SPONSOR: Sen. Gay & Sen. Townsend & Sen. Brown &
Rep. Griffith & Rep. Cooke
Sens. Hansen, Mantzavinos, S. McBride, Pettyjohn,
Poore, Walsh; Reps. Bush, Dukes, Hensley, Longhurst,
Minor-Brown, Schwartzkopf, Spiegelman

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 112

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION, AND DISSOLUTION OF DOMESTIC LIMITED PARTNERSHIPS AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED PARTNERSHIPS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend § 17-204, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-204. Execution.

(a) Each certificate required by this ~~subchapter~~ chapter to be filed in the Office of the Secretary of State shall be executed in the following manner:

(12) A certificate of cancellation of certificate of registered series must be signed by all general partners associated with such series or, if such general partners are not winding up the registered series' affairs, then by all liquidating trustees of such registered series; provided, however, that if the limited partners of such registered series are winding up such series' affairs, the certificate of cancellation of certificate of registered series shall be signed by limited partners of such registered series who own more than 50% of the then current percentage or other interest in the profits of such registered series owned by all of the limited partners of such series; ~~and~~

(13) A certificate of revival of registered series must be signed by at least 1 general partner associated with such registered ~~series.~~ series; and

(14)a. Unless otherwise provided in the plan of division or the certificate of division, each certificate of amendment of certificate of division must be executed as follows:

1. If the dividing partnership is a surviving partnership, by at least 1 general partner on behalf of the dividing partnership acting on behalf of the division partnership to which the certificate of amendment of certificate of division relates.

2. If the dividing partnership is not a surviving partnership or no longer exists as a limited partnership, by at least 1 general partner on behalf of a resulting partnership acting on behalf of the division partnership to which the certificate of amendment of certificate of division relates.

b. Each division partnership is deemed to have consented to the execution of a certificate of amendment of certificate of division under paragraph (a)(14)a. of this section.

Section 2. Amend § 17-211, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-211. Merger and consolidation.

(g) An agreement of merger or consolidation or a plan of merger approved in accordance with subsection (b) of this section may (1) effect any amendment to the partnership agreement or (2) effect the adoption of a new partnership ~~agreement~~ agreement, in either case, for a limited partnership if it is the surviving or resulting limited partnership in the merger or consolidation. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation and shall be effective notwithstanding any provision of the partnership agreement relating to amendment or adoption of a new partnership agreement, other than a provision that by its terms applies to an amendment to the partnership agreement or the adoption of a new partnership agreement, in either case, in connection with a merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law, including that the partnership agreement of any constituent limited partnership to the merger or consolidation (including a limited partnership formed for the purpose of consummating a merger or consolidation) shall be the partnership agreement of the surviving or resulting limited partnership. Unless otherwise provided in a partnership agreement, a limited partnership whose original certificate of limited partnership was filed with the Secretary of State and effective on or prior to July 31, 2005, shall continue to be governed by this subsection as in effect on July 31, 2005.

Section 3. Amend § 17-218, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-218. Series of limited partners, general partners, partnership interests or assets.

(b) A series established in accordance with the following sentence is a protected series. Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, in the event that a partnership agreement establishes or provides for the establishment of 1 or more series, and to the extent the records maintained for any such series account for the assets associated with such series separately from the other assets of the limited partnership, or any other series

thereof, and if the partnership agreement so provides, and if notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the certificate of limited partnership, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to such series shall be enforceable only against the assets of such series or the general partners associated with such series and not against the assets of the limited partnership generally, any other series thereof, or any general partner not associated with such series, and, unless otherwise provided in the partnership agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited partnership generally or any other series thereof shall be enforceable against the assets of such series or the general partners associated with such series who are not also general partners of the limited partnership generally or general partners associated with the other series, as the case may be. Neither the preceding sentence nor any provision pursuant thereto in a partnership agreement or certificate of limited partnership shall (i) restrict a protected series or limited partnership on behalf of a protected series or a general partner associated with a protected series from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited partnership generally or any other series thereof shall be enforceable against the assets of such series or such general partner associated with such series, (ii) restrict a limited partnership from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a protected series shall be enforceable against the assets of the limited partnership generally, or (iii) restrict a general partner of the limited partnership from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a protected series shall be enforceable against the assets of such general partner. A partnership agreement does not need to use the term protected when referencing series or refer to this section. Assets associated with a protected series may be held directly or indirectly, including in the name of such series, in the name of the limited partnership, through a nominee or otherwise. Records maintained for a protected series that reasonably identify its assets, including by specific listing, category, type, quantity, computational or allocational formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated with such series separately from the other assets of the limited partnership, or any other series thereof. Notice in a certificate of limited partnership of the limitation on liabilities of a protected series as referenced in this subsection shall be sufficient for all purposes of this subsection whether or not the limited partnership has established any protected series when such notice is included in the certificate of limited partnership, and there shall be no requirement that (i) any specific protected series of the limited partnership be referenced in such notice, or (ii) such notice use the term protected when referencing series or include a reference to this section. The fact that a certificate of limited

partnership that contains notice of the limitation on liabilities of a protected series is on file in the office of the Secretary of State shall constitute notice of such limitation on liabilities of a protected series. As used in this chapter, a reference to assets of a protected series includes assets associated with such series and a reference to assets associated with a protected series includes assets of such series, a reference to limited partners or general partners of a protected series includes limited partners or general partners associated with such series, and a reference to limited partners or general partners associated with a protected series includes limited partners or general partners of such series. The following shall apply to a protected series:

(1) A limited partnership governed by a partnership agreement that establishes or provides for the establishment of 1 or more series shall have at least 1 general partner of the partnership generally and at least 1 general partner associated with each of its protected series. If a partnership agreement does not designate ~~a~~ an initial general partner of a particular protected series, then each general partner of the limited partnership generally shall be deemed to be a general partner associated with such series. If a partnership agreement does not designate ~~a~~ an initial general partner of the limited partnership generally, then each general partner of the limited partnership not associated with a protected series or a registered series shall be deemed to be a general partner of the limited partnership generally, but if there is no such general partner, then each general partner of the limited partnership shall be deemed to be a general partner of the limited partnership generally. General partners of the limited partnership generally and general partners associated with a protected series are general partners of the limited partnership under this chapter. Limited partners of the limited partnership generally and limited partners associated with a protected series are limited partners of the limited partnership under this chapter. The same person may be a general partner of the limited partnership generally and be associated with any or all protected series thereof. The same person may be a limited partner of the limited partnership generally and be associated with any or all protected series thereof.

Section 4. Amend § 17-218, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-218. Series of limited partners, general partners, partnership interests or assets.

(d) If a partnership agreement provides the manner in which a termination of a protected series may be revoked, it may be revoked in that manner and, unless the limited partnership has dissolved and such dissolution has not been revoked or the partnership agreement prohibits revocation of termination of a protected series, then notwithstanding the occurrence of an event set forth in paragraph (b)(10)a., b., c., or d. of this section, the protected series shall not be terminated and its affairs shall not be wound up if, prior to the completion of the winding up of the protected series, the business of the protected series is continued, effective as of the occurrence of such event:

(1) In the case of termination effected by the vote or consent of the partners associated with the protected series or other persons, pursuant to such vote or consent (and the approval of any partners associated with the protected series or other persons whose approval is required under the partnership agreement to revoke a termination contemplated by this paragraph);

(2) In the case of termination under paragraph (b)(10)a. or b. of this section (other than a termination effected by the vote or consent of the partners associated with the protected series or other persons or an event of withdrawal of a general partner associated with the protected series), pursuant to such vote or consent that, pursuant to the terms of the partnership agreement, is required to amend the provision of the partnership agreement effecting such termination (and the approval of any partners associated with the protected series or other persons whose approval is required under the partnership agreement to revoke a termination contemplated by this paragraph); and

(3) In the case of termination effected by an event of withdrawal of a general partner associated with the protected series, pursuant to the vote or consent of:

a. All remaining general partners associated with the protected series; and

b. Limited partners associated with the protected series who own more than 2/3 of the then-current percentage or other interest in the profits of such series owned by all of the limited partners associated with such series, or if there is no limited partner associated with such series, the assignee of all of the limited partners' partnership interests in such series (and the approval of any partners associated with the protected series or other persons whose approval is required under the partnership agreement to revoke a termination contemplated by this paragraph); provided, however, if there is no remaining general partner associated with the protected series and no limited partner associated with such series or assignee of all of the limited partners' partnership interests in such series, the business of such series is continued, effective as of the occurrence of such event, pursuant to the vote or consent of the personal representative of the last remaining general partner associated with such series or the assignee of all of the general partners' partnership interests in such series (and the approval of any partners associated with the protected series or other persons whose approval is required under the partnership agreement to revoke a termination contemplated by this paragraph).

If termination is revoked pursuant to paragraph (d)(3) of this section and there is no remaining general partner associated with the protected series, 1 or more general partners associated with such series shall be appointed, effective as of the date of withdrawal of the last remaining general partner associated with such series, by the vote or consent of the limited partners associated with such series who own more than 2/3 of the then-current percentage or other interest in the profits of such series owned by all of the limited partners associated with such series, or if there is no limited partner

associated with such series, the assignee of all of the limited partners' partnership interests in such series. If termination is revoked pursuant to paragraph (d)(3) of this section and there is no remaining general partner associated with such series and no limited partner associated with such series or assignee of all of the limited partners' partnership interests in such series, 1 or more general partners associated with such series shall be appointed, effective as of the date of withdrawal of the last remaining general partner associated with such series, by the vote or consent of the personal representative of the last remaining general partner associated with such series or the assignee of all of the general partners' partnership interests associated with such series.

If the dissolution of the limited partnership under § 17-801 of this title results in the termination of a protected series under this section, unless the partnership agreement prohibits revocation of termination of such series, the termination of such series shall be automatically revoked upon any revocation of dissolution of the limited partnership in accordance with § 17-806 of this title provided there is at least 1 general partner associated with such series. If an event of withdrawal of a general partner who was both the last remaining general partner of the limited partnership and the last remaining general partner associated with a protected series results in both the dissolution of the limited partnership under § 17-801 of this title and the termination of such series under this section, unless the partnership agreement prohibits revocation of termination of such series, the termination of such series shall be automatically revoked upon any revocation of dissolution of the limited partnership in accordance with § 17-806 of this title, and the general partner of the limited partnership appointed pursuant to § 17-806 of this title shall also be the general partner associated with such series effective as of the date of withdrawal of the last remaining general partner associated with such series.

The provisions of this subsection shall not be construed to limit the accomplishment of a revocation of termination of a protected series by other means permitted by law.

Section 5. Amend § 17-220, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-220. Division of a limited partnership.

(h) If a domestic limited partnership divides under this section, the dividing partnership shall file a certificate of division executed by at least 1 general partner of the dividing partnership on behalf of such dividing partnership in the office of the Secretary of State in accordance with § 17-204 of this title, and a certificate of limited partnership that complies with § 17-201 of this title for each resulting partnership executed by all general partners of such resulting partnership in accordance with § 17-204 of this title.

(1) The certificate of division shall state:

~~(1)~~ a. The name of the dividing partnership and, if it has been changed, the name under which its certificate of limited partnership was originally filed and whether the dividing partnership is a surviving partnership;

~~(2)~~ b. The date of filing of the dividing partnership's original certificate of limited partnership with the Secretary of State;

~~(3)~~ c. The name of each division partnership;

~~(4)~~ d. The name and business address of the division contact required by paragraph (g)(3) of this section;

~~(5)~~ e. The future effective date or time (which shall be a date or time certain) of the division if it is not to be effective upon the filing of the certificate of division;

~~(6)~~ f. That the division has been approved in accordance with this section;

~~(7)~~ g. That the plan of division is on file at a place of business of such division partnership as is specified therein, and shall state the address thereof;

~~(8)~~ h. That a copy of the plan of division will be furnished by such division partnership as is specified therein, on request and without cost, to any partner of the dividing partnership; and

~~(9)~~ i. Any other information the dividing partnership determines to include therein.

(2) A certificate of division may be amended to change the name or business address of the division contact in a certificate of division or to change information in the certificate of division required by paragraph (h)(1)g. of this section. A certificate of division is amended by filing a certificate of amendment thereto for each division partnership that exists as a limited partnership in the office of the Secretary of State. Each certificate of amendment of certificate of division must include all of the following:

a. The name of the dividing partnership and, if the name has been changed, the name under which the dividing partnership's certificate of limited partnership was originally filed.

b. The name of the division partnership to which the amendment to the certificate of division relates.

c. The amendment to the certificate of division.

(3) If the dividing partnership is a surviving partnership, a general partner of the dividing partnership who becomes aware that the name or business address of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of division was false when made, or that the name or business address of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of division has changed, must promptly amend the certificate of division. If the dividing partnership is not a surviving partnership or no longer exists as a limited partnership, a general partner of any resulting

partnership who becomes aware that the name or business address of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of division was false when made, or that the name or business address of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of division has changed, must promptly amend the certificate of division. This subsection does not apply after the expiration of a period of 6 years following the effective date of the division.

(4) Unless otherwise provided in this chapter or unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of amendment of certificate of division, a certificate of amendment of certificate of division is effective at the time of its filing with the Secretary of State.

(5) Subject to this chapter, the Secretary of State shall accept the filing of certificates of amendment of certificate of division for all division partnerships resulting from the same certificate of division if at least 1 division partnership is in good standing at the time of such filings.

(*l*) Upon the division of a domestic limited partnership becoming effective:

(1) The dividing partnership shall be divided into the distinct and independent ~~resulting~~ division partnerships named in the plan of division, and, if the dividing partnership is not a surviving partnership, the existence of the dividing partnership shall cease.

(9) Any action or proceeding pending against a dividing partnership may be continued against the surviving ~~partnership~~ partnership, if any, as if the division did not occur, but subject to paragraph (l)(4) of this section, and against any resulting partnership to which the asset, property, right, series, debt, liability or duty associated with such action or proceeding was allocated pursuant to the plan of division by adding or substituting such resulting partnership as a party in the action or proceeding. Any action or proceeding pending against a general partner of a dividing partnership may be continued against such general partner as if the division did not occur and against the general partner of any resulting partnership to which the asset, property, right, series, debt, liability or duty associated with such action or proceeding was allocated pursuant to the plan of division by adding or substituting such general partner as a party in the action or proceeding.

Section 6. Amend § 17-221, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-221. Registered series of limited partners, general partners, partnership interests or assets.

(c) Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, to the extent the records maintained for a registered series account for the assets associated with such series separately from the other

assets of the limited partnership, or any other series thereof, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to such series shall be enforceable against the assets of such series or the general partners associated with such series only, and not against the assets of the limited partnership generally, any other series thereof, or any general partner not associated with such series, and, unless otherwise provided in the partnership agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited partnership generally or any other series thereof shall be enforceable against the assets of such series or the general partners associated with such series who are not also general partners of the limited partnership generally or general partners associated with the other series, as the case may be. Neither the preceding sentence nor any provision pursuant thereto in a partnership agreement, certificate of limited partnership or certificate of registered series shall (i) restrict a registered series or limited partnership on behalf of a registered series or a general partner associated with a registered series from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited partnership generally or any other series thereof shall be enforceable against the assets of such series or such general partner associated with such registered series, (ii) restrict a limited partnership from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a registered series shall be enforceable against the assets of the limited partnership generally or (iii) restrict a general partner of the limited partnership from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a registered series shall be enforceable against the assets of such general partner. Assets associated with a registered series may be held directly or indirectly, including in the name of such series, in the name of the limited partnership, through a nominee or otherwise. Records maintained for a registered series that reasonably identify its assets, including by specific listing, category, type, quantity, computational or allocational formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated with such series separately from the other assets of the limited partnership, or any other series thereof. As used in this chapter, a reference to assets of a registered series includes assets associated with such series and a reference to assets associated with a registered series includes assets of such series, a reference to limited partners or general partners of a registered series includes limited partners or general partners associated with such series, and a reference to limited partners or general partners associated with a registered series includes limited partners or general partners of such series. The following shall apply to a registered series:

(1) A limited partnership governed by a partnership agreement that establishes or provides for the establishment of 1 or more series shall have at least 1 general partner of the partnership generally and at least 1 general partner associated with each of its registered series. If a partnership agreement does not designate ~~a~~ an initial general partner of a particular registered series, then each general partner of the limited partnership generally shall be deemed to be a general partner associated with such series. If a partnership agreement does not designate ~~a~~ an initial general partner of the limited partnership generally, then each general partner of the limited partnership not associated with a registered series or a protected series shall be deemed to be a general partner of the limited partnership generally, but if there is no such general partner, then each general partner of the limited partnership shall be deemed to be a general partner of the limited partnership generally. General partners of the limited partnership generally and general partners associated with a registered series are general partners of the limited partnership under this chapter. Limited partners of the limited partnership generally and limited partners associated with a registered series are limited partners of the limited partnership under this chapter. The same person may be a general partner of the limited partnership generally and be associated with any or all registered series thereof. The same person may be a limited partner of the limited partnership generally and be associated with any or all registered series thereof.

Section 7. Amend § 17-221, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-221. Registered series of limited partners, general partners, partnership interests or assets.

(f) If a partnership agreement provides the manner in which a dissolution of a registered series may be revoked, it may be revoked in that manner and, unless the limited partnership has dissolved and such dissolution has not been revoked or the partnership agreement prohibits revocation of dissolution of a registered series, then notwithstanding the occurrence of an event set forth in paragraph (c)(10)a., b., c., or d. of this section, the registered series shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation of the certificate of registered series in the office of the Secretary of State, the business of the registered series is continued, effective as of the occurrence of such event:

(1) In the case of dissolution effected by the vote or consent of the partners associated with the registered series or other persons, pursuant to such vote or consent (and the approval of any partners associated with the registered series or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph);

(2) In the case of dissolution under paragraph (c)(10)a. or b. of this section (other than a dissolution effected by the vote or consent of the partners associated with the registered series or other persons or an event of withdrawal of

a general partner associated with the registered series), pursuant to such vote or consent that, pursuant to the terms of the partnership agreement, is required to amend the provision of the partnership agreement effecting such dissolution (and the approval of any partners associated with the registered series or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph); and

(3) In the case of dissolution effected by an event of withdrawal of a general partner associated with the registered series, pursuant to the vote or consent of:

a. All remaining general partners associated with the registered series; and

b. Limited partners associated with the registered series who own more than 2/3 of the then-current percentage or other interest in the profits of such series owned by all of the limited partners associated with such series, or if there is no limited partner associated with such series, the assignee of all of the limited partners' partnership interests in such series (and the approval of any partners associated with the registered series or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph); provided, however, if there is no remaining general partner associated with the registered series and no limited partner associated with such series or assignee of all of the limited partners' partnership interests in such series, the business of such series is continued, effective as of the occurrence of such event, pursuant to the vote or consent of the personal representative of the last remaining general partner associated with such series or the assignee of all of the general partners' partnership interests in such series (and the approval of any partners associated with the registered series or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph).

If dissolution is revoked pursuant to paragraph (f)(3) of this section and there is no remaining general partner associated with the registered series, 1 or more general partners associated with such series shall be appointed, effective as of the date of withdrawal of the last remaining general partner associated with such series, by the vote or consent of the limited partners associated with such series who own more than 2/3 of the then-current percentage or other interest in the profits of such series owned by all of the limited partners associated with such series, or if there is no limited partner associated with such series, the assignee of all of the limited partners' partnership interests in such series. If dissolution is revoked pursuant to paragraph (f)(3) of this section and there is no remaining general partner associated with such series and no limited partner associated with such series or assignee of all of the limited partners' partnership interests in such series, 1 or more general partners associated with such series shall be appointed, effective as of the date of withdrawal of the last remaining general partner associated with such series, by the vote or consent of the personal representative of the

last remaining general partner associated with such series or the assignee of all of the general partners' partnership interests associated with such series.

If the dissolution of the limited partnership under § 17-801 of this title results in the dissolution of a registered series under this section, unless a certificate of cancellation of the certificate of registered series with respect to such series has been filed in the office of the Secretary of State or the partnership agreement prohibits revocation of dissolution of such series, the dissolution of such series shall be automatically revoked upon any revocation of dissolution of the limited partnership in accordance with § 17-806 of this title provided there is at least 1 general partner associated with such series. If an event of withdrawal of a general partner who was both the last remaining general partner of the limited partnership and the last remaining general partner associated with a registered series results in both the dissolution of the limited partnership under § 17-801 of this title and the dissolution of such series under this section, unless a certificate of cancellation of the certificate of registered series with respect to such series has been filed in the office of the Secretary of State or the partnership agreement prohibits revocation of dissolution of such series, the dissolution of such series shall be automatically revoked upon any revocation of dissolution of the limited partnership in accordance with § 17-806 of this title, and the general partner of the limited partnership appointed pursuant to § 17-806 of this title shall also be the general partner associated with such series effective as of the date of withdrawal of the last remaining general partner associated with such series.

The provisions of this subsection shall not be construed to limit the accomplishment of a revocation of dissolution of a registered series by other means permitted by law.

Section 8. Amend Subchapter V, Chapter 17, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-506. Irrevocability of subscription.

For all purposes of the laws of the State of Delaware, a subscription for a partnership interest, whether submitted in writing, by means of electronic transmission, or as otherwise permitted by applicable law, is irrevocable if the subscription states that it is irrevocable to the extent provided by the terms of the subscription.

Section 9. Amend § 17-1107, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-1107. Fees.

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

(3) Upon the receipt for filing of a certificate of limited partnership domestication under § 17-215 of this title, a certificate of transfer or a certificate of transfer and domestic continuance under § 17-216 of this title, a certificate of conversion to limited partnership under § 17-217 of this title, a certificate of conversion to a non-Delaware entity under § 17-219 of this title, a certificate of limited partnership under § 17-201 of this title, a certificate of registered series under § 17-221 of this title, a certificate of amendment under ~~§ 17-202~~ § 17-202, § 17-220(h)(2), or § 17-221(d)(3) of this title, (except as otherwise provided in paragraph (a)(11) of this section) a certificate of cancellation under § 17-203 or § 17-221(d)(8) of this title, a certificate of merger or consolidation or a certificate of ownership and merger under § 17-211 of this title, a restated certificate of limited partnership or a restated certificate of registered series under § 17-210 of this title, a certificate of amendment of a certificate with a future effective date or time under § 17-206(c) of this title, a certificate of termination of a certificate with a future effective date or time under § 17-206(c) of this title, a certificate of correction under § 17-213 of this title, a certificate of division under § 17-220 of this title, a certificate of conversion of protected series to registered series under § 17-222 of this title, a certificate of conversion of registered series to protected series under § 17-223 of this title, a certificate of merger or consolidation of registered series under § 17-224 of this title or a certificate of revival under § 17-1111 or § 17-1112 of this title, a fee in the amount of $200, plus, in the case of a certificate of cancellation under § 17-203 of this title, a fee in the amount of $50 for each registered series of the limited partnership named in the certificate of cancellation.

Section 10. Amend § 17-1109, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-1109. Annual tax of domestic limited partnership and foreign limited partnership and registered series.

(j) A domestic limited partnership that has ceased to be in good standing by reason of the limited partnership's neglect, refusal or failure to pay an annual tax shall remain a domestic limited partnership formed under this chapter, and each registered series thereof shall remain a registered series formed under this chapter, and each protected series thereof shall remain a protected series established under this chapter. A registered series that has ceased to be in good standing by reason of the registered series' neglect, refusal or failure to pay an annual tax shall remain a registered series formed under this chapter. The Secretary of State shall not accept for filing any certificate (except a certificate of resignation of a registered agent when a successor registered agent is not being appointed and certificates of amendment of certificate of division as required by § 17-220(h)(5) of this title) required or permitted by this chapter to be filed in respect of any domestic limited partnership, registered series or foreign limited partnership if such domestic limited partnership, registered series or foreign limited partnership has neglected, refused or failed to pay an annual tax, and shall not issue any certificate of good standing with respect to such domestic limited partnership, registered series or foreign limited partnership, unless

and until such domestic limited partnership, registered series or foreign limited partnership shall have been restored to and have the status of a domestic limited partnership or registered series in good standing or a foreign limited partnership duly registered in the State of Delaware.

Section 11. This Act takes effect August 1, 2023.

SYNOPSIS

This Act continues the practice of amending periodically the Delaware Revised Uniform Limited Partnership Act (the "LP Act") to keep it current and to maintain its national preeminence. The following is a section-by-section review of the proposed amendments to the LP Act:

Section 1 amends § 17-204(a) of the LP Act to clarify that certificates required by the LP Act to be filed in the office of the Secretary of State be executed in the manner set forth in § 17-204(a). Further, because Section 5 of this Act contains amendments that permit or require a certificate of amendment to a certificate of division to be filed in the office of the Secretary of State, this section also amends § 17-204(a) of the LP Act to provide the manner in which a certificate of amendment to a certificate of division must be signed.

Section 2 amends § 17-211(g) of the LP Act. Currently, § 17-211(g) of the LP Act permits a duly approved agreement of merger or consolidation or plan of merger to effect any amendment to the partnership agreement or effect the adoption of a new partnership agreement. This amendment to § 17-211(g) confirms that an amendment to a partnership agreement or adoption of a new partnership agreement effected pursuant to § 17-211(g) of the LP Act may be effected only with respect to the partnership agreement of the surviving or resulting limited partnership and not with respect to the partnership agreement of a constituent limited partnership that is not the surviving or resulting limited partnership.

Sections 3 and 6 amend § 17-218(b)(1) and § 17-221(c)(1) of the LP Act. Each protected or registered series of a Delaware limited partnership must have a general partner associated with it. If a partnership agreement fails to designate an initial general partner associated with such a series, the LP Act designates a general partner to be associated with such a series. If a partnership agreement fails to designate a general partner of the limited partnership generally, the LP Act designates a general partner of the limited partnership generally. These sections amend § 17-218(b)(1) of the LP Act and § 17-221(c)(1) of the LP Act to confirm that the rules for designating a general partner for a limited partnership that has protected or registered series apply only to the designation of an initial general partner and not to subsequent general partners.

Section 4 amends §17-218 of the LP Act. Currently, § 17-806 of the LP Act permits revocation of dissolution of a limited partnership prior to the filing of a certificate of cancellation of the certificate of limited partnership in the office of the Secretary of State; however, the LP Act does not currently address revocation of termination of a protected series prior to the completion of the winding up of the protected series. This amendment adds a new § 17-218(d) to permit revocation of termination of a protected series prior to the completion of the winding up of the protected series.

Section 5 amends § 17-220(h) of the LP Act. Currently, among other requirements, a certificate of division must state the name and business address of the division contact and the name and address of the division partnership where the plan of division is on file. Because this information may change over time, this amendment permits or requires the filing of a certificate of amendment of certificate of division to amend the name or business address of the division contact or the name and address of the division partnership where the plan of division is on file. The requirement to update such information in a certificate of division ends after the expiration of a period of 6 years following the effective date of the division.

Section 5 also amends § 17-220(l)(1) of the LP Act to clarify that pursuant to a division, a dividing partnership is divided into distinct and independent division partnerships as such term is used in the LP Act.

Finally, Section 5 also amends § 17-220(l)(9) of the LP Act. Currently, under § 17-220 of the LP Act, a dividing partnership does not need to survive a division. This amendment confirms that a dividing partnership need not be a surviving partnership.

Section 7 amends §17-221 of the LP Act. Currently, § 17-806 of the LP Act permits revocation of dissolution of a limited partnership prior to the filing of a certificate of cancellation of the certificate of limited partnership in the office of the Secretary of State; however, the LP Act does not currently address revocation of dissolution of a registered series prior to the filing of a certificate of cancellation of the certificate of registered series in the office of the Secretary of State. This amendment adds a new § 17-221(f) to permit revocation of dissolution of a registered series prior to the filing of a certificate of cancellation of the certificate of registered series in the office of the Secretary of State.

Section 8 adds a new § 17-506 to the LP Act to clarify that a subscription for a partnership interest may be irrevocable if the subscription states it is irrevocable to the extent provided by the terms of the subscription.

Section 9 amends § 17-1107(a)(3) of the LP Act to specify the fee payable to the Secretary of State to file a certificate of amendment of certificate of division.

Section 10 amends § 17-1109(j) of the LP Act to acknowledge that certificates of amendment of certificate of division should be accepted for filing by the Secretary of State if at least 1 division partnership is in good standing at the time of such filings.

Section 11 provides that the proposed amendments to the LP Act take effect August 1, 2023.

This Act requires a greater than majority vote for passage because § 11 of Article VIII of the Delaware Constitution requires the affirmative vote of three-fifths of the members elected to each house of the General Assembly to impose or levy a tax or license fee.

Author: Senator Gay