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HOUSE OF REPRESENTATIVES  
150th GENERAL ASSEMBLY

HOUSE BILL NO. 341

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO THE GENERAL CORPORATION LAW.

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

Section 1. Amend § 102, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 102 Contents of certificate of incorporation.

(a) The certificate of incorporation shall set forth:

(1) The name of the corporation, which (i) shall contain 1 of the words “association,” “company,” “corporation,” “club,” “foundation,” “fund,” “incorporated,” “institute,” “society,” “union,” “syndicate,” or “limited,” (or abbreviations thereof, with or without punctuation), or words (or abbreviations thereof, with or without punctuation) of like import of foreign countries or jurisdictions (provided they are written in roman characters or letters); provided, however, that the Division of Corporations in the Department of State may waive such requirement (unless it determines that such name is, or might otherwise appear to be, that of a natural person) if such corporation executes, acknowledges and files with the Secretary of State in accordance with § 103 of this title a certificate stating that its total assets, as defined in § 503(i) of this title, are not less than \$10,000,000, or, in the sole discretion of the Division of Corporations in the Department of State, if the corporation is both a nonprofit nonstock corporation and an association of professionals, (ii) shall be such as to distinguish it upon the records in the office of the Division of Corporations in the Department of State from the names that are reserved on such records and from the names on such records of each other corporation, partnership, limited partnership, limited liability company, registered series of a limited liability company, registered series of a limited partnership or statutory trust organized or registered as a domestic or foreign corporation, partnership, limited partnership, limited liability company, registered series of a limited liability company, registered series of a limited partnership or statutory trust under the laws of this State, except with the written consent of the person who has reserved such name or such other foreign corporation or domestic or foreign partnership, limited partnership, limited liability company, registered series of a limited liability company, registered series of a limited partnership or statutory trust, executed, acknowledged and filed with the Secretary of State in accordance with § 103 of this title, or except that, without prejudicing any rights of the person who has

reserved such name or such other foreign corporation or domestic or foreign partnership, limited partnership, limited liability company, registered series of a limited liability company, registered series of a limited partnership or statutory trust, the Division of Corporations in the Department of State may waive such requirement if the corporation demonstrates to the satisfaction of the Secretary of State that the corporation or a predecessor entity previously has made substantial use of such name or a substantially similar name, that the corporation has made reasonable efforts to secure such written consent, and that such waiver is in the interest of the State, (iii) except as permitted by § 395 of this title, shall not contain the word “trust,” and (iv) shall not contain the word “bank,” or any variation thereof, except for the name of a bank reporting to and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as those terms are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a corporation regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home Owners’ Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall not be construed to prevent the use of the word “bank,” or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the corporation or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or the State as determined by the Division of Corporations in the Department of State;

Section 2. Amend § 102, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 102 Contents of certificate of incorporation.

(b) In addition to the matters required to be set forth in the certificate of incorporation by subsection (a) of this section, the certificate of incorporation may also contain any or all of the following matters:

(1) Any provision for the management of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors, and the stockholders, or any class of the stockholders, or the governing body, members, or any class or group of members of a nonstock corporation; if such provisions are not contrary to the laws of this State. Any provision which is required or permitted by any section of this chapter to be stated in the bylaws may instead be stated in the certificate of incorporation.

(2) The following provisions, in haec verba, (i), for a corporation other than a nonstock corporation, viz:

Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or

stockholder thereof or on the application of any receiver or receivers appointed for this corporation under § 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under § 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation; or

(ii), for a nonstock corporation, viz:

Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its members or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or member thereof or on the application of any receiver or receivers appointed for this corporation under § 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under § 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the members or class of members of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the members or class of members of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the members or class of members, of this corporation, as the case may be, and also on this corporation;

(3) Such provisions as may be desired granting to the holders of the stock of the corporation, or the holders of any class or series of a class thereof, the preemptive right to subscribe to any or all additional issues of stock of the corporation of any or all classes or series thereof, or to any securities of the corporation convertible into such stock. No stockholder shall have any preemptive right to subscribe to an additional issue of stock or to any security convertible into such stock unless, and except to the extent that, such right is expressly granted to such stockholder in the

certificate of incorporation. All such rights in existence on July 3, 1967, shall remain in existence unaffected by this paragraph unless and until changed or terminated by appropriate action which expressly provides for the change or termination;

(4) Provisions requiring for any corporate action, the vote of a larger portion of the stock or of any class or series thereof, or of any other securities having voting power, or a larger number of the directors, than is required by this chapter;

(5) A provision limiting the duration of the corporation's existence to a specified date; otherwise, the corporation shall have perpetual existence;

(6) A provision imposing personal liability for the debts of the corporation on its stockholders to a specified extent and upon specified conditions; otherwise, the stockholders of a corporation shall not be personally liable for the payment of the corporation's debts except as they may be liable by reason of their own conduct or acts;

(7) A provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director: (i) For any breach of the director's duty of loyalty to the corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under § 174 of this title; or (iv) for any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. An amendment, repeal or elimination of such a provision shall not affect its application with respect to an act or omission by a director occurring before such amendment, repeal or elimination unless the provision provides otherwise at the time of such act or omission. All references in this paragraph to a director shall also be deemed to refer to such other person or persons, if any, who, pursuant to a provision of the certificate of incorporation in accordance with § 141(a) of this title, exercise or perform any of the powers or duties otherwise conferred or imposed upon the board of directors by this title.

Section 3. Amend § 108, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 108 Organization meeting of incorporators or directors named in certificate of incorporation.

(c) ~~Any~~ Unless otherwise restricted by the certificate of incorporation, (1) any action permitted to be taken at the organization meeting of the incorporators or directors, as the case may be, may be taken without a meeting if each incorporator or director, where there is more than 1, or the sole incorporator or director where there is only 1, consents thereto in writing or by electronic transmission and (2) a consent may be documented, signed and delivered in any manner

permitted by § 116 of this title. Any person (whether or not then an incorporator or director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this subsection at such effective time so long as such person is then an incorporator or director, as the case may be, and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

Section 4. Amend § 110, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 110 Emergency bylaws and other powers in emergency.

(a) The board of directors of any corporation may adopt emergency bylaws, subject to repeal or change by action of the stockholders, which, ~~shall~~ notwithstanding any different provision elsewhere in this chapter or in Chapters 3 [repealed] and 5 [repealed] of Title 26, or in Chapter 7 of Title 5, or in the certificate of incorporation or bylaws, shall be operative during any emergency resulting from an attack on the United States or on a locality in which the corporation conducts its business or customarily holds meetings of its board of directors or its stockholders, or during any nuclear or atomic disaster, or during the existence of any catastrophe, including, but not limited to, an epidemic or pandemic, and a declaration of a national emergency by the United States government, or other similar emergency condition, ~~as a result of which irrespective of whether~~ a quorum of the board of directors or a standing committee thereof ~~cannot~~ can readily be convened for action. The emergency bylaws contemplated by this section may be adopted by the board of directors or, if a quorum cannot be readily convened for a meeting, by a majority of the directors present. The emergency bylaws may make any provision that may be practical and necessary for the circumstances of the emergency, including provisions that:

(1) A meeting of the board of directors or a committee thereof may be called by any officer or director in such manner and under such conditions as shall be prescribed in the emergency bylaws;

(2) The director or directors in attendance at the meeting, or any greater number fixed by the emergency bylaws, shall constitute a quorum; and

(3) The officers or other persons designated on a list approved by the board of directors before the emergency, all in such order of priority and subject to such conditions and for such period of time (not longer than reasonably necessary after the termination of the emergency) as may be provided in the emergency bylaws or in the resolution approving the list, shall, to the extent required to provide a quorum at any meeting of the board of directors, be deemed directors for such meeting.

(b) The board of directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such emergency any or all officers or agents of the corporation shall for any reason be rendered incapable of discharging their duties.

(c) The board of directors, either before or during any such emergency, may, effective in the emergency, change the head office or designate several alternative head offices or regional offices, or authorize the officers so to do.

(d) No officer, director or employee acting in accordance with any emergency bylaws shall be liable except for wilful misconduct.

(e) To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the corporation shall remain in effect during any emergency and upon its termination the emergency bylaws shall cease to be operative.

(f) Unless otherwise provided in emergency bylaws, notice of any meeting of the board of directors during such an emergency may be given only to such of the directors as it may be feasible to reach at the time and by such means as may be feasible at the time, including publication or radio.

(g) To the extent required to constitute a quorum at any meeting of the board of directors during such an emergency, the officers of the corporation who are present shall, unless otherwise provided in emergency bylaws, be deemed, in order of rank and within the same rank in order of seniority, directors for such meeting.

(h) Nothing contained in this section shall be deemed exclusive of any other provisions for emergency powers consistent with other sections of this title which have been or may be adopted by corporations created under this chapter.

(i) During any emergency condition of a type described in paragraph (a) of this section, the board of directors (or, if a quorum cannot be readily convened for a meeting, a majority of the directors present) may (i) take any action that it determines to be practical and necessary to address the circumstances of such emergency condition with respect to a meeting of stockholders of the corporation notwithstanding anything to the contrary in this chapter or in Chapter 7 of Title 5 or in the certificate of incorporation or bylaws, including, but not limited to, (1) to postpone any such meeting to a later time or date (with the record date for determining the stockholders entitled to notice of, and to vote at, such meeting applying to the postponed meeting irrespective of § 213 of this title), and (2) with respect to a corporation subject to the reporting requirements of § 13(a) or § 15(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, to notify stockholders of any postponement or a change of the place of the meeting (or a change to hold the meeting solely by means of remote communication) solely by a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to § 13, § 14 or § 15(d) of such Act and such rules and regulations; and (ii) with respect to any dividend that has been declared as to which the record date has not occurred, change each of the record date and payment date to a later date or dates (provided the payment date as so changed is not

more than 60 days after the record date as so changed); provided that, in either case, the corporation gives notice of such change to stockholders as promptly as practicable thereafter (and in any event before the record date theretofore in effect), which notice, in the case of a corporation subject to the reporting requirements of § 13(a) or § 15(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, may be given solely by a document publicly filed with the Securities and Exchange Commission pursuant to § 13, § 14 or § 15(d) of such Act and such rules and regulations. No person shall be liable, and no meeting of stockholders shall be postponed or voided, for the failure to make a stocklist available pursuant to § 219 of this title if it was not practicable to allow inspection during any such emergency condition.

Section 5. Amend § 116, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 116 Document form, signature and delivery.

(a) Except as provided in subsection (b) of this section, without limiting the manner in which any act or transaction may be documented, or the manner in which a document may be signed or delivered:

(1) Any act or transaction contemplated or governed by this chapter or the certificate of incorporation or bylaws may be provided for in a document, and an electronic transmission shall be deemed the equivalent of a written document. "Document" means:

a. Any tangible medium on which information is inscribed, and includes handwritten, typed, printed or similar instruments, and copies of such instruments; and

b. An electronic transmission.

(2) Whenever this chapter or the certificate of incorporation or bylaws requires or permits a signature, the signature may be a manual, facsimile, conformed or electronic signature. "Electronic signature" means an electronic symbol or process that is attached to, or logically associated with, a document and executed or adopted by a person with an intent to execute, authenticate or adopt the document. A person may execute a document with such person's signature.

(3) Unless otherwise agreed between the sender and recipient (and in the case of proxies or consents given by or on behalf of a stockholder, subject to the additional requirements set forth in § 212(c)(2) & (3) and § 228(d)(1), respectively, of this title), an electronic transmission shall be deemed delivered to a person for purposes of this chapter and the certificate of incorporation and bylaws when it enters an information processing system that the person has designated for the purpose of receiving electronic transmissions of the type delivered, so long as the electronic transmission is in a form capable of being processed by that system and such person is able to retrieve the electronic

transmission. Whether a person has so designated an information processing system is determined by the certificate of incorporation, the bylaws or from the context and surrounding circumstances, including the parties' conduct. An electronic transmission is delivered under this section even if no person is aware of its receipt. Receipt of an electronic acknowledgement from an information processing system establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

This chapter shall not prohibit 1 or more persons from conducting a transaction in accordance with Chapter 12A of Title 6 so long as the part or parts of the transaction that are governed by this chapter are documented, signed and delivered in accordance with this subsection or otherwise in accordance with this chapter. This subsection shall apply solely for purposes of determining whether an act or transaction has been documented, and the document has been signed and delivered, in accordance with this chapter, the certificate of incorporation and the bylaws.

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

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

(2) A document comprising part of the stock ledger;

(3) A certificate representing a security;

(4) Any document expressly referenced as a notice (or waiver of notice) by this chapter, the certificate of incorporation or bylaws;

~~(5) A consent in lieu of a meeting given by a director, stockholder or incorporator;~~

~~(6) (5) A ballot to vote on actions at a meeting of stockholders; and~~

~~(7) (6) An act or transaction effected pursuant to § 280 of this title or subchapters III, XIII or XVI of this chapter.~~

The foregoing shall not create any presumption about the lawful means to document a matter addressed by this subsection, or the lawful means to sign or deliver a document addressed by this subsection. ~~A No provision of the certificate of incorporation or bylaws shall not limit the application of subsection (a) of this section unless the provision except for a provision that expressly restricts one or more of the means of documenting an act or transaction, or of signing or delivering a document, permitted by subsection (a) of this section or prohibits the use of an electronic transmission or electronic signature (or any form thereof) or expressly restricts or prohibits the delivery of an electronic transmission to an information processing system.~~

Section 6. Amend § 132, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 132 Registered agent in State; resident agent.

(a) Every corporation shall have and maintain in this State a registered agent, which agent may be any of:

(1) The corporation itself;

(2) An individual resident in this State;

(3) A domestic corporation (other than the corporation itself), a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a domestic limited liability company or a domestic statutory trust; or

(4) A foreign corporation, a foreign ~~partnership (whether general (including a limited liability partnership), or~~ a foreign limited partnership, (including a foreign limited liability limited partnership), a foreign limited liability company or a foreign statutory trust.

Section 7. Amend § 135, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 135 Resignation of registered agent coupled with appointment of successor.

The registered agent of 1 or more corporations may resign and appoint a successor registered agent by filing a certificate with the Secretary of State, stating the name and address of the successor agent, in accordance with § 102(a)(2) of this title. There shall be attached to such certificate a statement of each affected corporation ratifying and approving such change of registered agent. Each such statement shall be executed and acknowledged in accordance with § 103 of this title. Upon such filing, the successor registered agent shall become the registered agent of such corporations as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such corporation's registered office in this State. ~~The Secretary of State shall then issue a certificate that the successor registered agent has become the registered agent of the corporations so ratifying and approving such change and setting out the names of such corporations.~~

Section 8. Amend § 141, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 141 Board of directors; powers; number, qualifications, terms and quorum; committees; classes of directors; nonstock corporations; reliance upon books; action without meeting; removal.

(f) Unless otherwise restricted by the certificate of incorporation or bylaws, (1) any action required or permitted to be taken at any meeting of the board of directors or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing, or by electronic transmission, and (2) a consent may be documented, signed and delivered in any manner permitted by § 116 of this title. Any person (whether or

not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this subsection at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of the proceedings of the board of directors, or the committee thereof, in the same paper or electronic form as the minutes are maintained.

Section 9. Amend § 145, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 145 Indemnification of officers, directors, employees and agents; insurance.

(c)(1) To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of this section, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. For indemnification with respect to any act or omission occurring after December 31, 2020, references to "officer" for purposes of this subsection (c)(1) and (2) shall mean only a person who at the time of such act or omission is deemed to have consented to service by the delivery of process to the registered agent of the corporation pursuant to section 3114(b) of title 10 (for purposes of this sentence only, treating residents of this State as if they were nonresidents to apply section 3114(b) of title 10 to this sentence).

(2) The corporation may indemnify any other person who is not a present or former director or officer of the corporation against expenses (including attorneys' fees) actually and reasonably incurred by such person to the extent he or she has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of this section, or in defense of any claim, issue or matter therein.

(d) Any indemnification under subsections (a) and (b) of this section (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsections (a) and (b) of this section. Such determination shall be made, with respect to a person who is a director or officer of the corporation at the time of such determination:

(1) By a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum; or

(2) By a committee of such directors designated by majority vote of such directors, even though less than a quorum; or

(3) If there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion; or

(4) By the stockholders.

(e) Expenses (including attorneys' fees) incurred by an officer or director of the corporation in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this section. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents of the corporation or by persons serving at the request of the corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to or repeal or elimination of the certificate of incorporation or the bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

Section 10. Amend § 212, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 212 Voting rights of stockholders; proxies; limitations.

(c) Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy pursuant to subsection (b) of this section, the following shall constitute a valid means by which a stockholder may grant such authority:

(1) A stockholder, or such stockholder's authorized officer, director, employee or agent, may execute a document authorizing another person or persons to act for such stockholder as proxy. ~~Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent.~~

(2) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such transmission must either set forth or be submitted with information from which it can be determined that the transmission was authorized by the stockholder. If it is determined that such transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

(3) The authorization of a person to act as a proxy may be documented, signed and delivered in accordance with § 116 of this title, provided that such authorization shall set forth, or be delivered with information enabling the corporation to determine, the identity of the stockholder granting such authorization.

Section 11. Amend § 213, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 213 Fixing date for determination of stockholders of record.

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action ~~in writing~~ without a meeting in accordance with § 228 of this title, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors, the record date for determining stockholders entitled to consent to corporate action ~~in writing~~ without a meeting, when no prior action by the board of directors is required by this chapter, shall be the first date on which a signed ~~written~~ consent setting forth the action taken or proposed to be taken is delivered to the corporation ~~by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded.~~ Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested in accordance with § 228(d) of this title. If no record date has been fixed by the board of directors and prior action by the board of directors is required by this chapter, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

Section 12. Amend § 228, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 228 Consent of stockholders or members in lieu of meeting [For application of section, see 81 Del. Laws, c. 86, § 40]

(a) Unless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents ~~in writing~~, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation ~~by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested~~ in the manner required by this section.

(b) Unless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at a meeting of the members of a nonstock corporation, or any action which may be taken at any meeting of the members of a nonstock corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents ~~in writing~~, setting forth the action so taken, shall be signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members having a right to vote thereon were present and voted and shall be delivered to the corporation ~~by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of members are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested~~ in the manner required by this section.

(c) A consent must be set forth in writing or in an electronic transmission. No ~~written~~ consent shall be effective to take the corporate action referred to therein unless ~~written~~ consents signed by a sufficient number of holders or members to take action are delivered to the corporation in the manner required by this section within 60 days of the first date on which a ~~written~~ consent is so delivered to the corporation. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made, if evidence of such instruction or provision is provided to the corporation. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective. All references to a consent in this section means a consent permitted by this section.

(d)(1) ~~An electronic transmission consenting to an action to be taken and transmitted by a stockholder, member or proxyholder, or by a person or persons authorized to act for a stockholder, member or proxyholder, shall be deemed to be written and signed for the purposes of this section, provided that any such electronic transmission sets forth or is delivered with information from which the corporation can determine (A) that the electronic transmission was transmitted by the stockholder, member or proxyholder or by a person or persons authorized to act for the stockholder, member or proxyholder and (B) the date on which such stockholder, member or proxyholder or authorized person or persons transmitted such electronic transmission. A consent given by electronic transmission is delivered to the corporation upon the earliest of: (i) when the consent enters an information processing system, if any, designated by the corporation for receiving consents, so long as the electronic transmission is in a form capable of being processed by that system and the corporation is able to retrieve that electronic transmission; (ii) when a paper reproduction of the consent is delivered to the corporation's principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded; (iii) when a paper reproduction of the consent is delivered to the corporation's registered office in this State by hand or by certified or registered mail, return receipt requested; or (iv) when delivered in such other manner, if any, provided by resolution of the board of directors or governing body of the corporation. Whether the corporation has so designated an information processing system to receive consents is determined by the certificate of incorporation, the bylaws or from the context and surrounding circumstances, including the conduct of the corporation. A consent given by electronic transmission is delivered under this section even if no person is aware of its receipt. Receipt of an electronic acknowledgement from an information processing system establishes that a consent given by electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received. A consent permitted by this section shall be delivered: (i) to the principal place of business of the corporation; (ii) to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded; (iii) to the registered office of the corporation in this State by hand or by certified or registered mail, return receipt requested; or (iv) subject to the next sentence, in accordance with § 116 of this title to an information processing system, if any, designated by the corporation for receiving such consents. In the case of delivery pursuant to the foregoing clause (iv), such consent must set forth or be delivered with information that enables the corporation to determine the date of delivery of such consent and the identity of the person giving such consent, and, if such consent is given by a person authorized to act for a stockholder or member as proxy, such consent must comply with the applicable provisions of § 212(c)(2) & (3) of this title.~~

(2) Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such

copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. A consent may be documented and signed in accordance with § 116 of this title, and when so documented or signed shall be deemed to be in writing for purposes of this title; provided that if such consent is delivered pursuant to clause (i), (ii) or (iii) of subsection (d)(1) of this section, such consent must be reproduced and delivered in paper form.

(e) Prompt notice of the taking of the corporate action without a meeting by less than unanimous ~~written~~ consent shall be given to those stockholders or members who have not consented ~~in writing~~ and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that ~~written~~ consents signed by a sufficient number of holders or members to take the action were delivered to the corporation as provided in this section. In the event that the action which is consented to is such as would have required the filing of a certificate under any other section of this title, if such action had been voted on by stockholders or by members at a meeting thereof, the certificate filed under such other section shall state, in lieu of any statement required by such section concerning any vote of stockholders or members, that ~~written~~ consent has been given in accordance with this section.

Section 13. Amend § 232, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 232 Delivery of notice; notice by electronic transmission.

(b) Without limiting the manner by which notice otherwise may be given effectively to stockholders, but subject to subsection (e) of this section, any notice to stockholders given by the corporation under any provision of this chapter, the certificate of incorporation, or the bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice or electronic transmission to the corporation. A corporation may give a notice by electronic mail in accordance with subsection (a) of this section without obtaining the consent required by this subsection (b).

Section 14. Amend § 251, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 251 Merger or consolidation of domestic corporations [For application of this section, see 79 Del. Laws, c. 327, § 8 and 80 Del. Laws, c. 265, § 17]

(g) Notwithstanding the requirements of subsection (c) of this section, unless expressly required by its certificate of incorporation, no vote of stockholders of a constituent corporation shall be necessary to authorize a merger with or into a single direct or indirect wholly-owned subsidiary of such constituent corporation if:

(1) such constituent corporation and the direct or indirect wholly-owned subsidiary of such constituent corporation are the only constituent entities to the merger;

(2) each share or fraction of a share of the capital stock of the constituent corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or equal fraction of share of capital stock of a holding company having the same designations, rights, powers and preferences, and the qualifications, limitations and restrictions thereof, as the share of stock of the constituent corporation being converted in the merger;

(3) the holding company and the constituent corporation are corporations of this State and the direct or indirect wholly-owned subsidiary that is the other constituent entity to the merger is a corporation or limited liability company of this State;

(4) the certificate of incorporation and ~~by-laws~~ bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the certificate of incorporation and ~~by-laws~~ bylaws of the constituent corporation immediately prior to the effective time of the merger (other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors and the initial subscribers for shares and such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination, or cancellation has become effective);

(5) as a result of the merger, the constituent corporation or its successor becomes or remains a direct or indirect wholly-owned subsidiary of the holding company;

(6) the directors of the constituent corporation become or remain the directors of the holding company upon the effective time of the merger;

(7) the organizational documents of the surviving entity immediately following the effective time of the merger ~~contain provisions identical to the certificate of incorporation of the constituent corporation immediately prior to the effective time of the merger (other than provisions, if any, regarding the incorporator or incorporators, the corporate or entity name, the registered office and agent, the initial board of directors and the initial subscribers for shares, references to members rather than stockholders or shareholders, references to interests, units or the like rather than stock or shares, references to managers, managing members or other members of the governing body rather than directors and such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective); provided, however, that (i) if the organizational documents of the surviving entity do not contain the following provisions, they shall be amended in the merger to contain provisions requiring that (A) any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members or other members of the governing body of~~

the surviving entity, that ~~requires, if taken by the constituent corporation immediately prior to the effective time of the~~  
~~merger, would require, for its adoption under this chapter or its organizational documents under the certificate of~~  
~~incorporation or bylaws of the constituent corporation immediately prior to the effective time of the merger, the~~  
approval of the stockholders ~~or members of the surviving entity of the constituent corporation,~~ shall, by specific  
reference to this subsection, require, in addition ~~to approval of the stockholders or members of the surviving entity,~~ the  
approval of the stockholders of the holding company (or any successor by merger), by the same vote as is required by  
this chapter and/or by the ~~organizational documents of the surviving entity~~ certificate of incorporation or bylaws of the  
constituent corporation immediately prior to the effective time of the merger; provided, however, that for purposes of  
this clause (i)(A), ~~any surviving entity that is not a corporation shall include in such amendment a requirement that the~~  
~~approval of the stockholders of the holding company be obtained for any act or transaction by or involving the~~  
~~surviving entity, other than the election or removal of directors or managers, managing members or other members of~~  
~~the governing body of the surviving entity, which would require the approval of the stockholders of the surviving entity~~  
~~if the surviving entity were a corporation subject to this chapter;~~ (B) any amendment of the organizational documents  
of a surviving entity that is not a corporation, which amendment would, if adopted by a corporation subject to this  
chapter, be required to be included in the certificate of incorporation of such corporation, shall, by specific reference to  
this subsection, require, in addition, the approval of the stockholders of the holding company (or any successor by  
merger), by the same vote as is required by this chapter and/or by the ~~organizational documents of the surviving entity~~  
certificate of incorporation or bylaws of the constituent corporation immediately prior to the effective time of the  
merger; and ~~(C)(B)~~ the business and affairs of a surviving entity that is not a corporation shall be managed by or under  
the direction of a board of directors, board of managers or other governing body consisting of individuals who are  
subject to the same fiduciary duties applicable to, and who are liable for breach of such duties to the same extent as,  
directors of a corporation subject to this chapter; and (ii) ~~the organizational documents of the surviving entity may be~~  
~~amended in the merger (A) to reduce the number of classes and shares of capital stock or other equity interests or units~~  
~~that the surviving entity is authorized to issue and (B) to eliminate any provision authorized by § 141(d) of this title;~~  
and

(8) the stockholders of the constituent corporation do not recognize gain or loss for United States federal  
income tax purposes as determined by the board of directors of the constituent corporation. Neither paragraph (g)(7)(i)  
of this section nor any provision of a surviving entity's organizational documents required by paragraph (g)(7)(i) of this  
section shall be deemed or construed to require approval of the stockholders of the holding company to elect or remove  
directors or managers, managing members or other members of the governing body of the surviving entity. The term

"organizational documents", as used in paragraph (g)(7) of this section and in the preceding sentence, shall, when used in reference to a corporation, mean the certificate of incorporation of such corporation, and when used in reference to a limited liability company, mean the limited liability company agreement of such limited liability company.

As used in this subsection only, the term "holding company" means a corporation which, from its incorporation until consummation of a merger governed by this subsection, was at all times a direct or indirect wholly-owned subsidiary of the constituent corporation and whose capital stock is issued in such merger. From and after the effective time of a merger adopted by a constituent corporation by action of its board of directors and without any vote of stockholders pursuant to this subsection: (i) to the extent the restrictions of § 203 of this title applied to the constituent corporation and its stockholders at the effective time of the merger, such restrictions shall apply to the holding company and its stockholders immediately after the effective time of the merger as though it were the constituent corporation, and all shares of stock of the holding company acquired in the merger shall for purposes of § 203 of this title be deemed to have been acquired at the time that the shares of stock of the constituent corporation converted in the merger were acquired, and provided further that any stockholder who immediately prior to the effective time of the merger was not an interested stockholder within the meaning of § 203 of this title shall not solely by reason of the merger become an interested stockholder of the holding company, (ii) if the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of the constituent corporation immediately prior to the effective time of the merger, the shares of capital stock of the holding company into which the shares of capital stock of the constituent corporation are converted in the merger shall be represented by the stock certificates that previously represented shares of capital stock of the constituent corporation and (iii) to the extent a stockholder of the constituent corporation immediately prior to the merger had standing to institute or maintain derivative litigation on behalf of the constituent corporation, nothing in this section shall be deemed to limit or extinguish such standing. If an agreement of merger is adopted by a constituent corporation by action of its board of directors and without any vote of stockholders pursuant to this subsection, the secretary or assistant secretary of the constituent corporation shall certify on the agreement that the agreement has been adopted pursuant to this subsection and that the conditions specified in the first sentence of this subsection have been satisfied, provided that such certification on the agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement. The agreement so adopted and certified shall then be filed and become effective, in accordance with § 103 of this title. Such filing shall constitute a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately prior to such filing.

Section 15. Amend § 262, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 262 Appraisal rights [For application of this section, see 79 Del. Laws, c. 72, § 22; 79 Del. Laws, c. 122, § 12; 80 Del. Laws, c. 265, § 18; 81 Del. Laws, c. 354, § 17; and 82 Del. Laws, c. 45, § 23].

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 255, § 256, § 257, § 258, § 263 or § 264 of this title:

(1) Provided, however, that, ~~except as expressly provided in § 363(b) of this title,~~ no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of the meeting of stockholders to act upon the agreement of merger or consolidation (or, in the case of a merger pursuant to § 251(h), as of immediately prior to the execution of the agreement of merger), were either: (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in § 251(f) of this title.

(2) Notwithstanding paragraph (b)(1) of this section, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to §§ 251, 252, 254, 255, 256, 257, 258, 263 and 264 of this title to accept for such stock anything except:

a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;

b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than 2,000 holders;

c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a. and b. of this section; or

d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a., b. and c. of this section.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 253 or § 267 of this title is not owned by the parent immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(4) ~~In the event of an amendment to a corporation's certificate of incorporation contemplated by § 363(a) of this title, appraisal rights shall be available as contemplated by § 363(b) of this title, and the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as practicable, with the word "amendment" substituted for the words "merger or consolidation," and the word "corporation" substituted for the words "constituent corporation" and/or "surviving or resulting corporation."~~ [Repealed.]

Section 16. Amend § 266, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 266 Conversion of a domestic corporation to other entities.

(d) Upon the filing in the Office of the Secretary of State of a certificate of conversion to non-Delaware entity in accordance with subsection (c) of this section or upon the future effective date or time of the certificate of conversion to non-Delaware entity and payment to the Secretary of State of all fees prescribed under this title, ~~the Secretary of State shall certify that the corporation has filed all documents and paid all fees required by this title, and thereupon the corporation shall cease to exist as a corporation of this State at the time the certificate of conversion becomes effective in accordance with § 103 of this title. Such~~ A copy of the certificate of conversion to non-Delaware entity certified by the Secretary of State shall be prima facie evidence of the conversion by such corporation out of the State of Delaware.

Section 17. Amend § 363, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 363 ~~Certain amendments and mergers; votes required; appraisal rights~~ Nonprofit nonstock corporations.

(a) ~~Notwithstanding any other provisions of this chapter, a corporation that is not a public benefit corporation, may not, without the approval of 2/3 of the outstanding stock of the corporation entitled to vote thereon:~~

(1) ~~Amend its certificate of incorporation to include a provision authorized by § 362(a)(1) of this title; or~~

(2) ~~Merge or consolidate with or into another entity if, as a result of such merger or consolidation, the shares in such corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign public benefit corporation or similar entity.~~

~~The restrictions of this section shall not apply prior to the time that the corporation has received payment for any of its capital stock, or in the case of a nonstock corporation, prior to the time that it has members.~~

(b) ~~Any stockholder of a corporation that is not a public benefit corporation that holds shares of stock of such corporation immediately prior to the effective time of:~~

(1) ~~An amendment to the corporation's certificate of incorporation to include a provision authorized by § 362(a)(1) of this title; or~~

(2) A merger or consolidation that would result in the conversion of the corporation's stock into or exchange of the corporation's stock for the right to receive shares or other equity interests in a domestic or foreign public benefit corporation or similar entity; and has neither voted in favor of such amendment or such merger or consolidation nor consented thereto in writing pursuant to § 228 of this title, shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder's shares of stock; provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of the meeting of stockholders to act upon the agreement of merger or consolidation, or amendment, were either: (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders, unless, in the case of a merger or consolidation, the holders thereof are required by the terms of an agreement of merger or consolidation to accept for such stock anything except (A) shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than 2,000 holders; (B) cash in lieu of fractional shares or fractional depository receipts described in the foregoing clause (A); or (C) any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing clauses (A) and (B).

(c) Notwithstanding any other provisions of this chapter, a corporation that is a public benefit corporation may not, without the approval of 2/3 of the outstanding stock of the corporation entitled to vote thereon:

(1) Amend its certificate of incorporation to delete or amend a provision authorized by § 362(a)(1) or § 366(c) of this title; or

(2) Merge or consolidate with or into another entity if, as a result of such merger or consolidation, the shares in such corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign corporation that is not a public benefit corporation or similar entity and the certificate of incorporation (or similar governing instrument) of which does not contain the identical provisions identifying the public benefit or public benefits pursuant to § 362(a) of this title or imposing requirements pursuant to § 366(c) of this title.

(d) Notwithstanding the foregoing, a nonprofit nonstock corporation may not be a constituent corporation to any merger or consolidation governed by this section with a public benefit corporation or in which the certificate of incorporation of the surviving corporation is amended to include a provision authorized by § 362 (a)(1) of this title.

Section 18. Amend § 365, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 365 Duties of directors.

(c) ~~The certificate of incorporation of a public benefit corporation may include a provision that any disinterested failure to satisfy this section shall not~~ A director's ownership of or other interest in the stock of the public benefit corporation shall not alone, for the purposes of this section, create a conflict of interest on the part of the director with respect to the director's decision implicating the balancing requirement in subsection (a) of this section, except to the extent that such ownership or interest would create a conflict of interest if the corporation were not a public benefit corporation. In the absence of a conflict of interest, no failure to satisfy that balancing requirement shall, for the purposes of § 102(b)(7) or § 145 of this title, constitute an act or omission not in good faith, or a breach of the duty of loyalty, unless the certificate of incorporation so provides.

Section 19. Amend § 367, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 367 ~~Derivative suits~~ Suits to enforce the requirements of §365(a).

~~Stockholders of a public benefit corporation owning~~ Any action to enforce the balancing requirement of § 365(a) of this title, including any individual, derivative or any other type of action, may not be brought unless the plaintiffs in such action own individually or collectively, as of the date of instituting such ~~derivative suit~~ action, at least 2% of the corporation's outstanding shares or, in the case of a corporation with shares listed on a national securities exchange, the lesser of such percentage or shares of the corporation with a market value of at least \$2,000,000 ~~in market value, may maintain a derivative lawsuit to enforce the requirements set forth in § 365(a) of this title as of the date the action is instituted.~~ This section shall not relieve the plaintiffs from complying with any other conditions applicable to filing a derivative action including § 327 of this title and any rules of the court in which the action is filed.

Section 20. Amend § 377, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 377 Change of registered agent.

(b) Any individual or entity designated by a foreign corporation as its registered agent for service of process may resign ~~by filing with the Secretary of State a signed statement that the registered agent is unwilling to continue to act as the registered agent of the corporation for service of process, including in the statement the post-office address of the main or headquarters office of the foreign corporation, but such resignation shall not become effective until 30 days after the statement is filed.~~ The statement shall be acknowledged by the registered agent and shall contain a representation that

649 ~~written notice of resignation was given to the corporation at least 30 days prior to the filing of the statement by mailing or~~  
650 ~~delivering such notice to the corporation at its address given in the statement~~ in the same manner as provided in § 136(a) of  
651 this title.

652 Section 21. Amend § 391, Title 8 of the Delaware Code by making deletions as shown by strike through and  
653 insertions as shown by underline as follows:

654 § 391 Amounts payable to Secretary of State upon filing certificate or other paper.

655 (a) The following fees and penalties shall be collected by and paid to the Secretary of State, for the use of the  
656 State:

657 (1) Upon the receipt for filing of an original certificate of incorporation, the fee shall be computed on the  
658 basis of \$0.02 for each share of authorized capital stock having par value up to and including 20,000 shares, \$0.01 for  
659 each share in excess of 20,000 shares up to and including 200,000 shares, and 2/5 of a \$0.01 for each share in excess of  
660 200,000 shares; \$0.01 for each share of authorized capital stock without par value up to and including 20,000 shares,  
661 1/2 of \$0.01 for each share in excess of 20,000 shares up to and including 2,000,000 shares, and 2/5 of \$0.01 for each  
662 share in excess of 2,000,000 shares. In no case shall the amount paid be less than \$15. For the purpose of computing  
663 the fee on par value stock each \$100 unit of the authorized capital stock shall be counted as 1 assessable share.

664 (2) Upon the receipt for filing of a certificate of amendment of certificate of incorporation, or a certificate of  
665 amendment of certificate of incorporation before payment of capital, or a restated certificate of incorporation,  
666 increasing the authorized capital stock of a corporation, the fee shall be an amount equal to the difference between the  
667 fee computed at the foregoing rates upon the total authorized capital stock of the corporation including the proposed  
668 increase, and the fee computed at the foregoing rates upon the total authorized capital stock excluding the proposed  
669 increase. In no case shall the amount paid be less than \$30.

670 (3) Upon the receipt for filing of a certificate of amendment of certificate of incorporation before payment of  
671 capital and not involving an increase of authorized capital stock, or an amendment to the certificate of incorporation  
672 not involving an increase of authorized capital stock, or a restated certificate of incorporation not involving an increase  
673 of authorized capital stock, or a certificate of retirement of stock, the fee to be paid shall be \$30. For all other  
674 certificates relating to corporations, not otherwise provided for, the fee to be paid shall be \$5.00. In the case of exempt  
675 corporations no fee shall be paid under this paragraph.

676 (4) Upon the receipt for filing of a certificate of merger or consolidation of 2 or more corporations, the fee  
677 shall be an amount equal to the difference between the fee computed at the foregoing rates upon the total authorized  
678 capital stock of the corporation created by the merger or consolidation, and the fee so computed upon the aggregate

amount of the total authorized capital stock of the constituent corporations. In no case shall the amount paid be less than \$75. The foregoing fee shall be in addition to any tax or fee required under any other law of this State to be paid by any constituent entity that is not a corporation in connection with the filing of the certificate of merger or consolidation.

(5) Upon the receipt for filing of a certificate of dissolution, there shall be paid to and collected by the Secretary of State a fee of:

a. Forty dollars; or

b. Ten dollars in the case of a certificate of dissolution which certifies that:

1. The corporation has no assets and has ceased transacting business; and

2. The corporation, for each year since its incorporation in this State, has been required to pay only the minimum franchise tax then prescribed by § 503 of this title; and

3. The corporation has paid all franchise taxes and fees due to or assessable by this State through the end of the year in which said certificate of dissolution is filed.

(6) Upon the receipt for filing of a certificate of reinstatement of a foreign corporation or a certificate of surrender and withdrawal from the State by a foreign corporation, there shall be collected by and paid to the Secretary of State a fee of \$10.

(7) For receiving and filing and/or indexing any certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee of \$115 in each case shall be paid to the Secretary of State. The fee in the case of a certificate of incorporation filed as required by § 102 of this title shall be \$25. For entering information from each instrument into the Delaware Corporation Information System in accordance with § 103(c)(8) of this title, the fee shall be \$5.00.

a. A certificate of dissolution which meets the criteria stated in paragraph (a)(5)b. of this section shall not be subject to such fee; and

b. A certificate of incorporation filed in accordance with § 102 of this title shall be subject to a fee of \$25.

(8) For receiving and filing and/or indexing the annual report of a foreign corporation doing business in this State, a fee of \$125 shall be paid. In the event of neglect, refusal or failure on the part of any foreign corporation to file the annual report with the Secretary of State on or before June 30 each year, the corporation shall pay a penalty of \$125.

(9) For recording and indexing articles of association and other papers required by this chapter to be recorded by the Secretary of State, a fee computed on the basis of \$0.01 a line shall be paid.

(10) For certifying copies of any paper on file provided by this chapter, a fee of \$50 shall be paid for each copy certified. In addition, a fee of \$2.00 per page shall be paid in each instance where the Secretary of State provides the copies of the document to be certified.

(11) For issuing any certificate of the Secretary of State other than a certification of a copy under paragraph (a)(10) of this section, or a certificate that recites all of a corporation's filings with the Secretary of State, a fee of \$50 shall be paid for each certificate. For issuing any certificate of the Secretary of State that recites all of a corporation's filings with the Secretary of State, a fee of \$175 shall be paid for each certificate. For issuing any certificate via the Division's online services, a fee of up to \$175 shall be paid for each certificate.

(12) For filing in the office of the Secretary of State any certificate of change of location or change of registered agent, as provided in § 133 of this title, there shall be collected by and paid to the Secretary of State a fee of \$50, provided that no fee shall be charged pursuant to § 103(c)(6) and (c)(7) of this title.

(13) For filing in the office of the Secretary of State any certificate of change of address or change of name of registered agent, as provided in § 134 of this title, there shall be collected by and paid to the Secretary of State a fee of \$50, plus the same fees for receiving, filing, indexing, copying and certifying the same as are charged in the case of filing a certificate of incorporation.

(14) For filing in the office of the Secretary of State any certificate of resignation of a registered agent and appointment of a successor, as provided in § 135 of this title, there shall be collected by and paid to the Secretary of State a fee of \$50.

(15) For filing in the office of the Secretary of State, any certificate of resignation of a registered agent without appointment of a successor, as provided in §§ 136 and 377 of this title, there shall be collected by and paid to the Secretary of State a fee of \$2.00 for each corporation whose registered agent has resigned by such certificate.

(16) For preparing and providing a written report of a record search, a fee of up to \$100 shall be paid.

(17) For preclearance of any document for filing, a fee of \$250 shall be paid.

(18) For receiving and filing and/or indexing an annual franchise tax report of a corporation provided for by § 502 of this title, a fee of \$25 shall be paid by exempt corporations and a fee of \$50 shall be paid by all other corporations.

(19) For receiving and filing and/or indexing by the Secretary of State of a certificate of domestication and certificate of incorporation prescribed in § 388(d) of this title, a fee of \$165, plus the fee payable upon the receipt for filing of an original certificate of incorporation, shall be paid.

(20) For receiving, reviewing and filing and/or indexing by the Secretary of State of the documents prescribed in § 389(c) of this title, a fee of \$10,000 shall be paid.

(21) For receiving, reviewing and filing and/or indexing by the Secretary of State of the documents prescribed in § 389(d) of this title, an annual fee of \$2,500 shall be paid.

(22) Except as provided in this section, the fees of the Secretary of State shall be as provided for in § 2315 of Title 29.

(23) In the case of exempt corporations, the total fees payable to the Secretary of State upon the filing of a Certificate of Change of Registered Agent and/or Registered Office or a Certificate of Revival shall be \$5.00 and such filings shall be exempt from any fees or assessments pursuant to the requirements of § 103(c)(6) and (c)(7) of this title.

(24) For accepting a corporate name reservation application, an application for renewal of a corporate name reservation, or a notice of transfer or cancellation of a corporate name reservation, there shall be collected by and paid to the Secretary of State a fee of up to \$75.

(25) For receiving and filing and/or indexing by the Secretary of State of a certificate of transfer or a certificate of continuance prescribed in § 390 of this title, a fee of \$1,000 shall be paid.

(26) For receiving and filing and/or indexing by the Secretary of State of a certificate of conversion and certificate of incorporation prescribed in § 265 of this title, a fee of \$115, plus the fee payable upon the receipt for filing of an original certificate of incorporation, shall be paid.

(27) For receiving and filing and/or indexing by the Secretary of State of a certificate of conversion prescribed in § 266 of this title, a fee of \$165 shall be paid.

(28) For receiving and filing and/or indexing by the Secretary of State of a certificate of validation prescribed in § 204 of this title, a fee of \$2,500 shall be paid; provided, that if the certificate of validation has the effect of increasing the authorized capital stock of a corporation, an additional fee, calculated in accordance with paragraph (a)(2) of this section, shall also be paid.

Section 22. Each of Sections 1 through 3, Sections 5 through 13, Section 16, and Sections 17 (other than with respect to the repeal of Section 363(b)(2)) through 21 of this Act shall be effective upon its enactment into law.

Section 23. Section 4 shall be effective retroactively as of January 1, 2020 with respect any emergency condition occurring on or after such date and with respect to any action contemplated by Section 4 and taken on or after such date by

766 or on behalf of the corporation with respect to a meeting of stockholders held or a dividend as to which the record date or  
767 payment date is anticipated to occur during the pendency of such condition.

768 Section 24. Each of Sections 14, 15 and 17 (solely with respect to the repeal of Section 363(b)(2)) of this Act shall  
769 be effective only with respect to a merger or consolidation consummated pursuant to an agreement entered into, or, with  
770 respect to a merger consummated pursuant to Section 253, resolutions of the board of directors adopted, on or after its  
771 enactment into law.

#### SYNOPSIS

Section 1. Section 1 of this Act amends Section 102(a) to provide that the name of a corporation must be such as to distinguish it from the name of any registered series of a limited partnership.

Section 2. Section 2 of this Act amends Section 102(b)(7). Section 102(b)(7) authorizes a corporation to include in its certificate of incorporation an exculpatory provision that eliminates or limits the liability of directors for monetary damages for certain breaches of duty. The amendment to Section 102(b)(7) clarifies that an exculpatory provision has the effect of eliminating or limiting liability for monetary damages with respect to any act or omission of a director occurring while the exculpatory provision is in effect. Unless the provision provides otherwise at the time of such act or omission, any future amendment, repeal or elimination of that provision will not revoke the elimination or limitation of liability.

Section 3. Section 3 of this Act amends Section 108(c). To conform to amended Section 116, Section 108(c) is being amended to permit an incorporator or initial director to rely on Section 116 as a basis to document, sign and deliver a consent by electronic means, unless the use of Section 116 is expressly restricted or prohibited by a provision of the certificate of incorporation.

Section 4. Section 4 of this Act amends Section 110. The amendments to Section 110 clarify the types of events that give rise to the availability of emergency powers and confirm certain of the specific powers relating to stockholders' meetings and dividends that may be exercised during an emergency condition. The amendments to Section 110 are not intended, by implication or otherwise, to limit or eliminate the availability of any powers or emergency actions that are not specifically enumerated with respect to stockholders' meetings, dividends, or other matters that are practical and necessary in connection with the particular emergency, or to affect the validity of any action taken in an emergency situation but not authorized by the amendments or taken in a non-emergency situation.

Section 5. Section 5 of this Act amends Section 116. Section 116(a)(2) establishes non-exclusive means to sign documents for purposes of chapter 1 of title 8. An amendment to this provision clarifies that a person may "execute" a document (such as agreements of merger and other documents that require execution pursuant to chapter 1 of title 8) by using any type of signature contemplated by Section 116(a)(2).

Section 116(b) is being amended to allow persons to rely on Section 116(a) as a basis for using an electronic transmission to document director, stockholder, member and incorporator consents and for signing and delivering those documents by electronic means. This amendment supplements provisions that already permitted these consents by electronic means before this amendment. A conforming amendment to Section 116(a)(3) requires that the electronic delivery of stockholder or member consents, and the electronic delivery of documents evidencing a proxy granted by a stockholder or member, must satisfy additional requirements set forth in Section 228(d) (with respect to consents) and Section 212(c) (with respect to proxies).

The final sentence of Section 116(b) is being amended to clarify that a provision in the certificate of incorporation or bylaws may restrict or prohibit only the electronic means (but not the manual means) to document an act or transaction and to sign and deliver a document.

Section 6. Section 6 of this Act amends Section 132(a)(4) to remove erroneous references to a foreign "general" partnership.

Section 7. Section 7 of this Act amends Section 135 to reflect the current practice of the Office of the Secretary of State relating to the appointment of a successor registered agent by a registered agent of a corporation.

Section 8. Section 8 of this Act amends Section 141(f). To conform to amended Section 116, Section 141(f) is being amended to permit a director to rely on Section 116 as a basis to document, sign and deliver a consent by electronic means, unless the use of Section 116 is expressly restricted or prohibited by a certificate of incorporation or bylaw provision adopted pursuant to Section 116(b).

Section 9. Section 9 of this Act amends Sections 145(c) and 145(f). Section 145(c) provides current and former directors and officers a right to indemnification if they are successful (on the merits or otherwise) in defending claims brought against them by reason of their conduct as directors and/or officers. Amended Section 145(c) defines the group of officers who are entitled to this statutory right of indemnification as the officers who are deemed to have consented to the jurisdiction of the State for acts relating to breach of officer duties pursuant to Section 3114(b) of title 10. Section 3114(b)

of title 10 does not apply to residents of the State, but amended Section 145(c) treats residents as if they were non-residents to ensure that persons who hold the officer positions identified in Section 3114(b) are entitled to indemnification, whether or not they are residents of the State. The amendment does not define who qualifies as an officer under Section 145(c) for purposes of a right to indemnification for an act or omission occurring on or before December 31, 2020 and does not define who qualifies as an officer for purposes of the other subsections of Section 145.

Section 145(c) is also amended to add a new subsection (2) that permits (but does not require) a corporation to indemnify other persons who are not current or former directors or officers if they are successful in defense of a proceeding referenced in subsections (a) and (b) of Section 145. A corporation may rely on Section 145(f) to make this permissive indemnification a mandatory right for these other persons, such as pursuant to a provision in the certificate of incorporation, the bylaws, an agreement, or vote of stockholders or disinterested directors. This amendment to Section 145(c) is consistent with case law holding that a corporation lawfully may agree to provide indemnification to a person who is not a director or officer solely based on that person's successful defense of a claim covered by Section 145(a) or (b), without an inquiry into whether such person has met the conduct requirements of Section 145(a) or (b). See, *Cochran v. Stifel Financial Corp.*, Del. Ch. C.A. No. 17350 (Dec. 13, 2000), *aff'd in part and reversed in part*, both on unrelated grounds, 809 A.2d 555 (Del. 2002).

Section 145(f) prohibits the elimination or impairment of a right to indemnification or to advancement by amendment to the certificate of incorporation or the bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative, or investigative action, suit or proceeding for which indemnification is sought, unless the provision in effect at the time of the act or omission explicitly authorizes such elimination or impairment after such act or omission has occurred. The amendment to Section 145(f) clarifies that such prohibition applies in the case of any repeal or elimination of the certificate of incorporation or the bylaws.

Section 10. Section 10 of this Act amends Section 212(c) to add a new subsection (3), which clarifies that a stockholder or member may rely on Section 116 as basis to document a proxy and to sign and deliver a document evidencing the proxy, unless an express provision of the certificate of incorporation or bylaws adopted in accordance with Section 116(b) prohibits or restricts those actions being taken by electronic means. An amendment to subsection (1) of Section 212(c) simplifies the language but does not enact a substantive change.

Section 11. Section 11 of this Act amends Section 213(b). To conform to amended Section 228(d), Section 213(b) is being amended to eliminate redundant references to where, and to whom, a consent may be delivered.

Section 12. Section 12 of this Act amends Section 228. Section 228(d) is being amended by deleting the provisions on documenting, signing and delivering a consent by electronic means, so that those actions may be effected pursuant to amended Section 116, unless an express provision of the certificate of incorporation or bylaws adopted in accordance with Section 116(b) restricts or prohibits a consent from being documented, signed or delivered electronically. The last sentence of amended Section 228(d)(1) requires certain additional information to be provided to the corporation in connection with delivering a consent electronically.

Redundant references to where, and to whom, a consent may be delivered have been deleted from amended Sections 228(a) and (b). References to "written consents" or consents set forth "in writing" have been replaced with a new sentence added to Section 228(c) stating that a consent must be set forth in writing or in an electronic transmission.

Section 13. Section 13 of this Act amends Section 232(b) to clarify that a stockholder's or member's consent is not required in order for a corporation to give the stockholder or member notices by electronic mail pursuant to Section 232(a).

Section 14. Section 14 of this Act amends Section 251(g)(7) to eliminate the requirement, in connection with a merger pursuant to such Section, that the organizational documents of the surviving entity contain provisions identical to the certificate of incorporation of the constituent corporation immediately prior to the merger. This amendment shall not be construed to eliminate the requirement in Section 251(g) that the organizational documents of the surviving entity contain provisions requiring approval of the holding company's stockholders for any act or transaction by the surviving entity that, if taken by the constituent corporation immediately prior to the merger, would have required stockholder approval. This Act also makes clerical changes to Section 251(g)(4). The amendments to Section 251(g) shall be effective with respect to agreements of merger or consolidation consummated pursuant to an agreement entered into on or after their enactment into law.

Section 15. Section 15 of this Act amends Section 262(b) to conform to the amendments to Section 363 relating to public benefit corporations. The amendments to Section 262 shall be effective with respect to a merger or consolidation consummated pursuant to an agreement entered into, or, with respect to a merger consummated pursuant to Section 253, resolutions of the board of directors adopted, on or after their enactment into law.

Section 16. Section 16 of this Act amends Section 266 to reflect the current practice of the Office of the Secretary of State relating to the issuance of a certified copy of a certificate of conversion to non-Delaware entity.

Section 17. Sections 17, 18 and 19 of this Act amend Sections 363, 365 and 367, respectively. The amendments to Section 363 will lower from two-thirds to a majority the stockholder vote required for (1) amendments to a certificate of incorporation that convert a conventional corporation into a public benefit corporation or convert a public benefit corporation into a conventional corporation and (2) mergers that convert shares of conventional corporations into shares of

public benefit corporations or shares of public benefit corporations into shares of conventional corporations. Those amendments will also eliminate appraisal rights for (1) amendments to a certificate of incorporation that convert a conventional corporation into a public benefit corporation and (2) mergers that convert shares of conventional corporations into shares of public benefit corporations. The amendments to Section 363(b)(2) shall be effective with respect to a merger or consolidation consummated pursuant to an agreement entered into, or, with respect to a merger consummated pursuant to Section 253, resolutions of the board of directors adopted, on or after their enactment into law.

The amendments to Section 365(c)(1) clarify that, for the purposes of Section 365(b), a director will not be interested with respect to a balancing decision due to the director's interest in stock of the corporation, except to the extent that such ownership would create a conflict of interest if the corporation were not a public benefit corporation and (2) provide that any failure to satisfy the balancing requirement shall not constitute an act or omission not in good faith for the purposes of Section 102(b)(7) or Section 145, unless the certificate of incorporation otherwise provides.

The amendments to Section 367 clarify that any lawsuit to enforce the balancing requirement to which public benefit corporations are subject must be brought by plaintiffs owning at least 2% of the corporation's outstanding shares or, in the case of certain listed companies, shares with a value of at least \$2,000,000 if such number is lower.

Section 18. Section 20 of this Act amends Section 377(b) to conform the process relating to the resignation of a registered agent of a foreign corporation to the process applicable to the resignation of a registered agent of a corporation under Section 136.

Section 19. Section 21 of this Act amends Section 391(a)(16) to include the maximum fee payable to the Secretary of State for a written report of a record search.

Section 20. Sections 22 through 24 of this Act relate to the effectiveness of the amendments to Title 8. Section 22 of this Act provides that each of Sections 1 through 3, Sections 5 through 13, Section 16, and Sections 17 (other than with respect to the repeal of Section 363(b)(2)) through 21 of this Act is effective upon its enactment into law. Section 23 of this Act provides that Section 4 of this Act is effective retroactively as of January 1, 2020 with respect to any emergency condition occurring on or after such date and with respect to any action contemplated by Section 4 of this Act and taken on or after such date by or on behalf of the corporation with respect to a meeting of stockholders held or a dividend as to which the record date or payment date is anticipated to occur during the pendency of such condition. Section 24 of this Act provides that each of Sections 14, 15 and 17 (solely with respect to the repeal of Section 363(b)(2)) of this Act is effective only with respect to a merger or consolidation consummated pursuant to an agreement entered into, or, with respect to a merger consummated pursuant to Section 253, resolutions of the board of directors adopted, on or after enactment into law of such Section.