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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 284

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 (Three-fifths of all members elected to each house thereof concurring therein):

1 Section 1. Amend § 3801, Title 12 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 3801. Definitions.

4 (f) "Independent trustee" means, solely with respect to a statutory trust that is registered as an investment company
5 or regulated as a business development company under the Investment Company Act of 1940, as amended (15 U.S.C. §
6 80a-1 et seq.), or any successor statute thereto (the "1940 Act"), any trustee who is not an "interested person" (as such term
7 is defined below) of the statutory trust; provided that the receipt of compensation for service as an independent trustee of
8 the statutory trust and also for service as an independent trustee of 1 or more other investment companies or business
9 development companies managed by a single investment adviser (or an "affiliated person" (as such term is defined below)
10 of such investment adviser) shall not affect the status of a trustee as an independent trustee under this chapter. An
11 independent trustee as defined hereunder shall be deemed to be independent and disinterested for all purposes. For purposes
12 of this definition, the terms "affiliated person" and "interested person" have the meanings set forth in the 1940 Act or any
13 rule adopted thereunder.

14 Section 2. Amend § 3804, Title 12 of the Delaware Code by making deletions as shown by strike through and
15 insertions as shown by underline as follows:

16 § 3804. Legal proceedings.

17 (a) A statutory trust may sue and be sued, and service of process upon 1 of the trustees shall be sufficient. In
18 furtherance of the foregoing, a statutory trust may be sued for debts and other obligations or liabilities contracted or
19 incurred by the trustees or other authorized persons, or by the duly authorized agents of such trustees or other authorized
20 persons, in the performance of their respective duties under the governing instrument of the statutory trust. Except to the
21 extent otherwise provided in the governing instrument of a statutory trust, the trustees or other authorized persons, or the

22 duly authorized agents of such trustees or other authorized persons, may bind a statutory trust to a contract or instrument by
23 entering into such contract or instrument in the name of the statutory trust or in the name of any such person acting on
24 behalf of the statutory trust. The property of a statutory trust shall be subject to attachment and execution as if it were a
25 corporation, subject to § 3502 of Title 10. Notwithstanding the foregoing provisions of this section, in the event that the
26 governing instrument of a statutory trust, including a statutory trust which is a registered investment company or regulated
27 as a business development company under the Investment Company Act of 1940, as amended (15 U.S.C. § 80a-1 et seq.),
28 creates 1 or more series as provided in § 3806(b)(2) of this title, and to the extent separate and distinct records are
29 maintained for any such series and the assets associated with any such series are held in such separate and distinct records
30 (directly or indirectly, including through a nominee or otherwise) and accounted for in such separate and distinct records
31 separately from the other assets of the statutory trust, or any other series thereof, and if the governing instrument so
32 provides, and notice of the limitation on liabilities of a series as referenced in this sentence is set forth in the certificate of
33 trust of the statutory trust, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing
34 with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the
35 statutory trust generally or any other series thereof, and, unless otherwise provided in the governing instrument, none of the
36 debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the statutory trust
37 generally or any other series thereof shall be enforceable against the assets of such series. Neither the preceding sentence
38 nor any provision pursuant thereto in a governing instrument or certificate of trust shall:

39 Section 3. Amend § 3805, Title 12 of the Delaware Code by making deletions as shown by strike through and
40 insertions as shown by underline as follows:

41 § 3805. Rights of beneficial owners and trustees in trust property.

42 (h) Except to the extent otherwise provided in the governing instrument of the statutory trust, where the statutory
43 trust is a registered investment company or regulated as a business development company under the Investment Company
44 Act of 1940, as amended (15 U.S.C. § 80a-1 et seq.), any class, group or series of beneficial interests established by the
45 governing instrument with respect to such statutory trust shall be a class, group or series preferred as to distribution of
46 assets or payment of dividends over all other classes, groups or series in respect to assets specifically allocated to the class,
47 group or series as contemplated by § 18 (or any amendment or successor provision) of the Investment Company Act of
48 1940 [15 U.S.C. § 80a-18], as amended, and any regulations issued thereunder, provided that this section is not intended to
49 affect in any respect the provisions of § 3804(a) of this title.

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

52 § 3806. Management of statutory trust.

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

56 (7) May provide for the appointment, election or engagement, either as agents or independent contractors of
57 the statutory trust or as delegates of the trustees, of officers, employees, managers or other persons who may manage
58 the business and affairs of the statutory trust, which delegation may be made irrespective of whether the trustee,
59 officer, employee, manager or other person who may manage the business and affairs of the statutory trust has a
60 conflict of interest with respect to the matter as to which its rights, powers or duties are being delegated, and the person
61 or person to whom any such rights, powers or duties are being delegated shall not be deemed conflicted solely by
62 reason of the conflict of interest of the trustee, officer, employee, manager or other person who may manage the
63 business and affairs of the statutory trust, and may have such titles and such relative rights, powers and duties as the
64 governing instrument shall provide.

65 Section 5. Amend § 3806, Title 12 of the Delaware Code by making deletions as shown by strike through and
66 insertions as shown by underline as follows:

67 § 3806. Management of statutory trust.

68 (i) Except to the extent otherwise provided in the governing instrument of a statutory trust, a trustee of a statutory
69 trust has the power and authority to delegate to 1 or more other persons any or all of the trustee's rights, powers ~~or~~ and
70 duties to manage and control the business and affairs of the statutory trust, ~~including to delegate which delegation may be~~
71 made irrespective of whether the trustee has a conflict of interest with respect to the matter as to which its rights, powers or
72 duties are being delegated, and the person or persons to whom any such rights, powers or duties are being delegated shall
73 not be deemed conflicted solely by reason of the conflict of interest of the trustee. Any such delegation may be to agents,
74 officers and employees of the trustee or the statutory trust, and ~~to delegate by~~ a management agreement or other agreement
75 with, or otherwise to, other persons, including a committee of 1 or more persons. Unless otherwise provided in the
76 governing instrument of a statutory trust, such delegation by a trustee of a statutory trust shall be irrevocable if it states that
77 it is irrevocable. Except to the extent otherwise provided in the governing instrument of a statutory trust, such delegation by
78 a trustee of a statutory trust shall not cause the trustee to cease to be a trustee of the statutory trust or cause the person to
79 whom any such rights, powers or duties have been delegated to be a trustee of the statutory trust. No other provision of this
80 subchapter or other law shall be construed to restrict a trustee's power and authority to delegate any or all of its rights,
81 powers and duties to manage and control the business and affairs of the statutory trust.

82 Section 6. Amend § 3806, Title 12 of the Delaware Code by making deletions as shown by strike through and
83 insertions as shown by underline as follows:

84 § 3806. Management of statutory trust.

85 (l) Except to the extent otherwise provided in the governing instrument of a statutory trust, trustees of a statutory
86 trust that is registered as an investment company or regulated as a business development company under the Investment
87 Company Act of 1940 [15 U.S.C. § 80a-1 et seq.] shall have the same fiduciary duties as directors of private corporations
88 for profit organized under the general corporation law of the State.

89 Section 7. Amend § 3806, Title 12 of the Delaware Code by making deletions as shown by strike through and
90 insertions as shown by underline as follows:

91 § 3806. Management of statutory trust.

92 (o) Any act or transaction that may be taken by or in respect of a statutory trust under this subchapter or the
93 governing instrument of the statutory trust, but that is void or voidable when taken, may be ratified (or the failure to comply
94 with any requirements of the governing instrument making such act or transaction void or voidable may be waived) by the
95 beneficial owners, trustees or other persons whose approval would be required under the governing instrument:

96 (1) For such act or transaction to be validly taken; or

97 (2) To amend the governing instrument in a manner that would permit such act or transaction to be validly
98 taken, in each case at the time of such ratification or waiver;

99 provided, that if the void or voidable act or transaction was the issuance or assignment of any beneficial interests, the
100 beneficial interests purportedly issued or assigned shall be deemed not to have been issued or assigned for purposes of
101 determining whether the void or voidable act or transaction was ratified or waived pursuant to this subsection. Any act or
102 transaction ratified, or with respect to which the failure to comply with any requirements of the governing instrument is
103 waived, pursuant to this subsection shall be deemed validly taken at the time of such act or transaction. If an amendment to
104 the governing instrument to permit any such act or transaction to be validly taken would require notice to any beneficial
105 owners, trustees or other persons under the governing instrument and the ratification or waiver of such act or transaction is
106 effectuated pursuant to this subsection by the beneficial owners, trustees or other persons whose approval would be
107 required to amend the governing instrument, notice of such ratification or waiver shall be given following such ratification
108 or waiver to the beneficial owners, trustees or other persons who would have been entitled to notice of such an amendment
109 and who have not otherwise received notice of, or participated in, such ratification or waiver. The provisions of this
110 subsection shall not be construed to limit the accomplishment of a ratification or waiver of a void or voidable act by other
111 means permitted by law. Upon application of the statutory trust, any beneficial owner, any trustee or any person claiming to

112 be substantially and adversely affected by a ratification or waiver pursuant to this subsection (excluding any harm that
113 would have resulted if such act or transaction had been valid when taken), the Court of Chancery may hear and determine
114 the validity and effectiveness of the ratification of, or waiver with respect to, any void or voidable act or transaction
115 effectuated pursuant to this subsection, and in any such application, the statutory trust shall be named as a party and service
116 of the application upon the Delaware trustee or registered agent of the statutory trust required by § 3807 of this title shall be
117 deemed to be service upon the statutory trust, and no other party need be joined in order for the Court to adjudicate the
118 validity and effectiveness of the ratification or waiver, and the Court may make such order respecting further or other notice
119 of such application as it deems proper under these circumstances; provided, that nothing herein limits or affects the right to
120 serve process in any other manner now or hereafter provided by law, and this sentence is an extension of and not a
121 limitation upon the right otherwise existing of service of legal process upon nonresidents.

122 Section 8. Amend § 3807, Title 12 of the Delaware Code by making deletions as shown by strike through and
123 insertions as shown by underline as follows:

124 § 3807. Trustee in State; registered agent.

125 (b) Notwithstanding the provisions of subsection (a) of this section, if a statutory trust is, becomes, or will become
126 prior to or within 180 days following the first issuance of beneficial interests, a registered investment company or a
127 regulated business development company under the Investment Company Act of 1940, as amended (15 U.S.C. § 80a-1 et
128 seq.), such statutory trust shall not be required to have a trustee who is a resident of this State or who has a principal place
129 of business in this State if notice that the statutory trust is or will become an investment company or a business
130 development company as referenced in this sentence is set forth in the certificate of trust of the statutory trust and if and for
131 so long as such statutory trust shall have and maintain in this State:

132 Section 9. Amend § 3807, Title 12 of the Delaware Code by making deletions as shown by strike through and
133 insertions as shown by underline as follows:

134 § 3807. Trustee in State; registered agent.

135 (c) Any statutory trust maintaining a registered office and registered agent in this State under subsection (b) of this
136 section may change the location of its registered office in this State to any other place in this State, or may change the
137 registered agent to any other person or corporation (meeting the requirements contained in subsection (b) of this section),
138 by filing an amendment to its certificate of trust in accordance with the applicable provisions of this subchapter. If a
139 statutory trust which is an investment company or a business development company registered or regulated as aforesaid
140 maintains a registered office and a registered agent in this State as herein provided, then the reference in § 3810(a)(1)b. of
141 this title to the “name and address in this State of at least 1 of the trustees meeting the requirements of § 3807 of this title”

142 shall be deemed a reference to the name and address in this State of the registered agent and registered office maintained
143 under this section, and the certificate of trust filed under § 3810 of this title shall reflect such information in lieu of the
144 information otherwise required by § 3810(a)(1)b. of this title.

145 Section 10. Amend § 3807, Title 12 of the Delaware Code by making deletions as shown by strike through and
146 insertions as shown by underline as follows:

147 § 3807. Trustee in State; registered agent.

148 (n) A successor trustee of one or more statutory trusts who, in accordance with the terms of the governing
149 instrument of each affected statutory trust, has succeeded the predecessor trustee with respect to such statutory trusts may
150 change the trustee's name and address, as set forth in a certificate of trust pursuant to § 3810(a)(1)b. of this title, in the
151 certificates of trust of each statutory trust for which such successor trustee has succeeded by paying a fee as set forth in §
152 3813(a)(5) of this title and executing and filing a certificate with the Secretary of State setting forth the name and address of
153 such predecessor trustee, stating that the successor trustee has succeeded such predecessor trustee and providing the name
154 and address of the successor trustee. There shall be included in or attached to such certificate a list of the names and file
155 numbers of each affected statutory trust. Upon the filing of such certificate, or upon the future effective date or time of such
156 certificate if it is not to be effective upon filing, and payment of such fee, the successor trustee's name and address, as
157 stated in such certificate, shall become for each such statutory trust the name and address of at least 1 of its trustees meeting
158 the requirements of § 3807 of this title. Filing of such certificate shall be deemed to be an amendment to the certificate of
159 trust of each statutory trust affected thereby, and no further action with respect thereto to amend its certificate of trust under
160 § 3810 of this title shall be required.

161 Section 11. Amend § 3811, Title 12 of the Delaware Code by making deletions as shown by strike through and
162 insertions as shown by underline as follows:

163 § 3811. Execution.

164 (c) The execution of a certificate by a trustee, or other person authorized pursuant to subsection (a) of this section
165 above, constitutes an oath or affirmation, under the penalties of perjury in the third degree, that, to the best of the trustee's,
166 or other person authorized pursuant to subsection (a) of this section above, knowledge and belief, the facts stated therein are
167 true at the time such certificate becomes effective as provided in this subchapter.

168 Section 12. Amend § 3813, Title 12 of the Delaware Code by making deletions as shown by strike through and
169 insertions as shown by underline as follows:

170 § 3813. Fees.

171 (a) No documents required to be filed under this subchapter shall be effective until the applicable fee required by
172 this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of this State:

173 (5) Upon the receipt for filing of a certificate under § 3807(e) of this title, a fee in the amount of \$200, upon
174 the receipt for filing of a certificate under § 3807(f) of this title, a fee in the amount of \$200, and upon the receipt for
175 filing of a certificate under § 3807(g) of this title, a fee in the amount of \$2.00 for each statutory trust whose registered
176 agent has resigned by such certificate, and upon the receipt for filing of a certificate under § 3807(n) of this title, a fee
177 in the amount of \$200.

178 Section 13. Amend § 3815, Title 12 of the Delaware Code by making deletions as shown by strike through and
179 insertions as shown by underline as follows:

180 § 3815. Merger and consolidation.

181 (a) Pursuant to an agreement of merger or consolidation, a statutory trust may merge or consolidate with or into 1
182 or more statutory trusts or other business entities formed or organized or existing under the laws of the State of Delaware or
183 any other state or the United States or any foreign country or other foreign jurisdiction, with such statutory trust or other
184 business entity as the agreement shall provide being the surviving or resulting statutory trust or other business entity.
185 Unless otherwise provided in the governing instrument of a statutory trust that is not registered as an investment company
186 or regulated as a business development company under the Investment Company Act of 1940, as amended (15 U.S.C. §
187 80a-1 et seq.), an agreement of merger or consolidation shall be approved by each such statutory trust which is to merge or
188 consolidate by all of the beneficial owners and all of the trustees. Unless otherwise provided in the governing instrument of
189 a statutory trust that is registered as an investment company or regulated as a business development company under the
190 Investment Company Act of 1940, as amended (15 U.S.C. § 80a-1 et seq.), an agreement of merger or consolidation shall
191 be approved by each such statutory trust which is to merge or consolidate by all of the trustees and by the beneficial owners
192 who own more than 50% of the then current percentage or other interest in the profits of such statutory trust owned by all of
193 the beneficial owners. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a
194 statutory trust or other business entity which is a constituent party to the merger or consolidation may be exchanged for or
195 converted into cash, property, rights or securities of, or interests in, the surviving or resulting statutory trust or other
196 business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or
197 securities of, or interests in, a statutory trust or other business entity which is not the surviving or resulting statutory trust or
198 other business entity in the merger or consolidation, may remain outstanding or may be cancelled. Notwithstanding prior
199 approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such
200 termination or amendment contained in the agreement of merger or consolidation. Unless otherwise provided in the

201 governing instrument of a statutory trust, a statutory trust whose original certificate of trust was filed with the Secretary of
202 State and effective on or prior to July 31, 2020, shall continue to be governed by this subsection as in effect on July 31,
203 2020.

204 Section 14. Amend § 3819, Title 12 of the Delaware Code by making deletions as shown by strike through and
205 insertions as shown by underline as follows:

206 § 3819. Access to and confidentiality of information; records.

207 (a) Except to the extent otherwise provided in the governing instrument of a statutory trust, each beneficial owner
208 of a statutory trust, in person or by attorney or other agent, has the right, subject to such reasonable standards (including
209 standards governing what information (including books, records and other documents~~are~~) is to be furnished at what time
210 and location and at whose expense) as may be established by the trustees or other persons who have authority to manage the
211 business and affairs of the statutory trust, to obtain from the statutory trust from time to time upon reasonable demand for
212 any purpose reasonably related to the beneficial owner's interest as a beneficial owner of the statutory trust:

213 (1) A copy of the governing instrument and certificate of trust and all amendments thereto, together with
214 copies of any written powers of attorney pursuant to which the governing instrument and any certificate and any
215 amendments thereto have been executed;

216 (2) A current list of the name and last known business, residence or mailing address of each beneficial owner
217 and trustee;

218 (3) Information regarding the business and financial condition of the statutory trust; and

219 (4) Other information regarding the affairs of the statutory trust as is just and reasonable.

220 (b) Except to the extent otherwise provided in the governing instrument of a statutory trust, each trustee, in person
221 or by attorney or other agent, shall have the right to examine all the information described in subsection (a) of this section
222 for any purpose reasonably related to his position as a trustee.

223 (c) Except to the extent otherwise provided in the governing instrument of a statutory trust, the trustees or other
224 persons who have authority to manage the business and affairs of the statutory trust shall have the right to keep confidential
225 from the beneficial owners, for such period of time as such persons deem reasonable, any information that such persons
226 reasonably believe to be in the nature of trade secrets or other information the disclosure of which such persons in good
227 faith believe is not in the best interest of the statutory trust or could damage the statutory trust or its business or which the
228 statutory trust is required by law or by agreement with a third party to keep confidential.

229 (d) A statutory trust may maintain its books, records and other documents in other than paper form, including on,
230 by means of, or in the form of any information storage device, method, or 1 or more electronic networks or databases

231 (including 1 or more distributed electronic networks or databases), if such form is capable of conversion into paper form
232 within a reasonable time.

233 (e) Any demand under this section shall be in writing and shall state the purpose of such demand. In every instance
234 where an attorney or other agent shall be the person who seeks the right to obtain the information described in subsection
235 (a) of this section, the demand shall be accompanied by a power of attorney or such other writing which authorizes the
236 attorney or other agent to so act on behalf of the beneficial owner or trustee.

237 (f) Except to the extent otherwise provided in the governing instrument of a statutory trust, if a beneficial owner is
238 entitled to obtain information under this subchapter or a governing instrument for a purpose reasonably related to the
239 beneficial owner's interest as a beneficial owner of the statutory trust or other stated purpose, the beneficial owner's right
240 shall be to obtain such information as is necessary and essential to achieving that purpose.

241 Section 15. Amend § 3821, Title 12 of the Delaware Code by making deletions as shown by strike through and
242 insertions as shown by underline as follows:

243 § 3821. Conversion of a statutory trust.

244 (b) If the governing instrument specifies the manner of authorizing a conversion of the statutory trust, the
245 conversion shall be authorized as specified in the governing instrument. If the governing instrument does not specify the
246 manner of authorizing a conversion of the statutory trust and does not prohibit a conversion of the statutory trust, the
247 conversion shall be authorized in the same manner as is specified in the governing instrument for authorizing a merger or
248 consolidation that involves the statutory trust as a constituent party to the merger or consolidation. If the governing
249 instrument of a statutory trust that is not registered as an investment company or regulated as a business development
250 company under the Investment Company Act of 1940, as amended (15 U.S.C. § 80a-1 et seq.), does not specify the manner
251 of authorizing a conversion of the statutory trust or a merger or consolidation that involves the statutory trust as a
252 constituent party and does not prohibit a conversion of the statutory trust, the conversion shall be authorized by the
253 approval by all of the beneficial owners and all of the trustees. If the governing instrument of a statutory trust that is
254 registered as an investment company or regulated as a business development company under the Investment Company Act
255 of 1940, as amended (15 U.S.C. § 80a-1 et seq.), does not specify the manner of authorizing a conversion of such statutory
256 trust or a merger or consolidation that involves the statutory trust as a constituent party and does not prohibit a conversion
257 of such statutory trust, the conversion shall be authorized by the approval of all of the trustees and by the beneficial owners
258 who own more than 50% of the then current percentage or other interest in the profits of such statutory trust owned by all of
259 the beneficial owners. Unless otherwise provided in the governing instrument of a statutory trust, a statutory trust whose

260 original certificate of trust was filed with the Secretary of State and effective on or prior to July 31, 2020, shall continue to
261 be governed by this subsection as in effect on July 31, 2020.

262 Section 16. Amend § 3823, Title 12 of the Delaware Code by making deletions as shown by strike through and
263 insertions as shown by underline as follows:

264 § 3823. Transfer or continuance of domestic statutory trusts.

265 (b) If the governing instrument specifies the manner of authorizing a transfer or domestication or continuance
266 described in subsection (a) of this section, the transfer or domestication or continuance shall be authorized as specified in
267 the governing instrument. If the governing instrument does not specify the manner of authorizing a transfer or
268 domestication or continuance described in subsection (a) of this section and does not prohibit such a transfer or
269 domestication or continuance, the transfer or domestication or continuance shall be authorized in the same manner as is
270 specified in the governing instrument for authorizing a merger or consolidation that involves the statutory trust as a
271 constituent party to the merger or consolidation. If the governing instrument of a statutory trust that is not registered as an
272 investment company or regulated as a business development company under the Investment Company Act of 1940, as
273 amended (15 U.S.C. § 80a-1 et seq.), does not specify the manner of authorizing a transfer or domestication or continuance
274 described in subsection (a) of this section or a merger or consolidation that involves the statutory trust as a constituent party
275 and does not prohibit such a transfer or domestication or continuance, the transfer or domestication or continuance shall be
276 authorized by the approval by all of the beneficial owners and all of the trustees. If the governing instrument of a statutory
277 trust that is registered as an investment company or regulated as a business development company under the Investment
278 Company Act of 1940, as amended (15 U.S.C. § 80a-1 et seq.), does not specify the manner of authorizing a transfer or
279 domestication or continuance described in subsection (a) of this section or a merger or consolidation that involves such
280 statutory trust as a constituent party and does not prohibit such a transfer or domestication or continuance, the transfer or
281 domestication or continuance shall be authorized by the approval of all of the trustees and by the beneficial owners who
282 own more than 50% of the then current percentage or other interest in the profits of such statutory trust owned by all of the
283 beneficial owners. If a transfer or domestication or continuance described in subsection (a) of this section shall be approved
284 as provided in this subsection, a certificate of transfer if the statutory trust's existence as a statutory trust of the State of
285 Delaware is to cease, or a certificate of transfer and continuance if the statutory trust's existence as a statutory trust in the
286 State of Delaware is to continue, executed in accordance with § 3811 of this title, shall be filed in the Office of the
287 Secretary of State in accordance with § 3812 of this title. Unless otherwise provided in the governing instrument of a
288 statutory trust, a statutory trust whose original certificate of trust was filed with the Secretary of State and effective on or

289 prior to July 31, 2020, shall continue to be governed by § 3823(b) of this title as in effect on July 31, 2020. The certificate
290 of transfer or the certificate of transfer and continuance shall state:

291 Section 17. Amend § 3825, Title 12 of the Delaware Code by making deletions as shown by strike through and
292 insertions as shown by underline as follows:

293 § 3825. Division of a statutory trust.

294 (c) If the governing instrument of the dividing trust specifies the manner of adopting a plan of division, the plan of
295 division shall be adopted as specified in the governing instrument. If the governing instrument of the dividing trust does not
296 specify the manner of adopting a plan of division and does not prohibit a division of the statutory trust, the plan of division
297 shall be adopted in the same manner as is specified in the governing instrument for authorizing a merger or consolidation
298 that involves the statutory trust as a constituent party to the merger or consolidation. If the governing instrument of a
299 dividing trust that is not registered as an investment company or regulated as a business development company under the
300 Investment Company Act of 1940, as amended (15 U.S.C. § 80a-1 et seq.), does not specify the manner of adopting a plan
301 of division or authorizing a merger or consolidation that involves such statutory trust as a constituent party and does not
302 prohibit a division of such statutory trust, the adoption of a plan of division shall be authorized by the approval by of all of
303 the trustees and the beneficial owners of such statutory trust. If the governing instrument of a dividing trust that is
304 registered as an investment company or regulated as a business development company under the Investment Company Act
305 of 1940, as amended (15 U.S.C. § 80a-1 et seq.), does not specify the manner of adopting a plan of division or authorizing a
306 merger or consolidation that involves such statutory trust as a constituent party and does not prohibit a division of such
307 statutory trust, the adoption of a plan of division shall be authorized by the approval by all of the trustees and the beneficial
308 owners who own more than 50% of the then current percentage or other interest in the profits of such dividing trust owned
309 by all of the beneficial owners. Notwithstanding prior approval, a plan of division may be terminated or amended pursuant
310 to a provision for such termination or amendment contained in the plan of division.

311 Section 18. Amend § 3826, Title 12 of the Delaware Code by making deletions as shown by strike through and
312 insertions as shown by underline as follows:

313 § 3826. Document form, signature and delivery.

314 (b) Subsection (a) of this section shall not apply to:

315 (1) A document filed with or submitted to the Secretary of State, the Prothonotary, the Register in Chancery,
316 or a court or other judicial or governmental body of this State;

317 (2) A certificate of beneficial interest, except that a signature on a certificate of beneficial interest may be a
318 manual, facsimile, or electronic signature; and

319 (3) An act or transaction effected pursuant to § 3804(c), § 3807(c)-(g), or subchapter II of this chapter [§ 3851
320 et seq. of this title].

321 The foregoing shall not create any presumption about the lawful means to document a matter addressed by this
322 subsection, or the lawful means to sign or deliver a document addressed by this subsection. A provision of the governing
323 instrument shall not limit the application of subsection (a) of this section unless the provision expressly restricts 1 or more
324 of the means of documenting an act or transaction, or of signing or delivering a document, permitted by subsection (a) of
325 this section.

326 Section 19. Amend Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and
327 insertions as shown by underline as follows:

328 Subchapter III. Control Beneficial Interest Acquisitions

329 § 3881. Control beneficial interest acquisition definitions.

330 (a) “1940 Act” means the Investment Company Act of 1940, as amended (15 U.S.C. § 80a-1 et seq.), or any
331 successor statute thereto.

332 (b) “Acquiring person” means a person who makes or proposes to make a control beneficial interest acquisition.

333 (c) “Associate”, when used to indicate a relationship with any person, means:

334 (1) Any other person (other than the statutory trust or a subsidiary of the statutory trust) of which such person
335 is an officer, director, or partner or is, directly or indirectly, the holder of 10 percent or more of any class of equity
336 securities;

337 (2) Any trust, corporation or other entity in which such person has a substantial beneficial interest or as to
338 which such person serves as a director, trustee or in a similar fiduciary capacity;

339 (3) Any relative or spouse of such person, or any relative of such spouse, who has the same home as such
340 person or who is a trustee or officer of the statutory trust or any of its affiliates; or

341 (4) Any other person that:

342 a. Directly or indirectly controls, or is controlled by, or is under common control with, the person
343 specified, which will include any investment fund or other collective investment vehicle that has the same
344 investment adviser as the person specified;

345 b. Is acting as an investment adviser with regard to any person specified that is an investment fund or
346 other collective investment vehicle; or

347 c. Is acting or intends to act jointly or in concert with the person specified.

348 (d)(1) “Control beneficial interest acquisition” means the acquisition, directly or indirectly, by any person of
349 ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control beneficial
350 interests.

351 (2) “Control beneficial interest acquisition” does not include the acquisition of beneficial interests:

352 a. Before August 1, 2022;

353 b. Under a contract entered into before August 1, 2022 creating a binding obligation to purchase
354 beneficial interests at a set price;

355 c. Under the laws of descent and distribution;

356 d. Under the satisfaction of a pledge or other security interest created in good faith and not for the
357 purpose of circumventing this subchapter as determined by the trustees; or

358 e. Under a merger or consolidation effected under §3815 of this title if the statutory trust is the surviving
359 or resulting party in the merger or consolidation, except with respect to any shares issued to a holder of control
360 beneficial interests in the target party.

361 (e)(1) “Control beneficial interests” means beneficial interests that, except for this subchapter, would, if
362 aggregated with all other beneficial interests of the statutory trust (including beneficial interests the acquisition of which is
363 excluded from “control beneficial interest acquisition” in subsection (d)(2) of this section) owned by a person or in respect
364 of which that person is entitled to exercise or direct the exercise of voting power (whether such power is direct or indirect
365 or through any contract, arrangement, understanding, relationship or otherwise), except solely by virtue of a revocable
366 proxy, entitle that person, directly or indirectly, to exercise or direct the exercise of the voting power of beneficial interests
367 of the statutory trust in the election of trustees (either generally or with respect to any subset, series or class of trustees,
368 including any trustees elected solely by a particular series or class of beneficial interests) within any of the following ranges
369 of voting power:

370 a. Ten percent or more, but less than fifteen percent of all voting power;

371 b. Fifteen percent or more, but less than twenty percent of all voting power;

372 c. Twenty percent or more, but less than twenty-five percent of all voting power;

373 d. Twenty-five percent or more, but less than thirty percent of all voting power;

374 e. Thirty percent or more, but less than a majority of all voting power; or

375 f. A majority or more of all voting power.

376 Notwithstanding the foregoing, a member of a national securities exchange shall not be deemed to be a beneficial
377 owner of beneficial interests held directly or indirectly by it on behalf of another person solely because such member is the

378 record holder of such securities and, pursuant to the rules of such exchange, may direct the vote of such beneficial interests,
379 without instruction, on other than contested matters or matters that may affect substantially the rights or privileges of the
380 holders of the beneficial interests to be voted but is otherwise precluded by the rules of such exchange from voting without
381 instructions.

382 (2) “Control beneficial interests” includes:

383 a. Beneficial interests of a statutory trust only to the extent that the acquiring person, following the
384 acquisition of the beneficial interests, is entitled, directly or indirectly, to exercise or direct the exercise of voting
385 power within any level of voting power set forth in this section for which approval has not been obtained under §
386 3883 of this title; provided that, if the statutory trust subsequently issues additional beneficial interests, all control
387 beneficial interests prior to such issuance will remain control beneficial interests, even if they represent a
388 percentage of voting power that is below the ranges described in paragraph (1) of this subsection; and

389 b. Beneficial interests of a statutory trust acquired within any range of voting power described in
390 paragraph (1) of this subsection, even if the initial beneficial interests acquired within the applicable range of
391 voting power are excluded from a control beneficial interest acquisition, including due to a reduction in the
392 beneficial interests outstanding due to the statutory trust repurchasing or redeeming beneficial interests.

393 (f) “Interested beneficial interests” means beneficial interests of a statutory trust in respect of which any of the
394 following persons is entitled to exercise or direct the exercise of the voting power of beneficial interests of the statutory
395 trust in the election of trustees:

396 (1) An acquiring person;

397 (2) An officer of the statutory trust;

398 (3) An employee of the statutory trust who is also a trustee of the statutory trust; or

399 (4) A trustee of the statutory trust who is an “interested person” of the statutory trust as defined in the 1940

400 Act or any rule adopted thereunder.

401 (g) “Person” includes an associate of the person.

402 § 3882. Related acquisitions; beneficial interests held for the benefit of others.

403 For the purposes of this subchapter:

404 (1) Beneficial interests acquired within 90 days or beneficial interests acquired in a series of related
405 transactions are considered to have been acquired in the same acquisition including for purposes of approvals or
406 exemptions pursuant to § 3883(b) of this title or approval of a control beneficial interest acquisition by beneficial
407 owners pursuant to § 3885 of this title; and

408 (2) A person will not be deemed to be entitled to exercise or direct the exercise of voting power with respect
409 to beneficial interests held for the benefit of others if the person:

410 a. Is acting in the ordinary course of business, in good faith and not for the purpose of circumventing the
411 provisions of this section as determined by the trustees; and

412 b. Is not entitled to exercise or to direct the exercise of the voting power of the beneficial interests unless
413 the person either (a) obtains the instruction of another unaffiliated person or (b) is subject to Rule 452 of the New
414 York Stock Exchange LLC (or any successor rule) and has complied with such rule.

415 § 3883. Voting rights; approvals and exemptions; application.

416 (a) Holders of control beneficial interests of the statutory trust acquired in a control beneficial interest acquisition
417 have no voting rights under this chapter or the governing instrument of the statutory trust with respect to the control
418 beneficial interests acquired in the control beneficial interest acquisition and such control beneficial interests shall not be
419 considered to be outstanding with regard to any matters relating to the determination or existence of a quorum or any other
420 matters relating to voting, including whether any required vote has been obtained, under this chapter or the governing
421 instrument of the statutory trust except to the extent approved by the beneficial owners at a meeting held under § 3885 of
422 this title by the affirmative vote of two-thirds of all the votes entitled to be cast on the matter, excluding all interested
423 beneficial interests. Upon transfer of the control beneficial interests acquired in a control beneficial interest acquisition, in
424 good faith and not for the purpose of circumventing this subchapter as determined by the trustees, the holders of such
425 beneficial interests shall have voting rights under this chapter and the governing instrument of the statutory trust with
426 respect to the beneficial interests acquired, unless the acquisition of such beneficial interests by such holder constituted a
427 control beneficial interest acquisition.

428 (b) This subchapter does not apply to the voting rights of beneficial interests if the acquisition of the beneficial
429 interests specifically, generally, or generally by types, as to specifically identified or unidentified existing or future
430 beneficial owners or their affiliates or associates, or as to any series or classes of beneficial interests, has been approved or
431 exempted by a provision contained in the governing instrument or by action of the trustees. In the event that either a request
432 is made under subsection (a) of §3885 of this title to have the issue of the voting rights to be accorded the beneficial
433 interests acquired in the control beneficial interest acquisition presented for consideration at a meeting of beneficial owners
434 or the trustees determine under subsection (e)(1) of §3885 of this title to present for consideration at a meeting of beneficial
435 owners the issue of the voting rights to be accorded the beneficial interests acquired in the control beneficial interest
436 acquisition, then, in either case, the trustees shall have no obligation to approve or exempt any such acquisition of the
437 beneficial interests.

438 (c) This subchapter shall apply to a statutory trust registered under the 1940 Act as a closed-end management
439 investment company or a statutory trust that is a closed-end management investment company that has elected to be
440 regulated as a business development company under the 1940 Act and that in either case has a class of equity securities
441 listed on a national securities exchange registered under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.) or
442 designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), and this
443 subchapter shall not apply to any other statutory trust.

444 § 3884. Acquiring person statement.

445 Any person who proposes to make or who has made a control beneficial interest acquisition may deliver an
446 acquiring person statement to the statutory trust at the statutory trust's principal office. The acquiring person statement shall
447 set forth all of the following:

448 (1) The identity of the acquiring person and each other member of any group of which the acquiring person is
449 a part for purposes of determining control beneficial interests;

450 (2) A statement that the acquiring person statement is given under this subchapter;

451 (3) The number of beneficial interests of the statutory trust owned (directly or indirectly) by the acquiring
452 person and each other member of any group of which the acquiring person is a part;

453 (4) The applicable range of voting power as set forth in § 3881(e) of this title; and

454 (5) If the control beneficial interest acquisition has not occurred:

455 a. A description in reasonable detail of the terms of the proposed control beneficial interest acquisition;

456 and

457 b. Representations of the acquiring person, together with a statement in reasonable detail of the facts on
458 which they are based, that:

459 1. The proposed control beneficial interest acquisition, if consummated, will not be contrary to law;

460 and

461 2. The acquiring person has the financial capacity, through financing to be provided by the acquiring
462 person and any additional specified sources of financing required under § 3886 of this title, to make the
463 proposed control beneficial interest acquisition.

464 § 3885. Acquiring person meeting request.

465 (a) Except as provided in § 3886 of this title, if the acquiring person requests, at the time of delivery of an
466 acquiring person statement, and gives a written undertaking to pay the statutory trust's expenses of a special meeting of
467 beneficial owners of the statutory trust, except the expenses of opposing approval of the voting rights, within 20 days after

468 the day on which the statutory trust receives both the request and undertaking along with any bond described in subsection
469 (b) of this section, the trustees of the statutory trust shall call a special meeting of beneficial owners of the statutory trust for
470 the purpose of considering the voting rights to be accorded the beneficial interests acquired or to be acquired in the control
471 beneficial interest acquisition.

472 (b) The trustees may require the acquiring person to give bond, with sufficient surety, to reasonably assure the
473 statutory trust that this undertaking will be satisfied.

474 (c) Unless the acquiring person agrees in writing to another date, the special meeting of beneficial owners shall be
475 held within 90 days after the day on which the statutory trust has received both the request and the undertaking; provided
476 that if the anniversary of the date of the proxy statement for the prior year's annual meeting of holders of beneficial
477 interests is within 120 days of the date of delivery of an acquiring person statement then the statutory trust may elect to
478 present the acquiring person's proposal at the next annual meeting of holders of beneficial interests.

479 (d) If the acquiring person makes a request in writing at the time of delivery of the acquiring person statement, the
480 special meeting may not be held sooner than 30 days after the day on which the statutory trust receives the acquiring person
481 statement.

482 (e)(1) If no request is made under subsection (a) of this section, the issue of the voting rights to be accorded the
483 beneficial interests acquired in the control beneficial interest acquisition may, at the option of the trustees (but without any
484 requirement), be presented for consideration at any meeting of beneficial owners.

485 (2) If no request is made under subsection (a) of this section and the statutory trust proposes to present the
486 issue of the voting rights to be accorded the beneficial interests acquired in a control beneficial interest acquisition for
487 consideration at any meeting of beneficial owners, the statutory trust shall provide the acquiring person with written
488 notice of the proposal not less than 10 days before the date on which notice of the meeting is given.

489 § 3886. Special meeting requirements; limitations.

490 (a) A call of a special meeting of beneficial owners of the statutory trust is not required to be made under §
491 3885(a) of this title unless, at the time of delivery of an acquiring person statement under § 3884 of this title, the acquiring
492 person has:

493 (1) Entered into a definitive financing agreement or agreements with one or more responsible financial
494 institutions or other entities that have the necessary financial capacity, providing for any amount of financing of the
495 control beneficial interest acquisition not to be provided by the acquiring person; and

496 (2) Delivered a copy of the agreements to the statutory trust.

497 (b) A call of a special meeting of beneficial owners of the statutory trust is not required to be made under §
498 3885(a) of this title if the acquiring person making such request (or an associate of such person) has in the three year period
499 preceding such request made a request to have the issue of the voting rights to be accorded the beneficial interests acquired
500 in a control beneficial interest acquisition presented for consideration at a meeting of beneficial owners where the beneficial
501 owners have not approved such acquisition under § 3885 of this title.

502 § 3887. Special meeting notice.

503 (a) If a special meeting of beneficial owners is requested, notice of the special meeting shall be given as promptly
504 as reasonably practicable by the statutory trust to all beneficial owners of record as of the record date set for the meeting,
505 whether or not the beneficial owners are entitled to vote at the meeting.

506 (b) Notice of the special or annual meeting of beneficial owners at which the voting rights are to be considered
507 shall include or be accompanied by the following:

508 (1) A copy of the acquiring person statement, if any, delivered to the statutory trust under § 3884 of this title;

509 and

510 (2) A statement by the trustees of the statutory trust setting forth the position or recommendation of the
511 trustees, or stating that the trustees are taking no position or making no recommendation, with respect to the issue of
512 voting rights to be accorded the control beneficial interests.

513 § 3888. Disclosure of control beneficial interest acquisitions and related information.

514 (a) A holder of beneficial interests shall disclose to the statutory trust any control beneficial interest acquisition
515 within 10 days of such control beneficial interest acquisition. A statutory trust may require a holder of beneficial interests or
516 an associate of such person to disclose the number of beneficial interests owned or with respect to which such person or an
517 associate thereof has the direct or indirect power to exercise voting power.

518 (b) A holder of beneficial interests or an associate of such person shall provide to the statutory trust within 10 days
519 of receiving a request therefor from the statutory trust any information that the trustees reasonably believe is necessary or
520 desirable to determine whether a control beneficial interest acquisition has occurred.

521 Section 20. This Act shall become effective August 1, 2022.

SYNOPSIS

This Act continues the practice of amending periodically the Delaware Statutory Trust Act (the “Act”) to keep it current and to maintain its national preeminence. The following is a section-by-section review of proposed amendments of the Act.

Sections 1, 3, 6, 8, 9, 13 and 15-17. The amendments add business development companies to a number of provisions of the Act that previously applied only to registered investment companies (within the meaning of the Investment Company Act of 1940). Though similar to registered investment companies in many respects, business

development companies as a technical matter are not registered investment companies but instead elect to be subject to many of the federal regulations applicable to registered investment companies.

Section 2. Section 3804(a) of the Act has been amended to clarify that, except to the extent otherwise provided in the governing instrument of a statutory trust, the trustees or other authorized persons, or the duly authorized agents of such trustees or other authorized persons, may bind a statutory trust to a contract or instrument by entering into such contract or instrument in the name of the statutory trust or in the name of any such person acting on behalf of the statutory trust.

Section 4. This section amends Section 3806(b)(7) of the Act to provide that a trustee, officer, employee, manager or other person who may manage the business and affairs of the statutory trust may delegate any of its rights, powers and duties irrespective of whether it has a conflict of interest with respect to the matter as to which such rights, powers or duties are being delegated, and that the person or persons to whom any such rights, powers or duties are being delegated shall not be deemed conflicted solely by reason of the conflict of interest of the trustee, officer, employee, manager or other person who may manage the business and affairs of the statutory trust. The amendments to Section 3806(b)(7) create a different rule than the rule applied in cases such as *Wenske v. Bluebell Creameries, Inc.*, 214 A.3d 958 (Del. Ch. 2019), that a conflicted principal is legally disabled from delegating authority over the subject matter as to which the principal is conflicted even to an independent delegate.

Section 5. This section amends Section 3806(i) of the Act to confirm and clarify the broad power and authority of a trustee to delegate any or all of the trustee's rights, powers and duties to manage and control the business and affairs of a statutory trust, including any core governance functions. In addition, this section amends Section 3806(i) of the Act to provide that a trustee may delegate any of its rights, powers and duties irrespective of whether it has a conflict of interest with respect to the matter as to which such rights, powers or duties are being delegated, and that the person or persons to whom any such rights, powers or duties are being delegated shall not be deemed conflicted solely by reason of the conflict of interest of the trustee. The amendments to Section 3806(i) create a different rule than the rule applied in cases such as *Wenske v. Bluebell Creameries, Inc.* 214 A.3d 958 (Del. Ch. 2019), that a conflicted principal is legally disabled from delegating authority over the subject matter as to which the principal is conflicted even to an independent delegate.

Section 7. This section amends Section 3806 of the Act to add subsection (o) to provide a safe harbor procedure for ratifying acts or transactions that may be taken by or in respect of a statutory trust under the Act or a governing instrument that are void or voidable and waiving failures to comply with requirements of a governing instrument that make such acts and transactions void or voidable. New subsection (o) is intended to provide a rule different from the rule applied in *Composecure, L.L.C. v. Cardux, LLC*, 206 A.3d 807 (Del. 2018), and *Absalom Absalom Trust v. Saint Gervais LLC*, 2019 WL 2655787 (Del. Ch. June 27, 2019), that acts or transactions determined to be void generally may not be ratified. The penultimate sentence of new subsection (o) confirms that void or voidable actions may be ratified or requirements may be waived by other means permitted by law, and accordingly, new subsection (o) is not intended to preempt or restrict other valid means of ratifying acts or transactions or waiving requirements or to impair the effectiveness of any valid ratification or waiver previously effected.

Section 10. This section adds a provision for the filing of a certificate by a trustee who has succeeded the predecessor trustee of one or more statutory trusts in order to amend the name and address of such trustee in each affected certificate of trust.

Section 11. This section amends Section 3811(c) of the Act to clarify that the execution of a certificate by a person who is authorized by the Act to execute such certificate constitutes an oath or affirmation that, to the best of such person's knowledge and belief, the facts stated therein shall be true at the time such certificate becomes effective, not at the time such certificate is executed.

Section 12. This section specifies the fee payable in connection with the filing of a certificate under Section 3807(n).

Section 14. This section amends Section 3819 of the Act to make certain clarifying and conforming changes, and to provide that when a beneficial owner is entitled to obtain information for a stated purpose (whether pursuant to Section 3819 or a governing instrument), the beneficial owner's right shall be to obtain such information as is necessary and essential to achieving that purpose, unless such right has been expanded or restricted in the governing instrument. To the extent current law is that the "necessary and essential" test does not apply by default to (i) a beneficial owner's right under Section 3819(a) of the Act to obtain information from a statutory trust for a purpose reasonably related to the beneficial owner's interest as a beneficial owner of the statutory trust or (ii) a beneficial owner's right under a governing instrument to obtain information from a statutory trust for a stated purpose, new subsection (f) is intended to change that law.

Section 18. This section amends Section 3826(b) of the Act to confirm that a signature on a certificate of beneficial interest may be a manual, facsimile or electronic signature.

Section 19. This section adds Subchapter III to the Act to add a control beneficial interest acquisition provision for statutory trusts registered under the 1940 Act as closed-end management investment companies or statutory trusts that are closed-end management investment companies that have elected to be regulated as business development companies under the 1940 Act and that in either case have a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.) or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ).

Section 20. This section provides that the proposed amendments of the Act shall become effective August 1, 2022.

Author: Senator Mantzavinos