SPONSOR: Sen. Mantzavinos & Sen. Gay & Sen. Hansen & Sen. Townsend & Rep. Bush & Rep. Griffith & Rep. Lynn
Sen. Walsh; Rep. Spiegelman

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 284
AS AMENDED BY
HOUSE AMENDMENT NO. 1

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

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

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

§ 3801. Definitions.

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

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

§ 3804. Legal proceedings.

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

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

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

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

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

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

§ 3806. Management of statutory trust.

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

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

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

§ 3806. Management of statutory trust.

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

subchapter or other law shall be construed to restrict a trustee's power and authority to delegate any or all of its rights, powers and duties to manage and control the business and affairs of the statutory trust.

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

§ 3806. Management of statutory trust.

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

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

§ 3806. Management of statutory trust.

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

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

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

provided, that if the void or voidable act or transaction was the issuance or assignment of any beneficial interests, the beneficial interests purportedly issued or assigned shall be deemed not to have been issued or assigned for purposes of determining whether the void or voidable act or transaction was ratified or waived pursuant to this subsection. Any act or transaction ratified, or with respect to which the failure to comply with any requirements of the governing instrument is waived, pursuant to this subsection shall be deemed validly taken at the time of such act or transaction. If an amendment to the governing instrument to permit any such act or transaction to be validly taken would require notice to any beneficial owners, trustees or other persons under the governing instrument and the ratification or waiver of such act or transaction is effectuated pursuant to this subsection by the beneficial owners, trustees or other persons whose approval would be required to amend the governing instrument, notice of such ratification or waiver shall be given following such ratification or waiver to the beneficial owners, trustees or other persons who would have been entitled to notice of such an amendment and who have not otherwise received notice of, or participated in, such ratification or waiver. The provisions of this

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

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

§ 3807. Trustee in State; registered agent.

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

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

§ 3807. Trustee in State; registered agent.

(c) Any statutory trust maintaining a registered office and registered agent in this State under subsection (b) of this section may change the location of its registered office in this State to any other place in this State, or may change the registered agent to any other person or corporation (meeting the requirements contained in subsection (b) of this section), by filing an amendment to its certificate of trust in accordance with the applicable provisions of this subchapter. If a statutory trust which is an investment company or a business development company registered or regulated as aforesaid

maintains a registered office and a registered agent in this State as herein provided, then the reference in § 3810(a)(1)b. of this title to the "name and address in this State of at least 1 of the trustees meeting the requirements of § 3807 of this title" shall be deemed a reference to the name and address in this State of the registered agent and registered office maintained under this section, and the certificate of trust filed under § 3810 of this title shall reflect such information in lieu of the information otherwise required by § 3810(a)(1)b. of this title.

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

§ 3807. Trustee in State; registered agent.

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

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

§ 3811. Execution.

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

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

§ 3813. Fees.

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

(5) Upon the receipt for filing of a certificate under § 3807(e) of this title, a fee in the amount of $200, upon the receipt for filing of a certificate under § 3807(f) of this title, a fee in the amount of $200, and upon the receipt for filing of a certificate under § 3807(g) of this title, a fee in the amount of $2.00 for each statutory trust whose registered agent has resigned by such certificate, and upon the receipt for filing of a certificate under § 3807(n) of this title, a fee in the amount of $500 plus $100 for each statutory trust whose certificate of trust has been amended by such certificate.

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

§ 3815. Merger and consolidation.

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

termination or amendment contained in the agreement of merger or consolidation. Unless otherwise provided in the governing instrument of a statutory trust, a statutory trust whose original certificate of trust was filed with the Secretary of State and effective on or prior to July 31, 2020, shall continue to be governed by this subsection as in effect on July 31, 2020.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3821. Conversion of a statutory trust.

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

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

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

§ 3823. Transfer or continuance of domestic statutory trusts.

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

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

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

§ 3825. Division of a statutory trust.

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

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

§ 3826. Document form, signature and delivery.

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

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

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

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

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 provision of the governing instrument shall not limit the application of subsection (a) of this section unless the provision expressly restricts 1 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.

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

Subchapter III. Control Beneficial Interest Acquisitions

§ 3881. Control beneficial interest acquisition definitions.

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

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

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

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

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

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

(4) Any other person that:

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

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

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

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

(2) "Control beneficial interest acquisition" does not include the acquisition of beneficial interests:

a. Before August 1, 2022;

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

c. Under the laws of descent and distribution;

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

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

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

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

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

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

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

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

f. A majority or more of all voting power.

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

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

(2) "Control beneficial interests" includes:

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

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

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

(1) An acquiring person;

(2) An officer of the statutory trust;

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

(4) A trustee of the statutory trust who is an "interested person" of the statutory trust as defined in the 1940 Act or any rule adopted thereunder.

(g) "Person" includes an associate of the person.

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

For the purposes of this subchapter:

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

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

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

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

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

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

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

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

§ 3884. Acquiring person statement.

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

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

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

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

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

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

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

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

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

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

§ 3885. Acquiring person meeting request.

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

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

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

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

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

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

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

§ 3886. Special meeting requirements; limitations.

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

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

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

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

§ 3887. Special meeting notice.

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

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

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

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

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

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

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

Section 20. Sections 1 through 9, 11, and 13 through 19 of this Act shall become effective August 1, 2022. Sections 10 and 12 of this Act shall become effective August 1, 2023.