owner to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a beneficial owner at such future time so long as such person is then a beneficial owner.

Section 4. Amend § 3806(g), Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(g) Unless otherwise provided in the governing instrument of a statutory trust, meetings of trustees may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. Unless otherwise provided in the governing instrument of a statutory trust, on any matter that is to be voted on by the trustees:

(1) The trustees may take such action without a meeting, without a prior notice and without a vote if consented to, in writing, or by electronic transmission, by trustees having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all trustees entitled to vote thereon were present and voted; and

(2) The trustee may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission, or as otherwise permitted by applicable law.

Unless otherwise provided in a governing instrument, a consent transmitted by electronic transmission by a trustee or by a person or persons authorized to act for a trustee shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term “electronic transmission” means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process. Unless otherwise provided in a governing instrument, if a person (whether or not then a trustee) consenting as a trustee to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a trustee at such future time so long as such person is then a trustee.

Section 5. Amend § 3807(c), Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(c) Any statutory trust maintaining a registered office and registered agent in this State under subsection (b) of this section may change the location of its registered office in this State to any other place in this State, or may change the registered agent to any other person or corporation (meeting the requirements contained in subsection (b) of this section), by filing an amendment to its certificate of trust in accordance with the applicable provisions of this subchapter. If a statutory trust which is an investment company registered as aforesaid maintains a registered office and a registered agent in this State as herein provided, then the reference in § 3810(a)(1)b. of this title to the “name and ~~the business~~ address in this State of at least 1 of the trustees meeting the requirements of § 3807 of this title” shall be deemed a reference to the name and ~~the business~~ address in this State of the registered agent and registered office maintained under this section, and the certificate of trust filed under § 3810 of this title shall reflect such information in lieu of the information otherwise required by § 3810(a)(1)b. of this title.

Section 6. Amend § 3814(c), Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(c) The name of each statutory trust, as set forth in its certificate of trust, may contain the following words: “company,” “association,” “club,” “foundation,” “fund,” “institute,” “society,” “union,” “syndicate,” “limited,” or “trust” (or abbreviations of like import) but shall not contain the word “bank,” or any variation thereof, except for the name of a bank reporting to and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as those terms are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a statutory trust regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home Owners’ Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall not be construed to prevent the use of the word “bank,” or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the statutory trust or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or the State as determined by the Division of Corporations in the Department of State.

Section 7. Amend § 3815(a), Title 12 of the Delaware Code by making deletions as shown by strike through and

insertions as shown by underline as follows:

(a) Pursuant to an agreement of merger or consolidation, a statutory trust may merge or consolidate with or into 1 or more statutory trusts or other business entities formed or organized or existing under the laws of the State of Delaware or any other state or the United States or any foreign country or other foreign jurisdiction, with such statutory trust or other business entity as the agreement shall provide being the surviving or resulting statutory trust or other business entity. Unless otherwise provided in the governing instrument of a statutory trust, an agreement of merger or consolidation shall be approved by each statutory trust which is to merge or consolidate by all of the trustees and the beneficial owners of such statutory trust. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a statutory trust or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting statutory trust or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a statutory trust or other business entity which is not the surviving or resulting statutory trust or other business entity in the merger or consolidation, may remain outstanding or may be cancelled. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

Section 8. Amend § 3820(i), Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(i) In connection with a conversion hereunder, rights or securities of or interests in the other business entity which is to be converted to a statutory trust may be exchanged for or converted into cash, property, rights or securities of, or interests in, such statutory trust or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another statutory trust or other business entity, may remain outstanding or may be cancelled.

Section 9. Amend § 3821(d), Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(d) In connection with a conversion of a statutory trust to an other business entity pursuant to this Section, rights or securities of, or interests in, the statutory trust which is to be converted may be exchanged for or converted into cash, property, rights or securities of, or interests in, the other business entity into which the statutory trust is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, any other business entity, may remain outstanding or may be cancelled.

Section 10. Amend § 3822(j), Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(j) In connection with a domestication hereunder, rights or securities of, or interests in, the non-United States entity that is to be domesticated as a domestic statutory trust may be exchanged for or converted into cash, property, rights or securities of, or interests in, such domestic statutory trust or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another domestic statutory trust or other entity, may remain outstanding or may be cancelled.

Section 11. Amend § 3823(f), Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(f) In connection with a transfer or domestication of a statutory trust to or in another jurisdiction pursuant to subsection (a) of this section, rights or securities of, or interests in, such statutory trust may be exchanged for or converted into cash, property, rights or securities of, or interests in, the other business entity in which the statutory trust will exist in such other jurisdiction as a consequence of the transfer or domestication or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, any other business entity, may remain outstanding or may be cancelled.

Section 12. This Act shall become effective August 1, 2014.

Approved July 23, 2014