SPONSOR: Sen. Bushweller & Rep. B. Short & Rep. M. Smith
Sens. Hansen, Townsend, Delcollo, Pettyjohn; Reps. Lynn, Keeley, Spiegelman, Hensley, Paradee

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 194

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

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

Section 1. Amend § 3801(a), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(a) "Beneficial owner" means any owner of a beneficial interest in a statutory trust, the fact of ownership to be determined and evidenced (whether by means of registration (including on, by means of, or in the form of any information storage device, method, or 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases)), the issuance of certificates or otherwise) in conformity to the applicable provisions of the governing instrument of the statutory trust."

Section 2. Amend § 3802(b), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(b) Except as provided in the governing instrument, a beneficial owner is obligated to the statutory trust to perform any promise to contribute cash, property or to perform services, even if the beneficial owner is unable to perform because of death, disability or any other reason. If a beneficial owner does not make the required contribution of property or services the beneficial owner is obligated at the option of the statutory trust to contribute cash equal to that portion of the agreed value (as stated in the records of the statutory trust) of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the statutory trust may have against such beneficial owner under the governing instrument or~~of~~ applicable law."

Section 3. Amend § 3803(c), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(c) Except to the extent otherwise provided in the governing instrument of a statutory trust, an officer, employee, manager or other person acting pursuant to § 3806(b)(7) or § 3806(i), when acting in such capacity, shall not be personally liable to any person other than the statutory trust or a trustee or a beneficial owner for any act, omission or obligation of the statutory trust or any trustee thereof."

Section 4. Amend § 3804(a), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(a) A statutory trust may sue and be sued, and service of process upon 1 of the trustees shall be sufficient. In furtherance of the foregoing, a statutory trust may be sued for debts and other obligations or liabilities contracted or incurred by the trustees or other authorized persons, or by the duly authorized agents of such trustees or other authorized persons, in the performance of their respective duties under the governing instrument of the statutory trust. The property of a statutory trust shall be subject to attachment and execution as if it were a corporation, subject to § 3502 of Title 10. Notwithstanding the foregoing provisions of this § 3804, in the event that the governing instrument of a statutory trust, including a statutory trust which is a registered investment company under the Investment Company Act of 1940, as amended (15 U.S.C. §§ 80a-1 et seq.), creates one or more series as provided in § 3806(b)(2), and to the extent ~~if~~ separate and distinct records are maintained for any such series and the assets associated with any such series are held in such separate and distinct records (directly or indirectly, including through a nominee or otherwise) and accounted for in such separate and distinct records separately from the other assets of the statutory trust, or any other series thereof, and if the governing instrument so provides, and notice of the limitation on liabilities of a series as referenced in this sentence is set forth in the certificate of trust of the statutory trust, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the statutory trust generally or any other series thereof, and, unless otherwise provided in the governing instrument, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the statutory trust generally or any other series thereof shall be enforceable against the assets of such series. Neither the preceding sentence nor any provision pursuant thereto in a governing instrument or certificate of trust shall (i) restrict a statutory trust on behalf of a series from agreeing in the governing instrument or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the statutory trust generally or any other series thereof shall be enforceable against the assets of such series or (ii) restrict a statutory trust from agreeing in the governing instrument or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a series shall be enforceable against the assets of the statutory trust generally. As used in this chapter, a reference to assets of a series includes assets associated with a series and a reference to assets associated with a series includes assets of a series. Except to the extent otherwise provided in the governing instrument of a statutory trust, a statutory trust that has established series in accordance with this subsection (a) may contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued, in each case, in the name of a series."

Section 5. Amend § 3806(b)(7), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

Section 6. Amend § 3806(f)(2), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(2) the beneficial owners may vote in person or by proxy, and such vote may be cast or such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a governing instrument, a consent transmitted by electronic transmission by a beneficial owner or by a person or persons authorized to act for a beneficial owner shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, including the use of or participation in 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Unless otherwise provided in a governing instrument, if a person (whether or not then a beneficial owner) consenting as a beneficial owner to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a beneficial owner at such future time so long as such person is then a beneficial owner."

Section 7. Amend § 3806(g)(2), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

Unless otherwise provided in a governing instrument, a consent transmitted by electronic transmission by a trustee or by a person or persons authorized to act for a trustee shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, including the use of or participation in 1 or more electronic networks

or databases (including 1 or more distributed electronic networks or databases), that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Unless otherwise provided in a governing instrument, if a person (whether or not then a trustee) consenting as a trustee to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a trustee at such future time so long as such person is then a trustee."

Section 8. Amend § 3806(i), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(i) Except to the extent otherwise provided in the governing instrument of a statutory trust, a trustee of a statutory trust has the power and authority to delegate to one or more other persons the trustee's rights~~, and~~ powers or duties to manage and control the business and affairs of the statutory trust, including to delegate to agents, officers and employees of the trustee or the statutory trust, and to delegate by management agreement or other agreement with, or otherwise to, other persons. Unless otherwise provided in the governing instrument of a statutory trust, such delegation by a trustee of a statutory trust shall be irrevocable if it states that it is irrevocable. Except to the extent otherwise provided in the governing instrument of a statutory trust, such delegation by 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 whom any such rights~~, and~~ powers or duties have been delegated to be a trustee of the statutory trust."

Section 9. Amend § 3806(k), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(k) A trustee, beneficial owner or an officer, employee, manager or other person designated in accordance with subsection (b)(7) or (i) of the Section shall be fully protected in relying in good faith upon the records of the statutory trust and upon information, opinions, reports or statements presented by another trustee, beneficial owner or officer, employee, manager or other person designated in accordance with subsection (b)(7) or (i) of this Section, or by any other person as to matters the trustee, beneficial owner or officer, employee, manager or other person designated in accordance with subsection (b)(7) or (i) of this Section reasonably believes are within such other person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the statutory trust, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to beneficial owners or creditors might properly be paid."

Section 10. Amend § 3806, Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(m) Except to the extent otherwise provided in the governing instrument of a statutory trust, a trustee shall have no duties or liabilities with respect to the selection, supervision, removal, decisions or actions of, or to exercise or perform the rights, powers or duties of, an officer, employee, manager or other person acting pursuant to §3806(b)(7) or a delegate acting pursuant to §3806(i):

(i) to the extent such person is appointed, elected, engaged or made a delegate by an express provision of the governing instrument or another agreement contemplated thereby;

(ii) to the extent the trustee is required to appoint, elect or engage, or delegate to, such person by an express provision of the governing instrument or another agreement contemplated thereby and not pursuant to the discretionary authority of the trustee;

(iii) to the extent a trustee makes an irrevocable delegation pursuant to §3806(i) and pursuant to the discretionary authority of the trustee, except to exercise the standard of care required of the trustee under the governing instrument or this subchapter in making such decisions when selecting such person and when establishing the scope and terms of the delegation; or

(iv) in all other cases, except to exercise the standard of care required of the trustee under the governing instrument or this subchapter in making such decisions when selecting such person, when establishing the scope and terms of the delegation and when reviewing such person's actions in order to monitor such person's performance and compliance with the scope and terms of the delegation.

(n) Any officer, employee, manager or other person acting pursuant to §3806(b)(7) or any delegate acting pursuant to §3806(i) shall comply with the scope and terms of the appointment, election, engagement or delegation and, except to the extent otherwise provided in the governing instrument of a statutory trust or the terms of such appointment, election, engagement or delegation, shall (i) exercise the rights, powers and duties subject to the standard of care required of the trustee under the governing instrument or this subchapter and (ii) be liable for failure to do so."

Section 11. Amend § 3808(c), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(c) In the event that a statutory trust does not have perpetual existence, a statutory trust is dissolved and its affairs shall be wound up at the time or upon the happening of events specified in the governing instrument. If a governing instrument provides the manner in which a dissolution may be revoked, it may be revoked in that manner and, unless a governing instrument prohibits revocation of dissolution, then notwithstanding the happening of events specified in the

governing instrument, the statutory trust shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation as provided in § 3810 of this Chapter, the statutory trust is continued, effective as of the happening of such event,

(1) in the case of dissolution effected by the approval ~~affirmative vote or written consent~~ of the beneficial owners or other persons, pursuant to such approval ~~affirmative vote or written consent~~ (and the approval of any beneficial owners or other persons whose approval is required under the governing instrument to revoke a dissolution contemplated by this clause), and

(2) in the case of dissolution at the time or upon the happening of events specified in a governing instrument (other than a dissolution effected by the approval ~~affirmative vote or written consent~~ of the beneficial owners or other persons), pursuant to such approval ~~affirmative vote or written consent~~ that, pursuant to the terms of the governing instrument, is required to amend the provision of the governing instrument effecting such dissolution (and the approval of any beneficial owners or other persons whose approval is required under the governing instrument to revoke a dissolution contemplated by this clause). The provisions of this section shall not be construed to limit the accomplishment of a revocation of dissolution by other means permitted by law."

Section 12. Amend § 3808(g), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(g) Upon dissolution of a series of a statutory trust established in accordance with § 3804(a), the persons who under the governing instrument of the statutory trust are responsible for winding up such series' affairs may, in the name of the statutory trust and for and on behalf of the statutory trust and such series, take all actions with respect to the series as are permitted under § 3808(d) and shall provide for the claims and obligations of the series and distribute the assets of the series as provided under § 3808(e). Any person, including any trustee, who under the governing instrument is responsible for winding up such series' affairs who has complied with § 3808(e) shall not be personally liable to the claimants of the dissolved series by reason of such person's actions in winding up the series."

Section 13. Amend § 3810(d), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(d) A certificate of trust shall be cancelled upon the dissolution and the completion of winding up of a statutory trust, or upon the filing of a certificate of merger or consolidation if the statutory trust is not the surviving or resulting person ~~entity~~ in a merger or consolidation, or upon the future effective date or time of a certificate of merger or consolidation if the trust is not the surviving or resulting person ~~entity~~ in a merger or consolidation, or upon the filing of a certificate of transfer, or upon the future effective date or time of a certificate of transfer, or upon the filing of a certificate

of conversion to non-Delaware other business entity or upon the future effective date or time of a certificate of conversion to non-Delaware entity. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

(1) The name of the statutory trust;

(2) The date of filing of its certificate of trust;

(3) The future effective date or time (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate; and

(4) Any other information the trustee determines to include therein.

A certificate of cancellation that is filed in the office of the Secretary of State prior to the dissolution or the completion of winding up of a statutory trust may be corrected as an erroneously executed certificate of cancellation by filing with the office of the Secretary of State a certificate of correction of such certificate of cancellation in accordance with § 3810(e). The Secretary of State shall not issue a certificate of good standing with respect to a statutory trust if its certificate of trust is cancelled."

Section 14. Amend § 3812(f), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(f) The fact that a certificate of trust is on file in the Office of the Secretary of State is notice that the person ~~entity~~ formed in connection with the filing of the certificate of trust is a statutory trust formed under the laws of the State of Delaware and is notice of all other facts set forth therein which are required to be set forth in a certificate of trust by § 3810(a)(1) and (2) of this Title and is notice of the limitation on liability of a series of a statutory trust which is permitted to be set forth in a certificate of trust by § 3804(a) of this Title."

Section 15. Amend § 3814(a), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(a) The name of each statutory trust as set forth in its certificate of trust must be such as to distinguish it upon the records of the office of the Secretary of State from the name of any corporation, partnership, limited partnership, statutory trust, limited liability company or registered series of a ~~or~~ limited liability company reserved, registered, formed or organized under the laws of the State of Delaware or qualified to do business or registered as a foreign corporation, foreign partnership, foreign limited partnership, foreign statutory trust or foreign limited liability company in the State of Delaware; provided, however, that a statutory trust may register under any name which is not such as to distinguish it upon the records of the office of the Secretary of State from the name of any domestic or foreign corporation, partnership, limited partnership, or foreign statutory trust or limited liability company or registered series of a limited liability company reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other

corporation, partnership, limited partnership, foreign statutory trust, limited liability company or registered series of a ~~or~~ limited liability company, which written consent shall be filed with the Secretary of State, provided further, that, if on July 31, 2011 a statutory trust is registered (with the consent of another statutory trust) under a name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of such other domestic statutory trust, it shall not be necessary for any such statutory trust to amend its certificate of trust to comply with this subsection."

Section 16. Amend § 3815(b), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(b) If a statutory trust is merging or consolidating under this section, the statutory trust or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation in the office of the Secretary of State. The certificate of merger or consolidation shall state:

(1) The name, jurisdiction of formation or organization and type of person ~~entity~~ of each of the statutory trusts or other business entities which is to merge or consolidate;

(2) That an agreement of merger or consolidation has been approved and executed by each of the statutory trusts or other business entities which is to merge or consolidate;

(3) The name of the surviving or resulting statutory trust or other business entity;

(4) In the case of a merger in which a statutory trust is the surviving person ~~entity~~, such amendments, if any, to the certificate of trust of the surviving statutory trust to change its name, registered office or registered agent as are desired to be effected by the merger;

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

(6) That the executed agreement of merger or consolidation is on file at the principal place of business of the surviving or resulting statutory trust or other business entity, and shall state the address thereof;

(7) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting statutory trust or other business entity, on request and without cost, to any beneficial owner of any statutory trust or any person holding an interest in any other business entity which is to merge or consolidate; and

(8) If the surviving or resulting person ~~entity~~ is not a statutory trust or other business entity formed or organized or existing under the laws of the State of Delaware, a statement that such surviving or resulting other business entity agrees that it may be served with process in the State in any action, suit or proceeding for the enforcement of any obligation of any statutory trust which is to merge or consolidate, irrevocably appointing the

Secretary of State as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of service hereunder upon the Secretary of State, the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in the certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify such surviving or resulting other business entity thereof at all such addresses furnished by the plaintiff by letter. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served upon the Secretary of State. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being made pursuant to this subsection, and to pay the Secretary of State the sum of $50 for use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceedings in which process has been served upon him, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from his receipt of the service of process."

Section 17. Amend § 3815(e), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(e) A certificate of merger or consolidation shall act as a certificate of cancellation for a statutory trust which is not the surviving or resulting person ~~entity~~ in the merger or consolidation. A certificate of merger that sets forth any amendment in accordance with subsection (b)(4) of this Section shall be deemed to be an amendment to the certificate of trust of the statutory trust, and the statutory trust shall not be required to take any further action to amend its certificate of trust under § 3810 of this Chapter with respect to such amendments set forth in the certificate of merger. Whenever this Section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this Section to be set forth in the certificate of merger or consolidation."

Section 18. Amend § 3815(g), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(g)When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of each of the statutory trusts and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said statutory trusts and other business entities, as well as all other things and causes of action belonging to each of such statutory trusts and other business entities, shall be vested in the surviving or resulting statutory trust or other business entity, and shall thereafter be the property of the surviving or resulting statutory trust or other business entity as they were of each of the statutory trusts and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the State of Delaware, in any of such statutory trusts and other business entities, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said statutory trusts and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the said statutory trusts and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting statutory trust or other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a statutory trust, including a statutory trust which is not the surviving or resulting person ~~entity~~ in the merger or consolidation, shall not require such statutory trust to wind up its affairs under Section 3808(d) of this title or pay any of its liabilities and distribute its assets under Section 3808(e) of this title, and the merger or consolidation shall not constitute the dissolution of such statutory trust."

Section 19. Amend § 3819(d), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(d) A statutory trust may maintain its records in other than a written form, including on, by means of, or in the form of any information storage device, method, or 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), if such form is capable of conversion into a written form within a reasonable time."

Section 20. Amend § 3820(f), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(f) Unless otherwise agreed, for all purposes of the laws of the State of Delaware, the converting other business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other business entity and shall constitute a continuation of the existence of the

converting other business entity in the form of a statutory trust. When the other business entity has been converted to a statutory trust pursuant to this section, the statutory trust shall, for all purposes of the laws of the State of Delaware, be deemed to be the same person ~~entity~~ as the converting other business entity."

Section 21. Amend § 3821(d), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

Section 22. Amend § 3821(h), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(h) When a statutory trust has been converted to an other business entity pursuant to this Section, the other business entity shall, for all purposes of the laws of the State of Delaware, be deemed to be the same person ~~entity~~ as the statutory trust. When any conversion becomes effective under this Section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the statutory trust that has converted, and all property, real, personal and mixed, and all debts due to such statutory trust, as well as all other things and causes of action belonging to such statutory trust, shall remain vested in the other business entity to which such statutory trust has converted and shall be the property of such other business entity, and the title to any real property vested by deed or otherwise in such statutory trust shall not revert or be in any way impaired by reason of this Chapter; but all rights of creditors and all liens upon any property of such statutory trust shall be preserved unimpaired, and all debts, liabilities and duties of the statutory trust that has converted shall remain attached to the other business entity to which such statutory trust has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as such other business entity. The rights, privileges, powers and interests in property of the statutory trust that has converted, as well as the debts, liabilities and duties of such statutory trust, shall not be deemed, as a consequence of the conversion, to have been transferred to the other business entity to which such statutory trust has converted for any purpose of the laws of the State of Delaware."

Section 23. Amend § 3822(i), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(i) When a non-United States entity has become domesticated as a statutory trust pursuant to this Section, the statutory trust shall, for all purposes of the laws of the State of Delaware, be deemed to be the same person ~~entity~~ as the domesticating non-United States entity. Unless otherwise agreed, for all purposes of the laws of the State of Delaware, the domesticating non-United States entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the domestication shall not be deemed to constitute a dissolution of such non-United States entity and shall constitute a continuation of the existence of the domesticating non-United States entity in the form of a domestic statutory trust. If, following domestication, a non-United States entity that has become domesticated as a statutory trust continues its existence in the foreign country or other foreign jurisdiction in which it was existing immediately prior to domestication, the statutory trust and such non-United States entity shall, for all purposes of the laws of the State of Delaware, constitute a single person ~~entity~~ formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the State of Delaware and the laws of such foreign country or other foreign jurisdiction."

Section 24. Amend § 3822(j), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

Section 25. Amend § 3823(e), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(e) If a statutory trust files a certificate of transfer and continuance, after the time the certificate of transfer and continuance becomes effective, the statutory trust shall continue to exist as a statutory trust of the State of Delaware, and the laws of the State of Delaware, including the provisions of this Chapter, shall apply to the statutory trust, to the same extent as prior to such time. So long as a statutory trust continues to exist as a statutory trust of the State of Delaware following the filing of a certificate of transfer and continuance, the continuing statutory trust and the other business entity formed, incorporated, created or that otherwise came into being as a consequence of the transfer of the statutory trust to, or its domestication in, a foreign country or other foreign jurisdiction shall, for all purposes of the laws of the State of Delaware, constitute a single person ~~entity~~ formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the State of Delaware and the laws of such foreign country or other foreign jurisdiction."

Section 26. Amend § 3823(f), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

Section 27. Amend § 3823(g), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"(g) When a statutory trust has transferred or domesticated out of the State of Delaware pursuant to this Section, the transferred or domesticated other business entity shall, for all purposes of the laws of the State of Delaware, be deemed to be the same person ~~entity~~ as the statutory trust. When any transfer or domestication of a statutory trust out of the State of Delaware shall have become effective under this Section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the statutory trust that has transferred or domesticated, and all property, real, personal and mixed, and all debts due to such statutory trust, as well as all other things and causes of action belonging to such statutory trust, shall remain vested in the transferred or domesticated other business entity and shall be the property of such transferred or domesticated other business entity, and the title to any real property vested by deed or otherwise in such statutory trust shall not revert or be in any way impaired by reason of this Chapter; but all rights of creditors and all liens upon any property of such statutory trust shall be preserved unimpaired, and all debts, liabilities and duties of the statutory trust that has transferred or domesticated shall remain attached to the transferred or domesticated other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as the transferred or domesticated other business entity. The rights, privileges, powers and interests in property of the statutory trust that has transferred or domesticated, as well as the debts, liabilities and duties of such statutory trust, shall not be deemed, as a consequence of the transfer or domestication out of the State of Delaware, to have been transferred to the transferred or domesticated other business entity for any purpose of the laws of the State of Delaware."

Section 28. This Act shall become effective August 1, 2018.

SYNOPSIS

This bill makes the following changes to 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 the proposed amendments of the Act.

Section 1. This section amends § 3801(a) of the Act to further the State of Delaware's initiative to implement policies enhancing the State's position as a leader in the adoption of distributive electronic network and database technologies (including what is commonly referred to as "blockchain" or "distributed ledger technology") by providing that the registration of a beneficial interest in a statutory trust may be evidenced electronically, including by means of an electronic database or network, including distributed electronic networks or databases.

Section 2. This section amends § 3802(b) of the Act to correct a typo.

Section 3. This section amends § 3803(c) of the Act to clarify that protection from personal liability extends to any person to whom a trustee has delegated its rights, powers or duties to manage and control the business and affairs of the statutory trust pursuant to § 3806(i) of the Act, and to include the trustees in the list of persons who are excluded from the confines of § 3803(c) of the Act, in each case except to the extent otherwise provided in the governing instrument.

Section 4. This section amends § 3804(a) of the Act to make a clarifying change to the wording of such section.

Section 5. This section amends § 3806(b)(7) of the Act to remove the default duty of the trustee to choose and supervise the officers, managers, employees or other persons of such agents and independent contractors of the statutory trust, or delegates of the trustee appointed, elected or engaged to manage the business and affairs of the trust, such default duty being replaced by new § 3806(m).

Section 6. This section amends § 3806(f)(2) of the Act to further the State of Delaware's initiative to implement policies enhancing the State's position as a leader in the adoption of distributive electronic network and database technologies (including what is commonly referred to as "blockchain" or "distributed ledger technology") by providing that a vote or a proxy of the beneficial owners may be provided by electronic transmission, including by use of electronic networks or databases, including distributed electronic networks or databases.

Section 7. This section amends § 3806(g)(2) of the Act to further the State of Delaware's initiative to implement policies enhancing the State's position as a leader in the adoption of distributive electronic network and database technologies (including what is commonly referred to as "blockchain" or "distributed ledger technology") by providing that the vote of the trustees may be provided by electronic transmission, including by use of electronic networks or databases, including distributed electronic networks or databases.

Section 8. This section amends § 3806(i) of the Act to clarify that a trustee may delegate its duties to manage and control the business and affairs of the statutory trust.

Section 9. This section amends § 3806(k) of the Act to clarify that a person to which a trustee has delegated its rights, powers or duties to manage the business and affairs of the statutory trust under § 3806(i) shall be provided protections for good faith reliance on certain records, information opinions, reports or statements obtained in the performance of its delegated duties.

Section 10. This section amends § 3806 of the Act to provide for the circumstances in which a trustee's duties and liabilities will be limited for the actions of an officer, employee, manager or other person acting pursuant to § 3806(b)(7) or a delegate acting pursuant to § 3806(i) of the Act. This section further provides for the default standard of care required of any person acting pursuant to § 3806(b)(7) and § 3806(i) of the Act.

Section 11. This section amends § 3808(c) of the Act to recognize that an affirmative vote or written consent are not the sole methods of approval by the beneficial owners.

Section 12. This section amends § 3808(g) of the Act to clarify that § 3808(g) only applies to series formed in accordance with § 3804(a).

Section 13. This section amends § 3810(d) of the Act to remove the undefined term "entity" and replace it with "Person," a term defined in § 3801(f) of the Act.

Section 14. This section amends § 3812(f) of the Act to remove the undefined term "entity" and replace it with "Person," a term defined in § 3801(f) of the Act.

Section 15. This section amends § 3814(a) of the Act to further restrict the use of names of statutory trusts to those that can be distinguished from registered series of limited liability companies.

Section 16. This section amends § 3815(b) of the Act to remove the undefined term "entity" and replace it with "Person," a term defined in § 3801(f) of the Act.

Section 17. This section amends § 3815(e) of the Act to remove the undefined term "entity" and replace it with "Person," a term defined in § 3801(f) of the Act.

Section 18. This section amends § 3815(g) of the Act to remove the undefined term "entity" and replace it with "Person," a term defined in § 3801(f) of the Act.

Section 19. This section amends § 3819(d) of the Act to further the State of Delaware's initiative to implement policies enhancing the State's position as a leader in the adoption of distributive electronic network and database technologies (including what is commonly referred to as "blockchain" or "distributed ledger technology") by providing that the records of a statutory trust may be maintained by means of any information storage device, method or an electronic database or network, including distributed electronic networks or databases.

Section 20. This section amends § 3820(f) of the Act to remove the undefined term "entity" and replace it with "Person," a term defined in § 3801(f) of the Act.

Section 21. This section amends § 3821(d) of the Act to clarify that the rights or securities of, or interests in a statutory trust which is to be converted may be exchanged for or converted into cash, property, rights or securities of, or interests in, another statutory trust.

Section 22. This section amends § 3821(h) of the Act to remove the undefined term "entity" and replace it with "Person," a term defined in § 3801(f) of the Act.

Section 23. This section amends § 3822(i) of the Act to remove the undefined term "entity" and replace it with "Person," a term defined in § 3801(f) of the Act.

Section 24. This section amends § 3822(j) of the Act to remove the undefined term "entity" and replace it with "Person," a term defined in § 3801(f) of the Act.

Section 25. This section amends § 3823(e) of the Act to remove the undefined term "entity" and replace it with "Person," a term defined in § 3801(f) of the Act.

Section 26. This section amends § 3823(f) of the Act to remove the undefined term "entity" and replace it with "Person," a term defined in § 3801(f) of the Act.

Section 27. This section amends § 3823(g) of the Act to remove the undefined term "entity" and replace it with "Person," a term defined in § 3801(f) of the Act.

Section 28. This section provides that the proposed amendments of the Act shall become effective August 1, 2018.

Author: Senator Bushweller