

1 HB250
2 195929-2
3 By Representative Poole
4 RFD: Judiciary
5 First Read: 20-MAR-19

1
2 ENROLLED, An Act,

3 Relating to business entities; to add Chapter 2A to
4 Title 10A, consisting of Sections 10A-2A-1.01 to 10A-2A-17.06,
5 inclusive, to the Code of Alabama 1975, substantially revising
6 the Alabama Business Corporation Law to reflect the national
7 standards set by the Model Business Corporation Act of 2016
8 and the Delaware General Corporation Law; to amend Sections
9 10A-1-1.02, 10A-1-1.03, 10A-1-1.08, 10A-1-1.12, 10A-1-3.05,
10 10A-1-3.06, 10A-1-3.32, 10A-1-3.42, 10A-1-4.01, and
11 10A-1-4.02, Code of Alabama 1975, as amended by Act 2018-125;
12 to amend Sections 10A-1-4.04, 10A-1-4.06, 10A-1-4.11,
13 10A-1-4.13, 10A-1-4.15, 10A-1-4.21, 10A-1-4.23, and
14 10A-1-4.24, Code of Alabama 1975; to amend Section 10A-1-4.25,
15 Code of Alabama 1975, as amended by Act 2018-125; to amend
16 Section 10A-1-4.26, Code of Alabama 1975; to amend Sections
17 10A-1-4.31, 10A-1-5.01, and 10A-1-5.08, Code of Alabama 1975,
18 as amended by Act 2018-125; to amend Section 10A-1-6.01, Code
19 of Alabama 1975; to amend Sections 10A-1-6.02, 10A-1-7.01,
20 10A-1-7.04, and 10A-1-7.11, Code of Alabama 1975, as amended
21 by Act 2018-125; to amend Section 10A-1-7.21, Code of Alabama
22 1975; to amend Sections 10A-1-7.31, 10A-1-8.01, and
23 10A-1-8.02, Code of Alabama 1975, as amended by Act 2018-125;
24 to amend Sections 10A-1-8.04, 10A-1-9.01, 10A-4-2.02,
25 10A-4-4.01, 10A-4-4.02, 10A-4-5.01, 10A-4-5.04, 10A-5A-10.01,

1 10A-5A-10.03, 10A-5A-10.04, 10A-5A-10.05, and 10A-5A-10.07,
2 Code of Alabama 1975; to amend Section 10A-5A-10.08, Code of
3 Alabama 1975, as amended by Act 2018-125; to amend Sections
4 10A-8A-9.02, 10A-8A-9.04, 10A-8A-9.05, 10A-8A-9.06,
5 10A-8A-9.08, and 10A-8A-9.09, as added to the Code of Alabama
6 1975 by Act 2018-125; to amend Sections 10A-9A-10.02,
7 10A-9A-10.04, 10A-9A-10.05, 10A-9A-10.06, and 10A-9A-10.08,
8 Code of Alabama 1975; to amend Section 10A-9A-10.09, Code of
9 Alabama 1975, as amended by Act 2018-125; to amend Sections
10 10A-10-1.09, 10A-10-1.12, 10A-10-1.15, 10A-10-1.16,
11 10A-11-1.01, 10A-11-1.03, 10A-11-1.04, 10A-11-1.06,
12 10A-11-1.12, 10A-30-2.01, 10A-30-2.03, 10A-30-2.04,
13 10A-30-2.05, 10A-30-2.06, 10A-30-2.09, 10A-30-2.12, and
14 10A-30-2.13, Code of Alabama 1975, to make conforming changes
15 throughout the Alabama Business and Nonprofit Entity Code in
16 order to effectuate the changes to the Alabama Business
17 Corporation Law and conform with the other entities governed
18 by the Alabama Business and Nonprofit Entity Code; and to
19 repeal Chapter 2 of Title 10, consisting of Sections
20 10A-2-1.01 to 10A-2-17.02, inclusive, Code of Alabama 1975.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Chapter 2A, commencing with Section
23 10A-2A-1.01, is added to Title 10A of the Code of Alabama
24 1975, as follows:

25 ARTICLE 1. GENERAL PROVISIONS.

1 Division A. SHORT TITLE.

2 §10A-2A-1.01. Short title.

3 (a) This chapter and the provisions of Chapter 1, to
4 the extent applicable to business corporations, shall be known
5 and may be cited as the Alabama Business Corporation Law.

6 (b) This chapter and the provisions of Chapter 1, to
7 the extent applicable to business corporations, apply to a
8 corporation incorporated and existing under this chapter or
9 any predecessor law regarding business corporations, and to a
10 foreign corporation that is transacting business in this
11 state, regardless of whether the foreign corporation is
12 registered to transact business in this state. Without in any
13 way limiting the generality of any provision of this chapter
14 or of any provision of Chapter 1, this chapter and the
15 provisions of Chapter 1, to the extent applicable to
16 corporations, shall apply to banks, trust companies, savings
17 and loan associations, insurance companies, public utilities,
18 and railroad companies, except to the extent, if any, that any
19 provision of this chapter or of Chapter 1 is inconsistent with
20 other statutes of this state specifically applicable to those
21 entities.

22 Division B. FILING DOCUMENTS.

23 §10A-2A-1.20. Requirements for filing instruments;
24 extrinsic facts.

1 (a) Whenever any filing instrument is to be filed
2 with the Secretary of State or in accordance with this
3 chapter, such instrument shall be executed as follows:

4 (1) Except as provided in subsection (3), the
5 certificate of incorporation, and any other instrument to be
6 filed before the election of the initial board of directors if
7 the initial directors were not named in the certificate of
8 incorporation, shall be signed by the incorporator or
9 incorporators or the successors and assigns of the
10 incorporator or incorporators. If any incorporator is not
11 available then any other instrument may be signed, with the
12 same effect as if the incorporator had signed it, by any
13 person for whom or on whose behalf the incorporator, in
14 executing the certificate of incorporation, was acting
15 directly or indirectly as employee or agent, provided that the
16 other instrument shall state that the incorporator is not
17 available and the reason therefor, that the incorporator in
18 executing the certificate of incorporation was acting directly
19 or indirectly as employee or agent for or on behalf of the
20 person, and that the person's signature on the instrument is
21 otherwise authorized and not wrongful.

22 (2) Except as provided in subsection (3), all other
23 filing instruments shall be signed:

24 (i) by any authorized officer of the corporation; or

1 (ii) if it shall appear from the filing instrument
2 that there are no such officers, then by a majority of the
3 directors or by such directors as may be designated by the
4 board of directors; or

5 (iii) if it shall appear from the filing instrument
6 that there are no such officers or directors, then by the
7 holders of record, or such of them as may be designated by the
8 holders of record, of a majority of all outstanding shares of
9 stock; or

10 (iv) by the holders of record of all outstanding
11 shares of stock.

12 (3) If the corporation is in the hands of a
13 receiver, trustee, or other court-appointed fiduciary, by that
14 fiduciary.

15 (b) The person executing the filing instrument shall
16 sign it and state beneath or opposite the person's signature
17 the person's name and the capacity in which the filing
18 instrument is signed. The filing instrument may, but need not,
19 contain a corporate seal, attestation, acknowledgment, or
20 verification.

21 (c) Whenever a provision of this chapter permits any
22 of the terms of a plan or a filing instrument to be dependent
23 on facts objectively ascertainable outside the plan or filing
24 instrument, the following provisions apply:

1 (1) The manner in which the facts will operate upon
2 the terms of the plan or filing instrument must be set forth
3 in the plan or filing instrument.

4 (2) The facts may include:

5 (i) any of the following that are available in a
6 nationally recognized news or information medium either in
7 print or electronically: statistical or market indices, market
8 prices of any security or group of securities, interest rates,
9 currency exchange rates, or similar economic or financial
10 data;

11 (ii) a determination or action by any person or
12 body, including the corporation or any other party to a plan
13 or filing instrument; or

14 (iii) the terms of, or actions taken under, an
15 agreement to which the corporation is a party, or any other
16 agreement or document.

17 (3) As used in this subsection (c), "plan" means a
18 plan of conversion, merger, or share exchange.

19 (4) The following provisions of a plan or filing
20 instrument may not be made dependent on facts outside the plan
21 or filed document:

22 (i) the name and address of any person required in a
23 filing instrument;

24 (ii) the registered office of any entity required in
25 a filing instrument;

1 (iii) the registered agent of any entity required in
2 a filing instrument;

3 (iv) the number of authorized shares of stock and
4 designation of each class or series of stock;

5 (v) the effective date and time of a filing
6 instrument as determined under Article 4 of Chapter 1; and

7 (vi) any required statement in a filing instrument
8 of the date on which the underlying transaction was approved
9 or the manner in which that approval was given.

10 (5) If a provision of a filing instrument is made
11 dependent on a fact ascertainable outside of the filing
12 instrument, and that fact is neither ascertainable by
13 reference to a source described in subsection (c) (2) (i) or a
14 document that is a matter of public record, nor have the
15 affected stockholders received notice of the fact from the
16 corporation, then the corporation shall file with the
17 Secretary of State a certificate of amendment to the filing
18 instrument setting forth the fact promptly after the time when
19 the fact referred to is first ascertainable or thereafter
20 changes. A certificate of amendment under this subsection
21 (c) (5) is deemed to be authorized by the authorization of the
22 original filing instrument to which it relates and may be
23 filed by the corporation without further action by the board
24 of directors or the stockholders.

1 §10A-2A-1.21. Certificate of existence or
2 registration.

3 (a) The Secretary of State, upon request and payment
4 of the requisite fee, shall furnish to any person a
5 certificate of existence for a corporation if the writings
6 filed in the office of the Secretary of State show that the
7 corporation has been incorporated under the laws of this
8 state. A certificate of existence shall reflect only the
9 information on file with the Secretary of State. A certificate
10 of existence must state:

11 (1) the corporation's name;

12 (2) that the corporation was incorporated under the
13 laws of this state, the date of incorporation, and the filing
14 office in which the certificate of incorporation was filed;

15 (3) whether the corporation has delivered to the
16 Secretary of State for filing a certificate of dissolution;

17 (4) whether the corporation has delivered to the
18 Secretary of State for filing a certificate of reinstatement;
19 and

20 (5) other facts of record in the office of the
21 Secretary of State that are specified by the person requesting
22 the certificate.

23 (b) The Secretary of State, upon request and payment
24 of the requisite fee, shall furnish to any person a
25 certificate of registration for a foreign corporation if the

1 writings filed in the office of the Secretary of State show
2 that the Secretary of State has filed an application for
3 registration for authority to transact business in this state
4 and the registration has not been revoked, withdrawn, or
5 terminated. A certificate of registration must state:

6 (1) the foreign corporation's name and any alternate
7 name adopted for use in this state;

8 (2) that the foreign corporation is authorized to
9 transact business in this state;

10 (3) that the Secretary of State has not revoked the
11 foreign corporation's registration;

12 (4) that the foreign corporation has not filed with
13 the Secretary of State a certificate of withdrawal or
14 otherwise terminated its registration; and

15 (5) other facts of record in the office of the
16 Secretary of State that are specified by the person requesting
17 the certificate.

18 (c) Subject to any qualification stated in the
19 certificate, a certificate of existence or certificate of
20 registration issued by the Secretary of State is conclusive
21 evidence that the corporation is in existence or the foreign
22 corporation is authorized to transact business in this state.

23 Division C. DEFINITIONS.

24 §10A-2A-1.40. Chapter definitions.

1 Notwithstanding Section 10A-1-1.03, as used in this
2 chapter, unless otherwise specified or unless the context
3 otherwise requires, the following terms have the following
4 meaning:

5 (1) "Authorized stock" means the stock of all
6 classes and series a corporation or foreign corporation is
7 authorized to issue.

8 (2) "Beneficial stockholder" means a person who owns
9 the beneficial interest in stock, which may be a record
10 stockholder or a person on whose behalf shares of stock are
11 registered in the name of an intermediary or nominee.

12 (3) "Certificate of incorporation" means the
13 certificate of incorporation described in Section 10A-2A-2.02,
14 all amendments to the certificate of incorporation, and any
15 other documents permitted or required to be delivered for
16 filing by a corporation with the Secretary of State under this
17 chapter or Chapter 1 that modify, amend, supplement, restate,
18 or replace the certificate of incorporation. After an
19 amendment of the certificate of incorporation or any other
20 document filed under this chapter or Chapter 1 that restates
21 the certificate of incorporation in its entirety, the
22 certificate of incorporation shall not include any prior
23 documents. When used with respect to a corporation
24 incorporated and existing on December 31, 2019, under a
25 predecessor law of this state, the term "certificate of

1 incorporation" means articles of incorporation, charter, or
2 similar incorporating document, and all amendments and
3 restatements to the certificate of incorporation, charter, or
4 similar incorporating document. When used with respect to a
5 foreign corporation, a nonprofit corporation, or a foreign
6 nonprofit corporation, the "certificate of incorporation" of
7 such an entity means the document of such entity that is
8 equivalent to the certificate of incorporation of a
9 corporation. The term "certificate of incorporation" as used
10 in this chapter is synonymous to the term "certificate of
11 formation" used in Chapter 1.

12 (4) "Corporation," except in the phrase "foreign
13 corporation," means an entity incorporated or existing under
14 this chapter.

15 (5) "Deliver" or "delivery" means any method of
16 delivery used in conventional commercial practice, including
17 delivery by hand, mail, commercial delivery, and, if
18 authorized in accordance with Section 10A-2A-1.41, by
19 electronic transmission.

20 (6) "Distribution" means a direct or indirect
21 transfer of cash or other property (except a corporation's own
22 stock) or incurrence of indebtedness by a corporation to or
23 for the benefit of its stockholders in respect of any of its
24 stock. A distribution may be in the form of a payment of a
25 dividend; a purchase, redemption, or other acquisition of

1 stock; a distribution of indebtedness; a distribution in
2 liquidation; or otherwise.

3 (7) "Document" means a writing as defined in Chapter
4 1.

5 (8) "Effective date," when referring to a document
6 accepted for filing by the Secretary of State, means the time
7 and date determined in accordance with Article 4 of Chapter 1.

8 (9) "Eligible entity" means an unincorporated
9 entity, foreign unincorporated entity, nonprofit corporation,
10 or foreign nonprofit corporation.

11 (10) "Eligible interests" means interests or
12 memberships.

13 (11) "Employee" includes an officer, but not a
14 director. A director may accept duties that make the director
15 also an employee.

16 (12) "Entity" includes corporation; foreign
17 corporation; nonprofit corporation; foreign nonprofit
18 corporation; estate; trust; unincorporated entity; foreign
19 unincorporated entity; and state, United States, and foreign
20 government.

21 (13) "Expenses" means reasonable expenses of any
22 kind that are incurred in connection with a matter.

23 (14) "Filing entity" means an unincorporated entity,
24 other than a limited liability partnership, that is of a type
25 that is created by filing a public organic record or is

1 required to file a public organic record that evidences its
2 creation.

3 (15) "Foreign corporation" means a corporation
4 incorporated under a law other than the law of this state
5 which would be a corporation if incorporated under the law of
6 this state.

7 (16) "Foreign nonprofit corporation" means a
8 corporation incorporated under a law other than the law of
9 this state which would be a nonprofit corporation if
10 incorporated under the law of this state.

11 (17) "Governing statute" means the statute governing
12 the internal affairs of a corporation, foreign corporation,
13 nonprofit corporation, foreign nonprofit corporation,
14 unincorporated entity, or foreign unincorporated entity.

15 (18) "Governmental subdivision" includes authority,
16 county, district, and municipality.

17 (19) "Includes" and "including" denote a partial
18 definition or a nonexclusive list.

19 (20) "Interest" means either or both of the
20 following rights under the governing statute governing an
21 unincorporated entity:

22 (i) the right to receive distributions from the
23 entity either in the ordinary course or upon liquidation; or

24 (ii) the right to receive notice or vote on issues
25 involving its internal affairs, other than as an agent,

1 assignee, proxy, or person responsible for managing its
2 business and affairs.

3 (21) "Interest holder" means a person who holds of
4 record an interest.

5 (22) "Knowledge" is determined as follows:

6 (a) A person knows a fact when the person:

7 (1) has actual knowledge of it; or

8 (2) is deemed to know it under law other than this
9 chapter.

10 (b) A person has notice of a fact when the person:

11 (1) knows of it;

12 (2) receives notification of it in accordance with
13 Section 10A-2A-1.41;

14 (3) has reason to know the fact from all of the
15 facts known to the person at the time in question; or

16 (4) is deemed to have notice of the fact under
17 subsection (d).

18 (c) A person notifies another of a fact by taking
19 steps reasonably required to inform the other person in
20 ordinary course in accordance with Section 10A-2A-1.41,
21 whether or not the other person knows the fact.

22 (d) A person is deemed to have notice of a
23 corporation's:

24 (1) matters included in the certificate of
25 incorporation upon filing;

1 (2) dissolution, 90 days after a certificate of
2 dissolution under Section 10A-2A-14.03 becomes effective;

3 (3) conversion, merger, or interest exchange under
4 Article 9 or Article 11, 90 days after a statement of
5 conversion, or statement of merger or interest exchange
6 becomes effective;

7 (4) conversion or merger under Article 8 of Chapter
8 1, 90 days after a statement of conversion or statement of
9 merger becomes effective; and

10 (5) revocation of dissolution and reinstatement, 90
11 days after certificate of revocation of dissolution and
12 reinstatement under Section 10A-2A-14.04 becomes effective.

13 (e) A stockholder's knowledge, notice, or receipt of
14 a notification of a fact relating to the corporation is not
15 knowledge, notice, or receipt of a notification of a fact by
16 the corporation solely by reason of the stockholder's capacity
17 as a stockholder.

18 (f) The date and time of the effectiveness of a
19 notice delivered in accordance with Section 10A-2A-1.41, is
20 determined by Section 10A-2A-1.41.

21 (23) "Means" denotes an exhaustive definition.

22 (24) "Membership" means the rights of a member in a
23 nonprofit corporation or foreign nonprofit corporation.

24 (25) "Merger" means a transaction pursuant to
25 Section 10A-2A-11.02.

1 (26) "Organizational documents" means the public
2 organic record and private organizational documents of a
3 corporation, foreign corporation, or eligible entity.

4 (27) "Principal office" means the office (in or out
5 of this state) so designated in the annual report where the
6 principal executive offices of a corporation or foreign
7 corporation are located.

8 (28) "Private organizational documents" means (i)
9 the bylaws of a corporation, foreign corporation, nonprofit
10 corporation, or foreign nonprofit corporation or (ii) the
11 rules, regardless of whether in writing, that govern the
12 internal affairs of an unincorporated entity or foreign
13 unincorporated entity, are binding on all its interest
14 holders, and are not part of its public organic record, if
15 any. Where private organizational documents have been amended
16 or restated, the term means the private organizational
17 documents as last amended or restated.

18 (29) "Proceeding" includes any civil suit and
19 criminal, administrative, and investigatory action.

20 (30) "Public organic record" means (i) the
21 certificate of incorporation of a corporation, foreign
22 corporation, nonprofit corporation, or foreign nonprofit
23 corporation, or (ii) the document, if any, the filing of which
24 is required to create an unincorporated entity or foreign
25 unincorporated entity, or which creates the unincorporated

1 entity or foreign unincorporated entity and is required to be
2 filed. Where a public organic record has been amended or
3 restated, the term means the public organic record as last
4 amended or restated.

5 (31) "Record date" means the date fixed for
6 determining the identity of the corporation's stockholders and
7 their stockholdings for purposes of this chapter. Unless
8 another time is specified when the record date is fixed, the
9 determination shall be made as of the close of business at the
10 principal office of the corporation on the date so fixed.

11 (32) "Record stockholder" means (i) the person in
12 whose name shares of stock are registered in the records of
13 the corporation or (ii) the person identified as the
14 beneficial owner of stock in a beneficial ownership
15 certificate pursuant to Section 10A-2A-7.23 on file with the
16 corporation to the extent of the rights granted by such
17 certificate.

18 (33) "Secretary" means the corporate officer to whom
19 the board of directors has delegated responsibility under
20 Section 10A-2A-8.40(c) to maintain the minutes of the meetings
21 of the board of directors and of the stockholders and for
22 authenticating records of the corporation.

23 (34) "Stock exchange" means a transaction pursuant
24 to Section 10A-2A-11.03.

25 (35) "Stockholder" means a record stockholder.

1 (36) "Stock" means the units into which the
2 proprietary interests in a corporation or foreign corporation
3 are divided.

4 (37) "Type of entity" means a generic form of
5 entity: (i) recognized at common law; or (ii) formed under a
6 governing statute, regardless of whether some entities formed
7 under that law are subject to provisions of that law that
8 create different categories of the form of entity.

9 (38) "Unincorporated entity" means an organization
10 or artificial legal person that either has a separate legal
11 existence or has the power to acquire an estate in real
12 property in its own name and that is not any of the following:
13 a corporation, foreign corporation, nonprofit corporation,
14 foreign nonprofit corporation, a series of a limited liability
15 company or of another type of entity, an estate, a trust, a
16 state, United States, or foreign government. The term includes
17 a general partnership, limited liability company, limited
18 partnership, business trust, joint stock association, and
19 unincorporated nonprofit association.

20 (39) "United States" includes any district,
21 authority, bureau, commission, department, and any other
22 agency of the United States.

23 (40) "Unrestricted voting trust beneficial owner"
24 means, with respect to any stockholder rights, a voting trust
25 beneficial owner whose entitlement to exercise the stockholder

1 right in question is not inconsistent with the voting trust
2 agreement.

3 (41) "Voting group" means all stock of one or more
4 classes or series that under the certificate of incorporation
5 or this chapter are entitled to vote and be counted together
6 collectively on a matter at a meeting of stockholders. All
7 stock entitled by the certificate of incorporation or this
8 chapter to vote generally on the matter is for that purpose a
9 single voting group.

10 (42) "Voting power" means the current power to vote
11 in the election of directors.

12 (43) "Voting trust beneficial owner" means an owner
13 of a beneficial interest in stock of the corporation held in a
14 voting trust established pursuant to Section 10A-2A-7.30(a).

15 §10A-2A-1.41. Notice and other communications.

16 (a) A notice under this chapter must be in writing
17 unless oral notice is reasonable in the circumstances. Unless
18 otherwise agreed between the sender and the recipient, words
19 in a notice or other communication under this chapter must be
20 in English.

21 (b) A notice or other communication may be given by
22 any method of delivery, except that electronic transmissions
23 must be in accordance with this section. If the methods of
24 delivery are impracticable, a notice or other communication
25 may be given by means of a broad non-exclusionary distribution

1 to the public (which may include a newspaper of general
2 circulation in the area where published; radio, television, or
3 other form of public broadcast communication; or other methods
4 of distribution that the corporation has previously identified
5 to its stockholders).

6 (c) A notice or other communication to a corporation
7 or to a foreign corporation registered to do business in this
8 state may be delivered to the corporation's registered agent
9 at its registered office or to the secretary at the
10 corporation's principal office shown in its most recent annual
11 report or, in the case of a foreign corporation that has not
12 yet delivered an annual report, in its foreign registration
13 under Chapter 1.

14 (d) A notice or other communications may be
15 delivered by electronic transmission if consented to by the
16 recipient or if authorized by subsection (j).

17 (e) Any consent under subsection (d) may be revoked
18 by the person who consented by written or electronic notice to
19 the person to whom the consent was delivered. Any consent is
20 deemed revoked if (i) the corporation is unable to deliver two
21 consecutive electronic transmissions given by the corporation
22 in accordance with that consent, and (ii) the inability
23 becomes known to the secretary or an assistant secretary or to
24 the transfer agent, or other person responsible for the giving
25 of notice or other communications; provided, however, the

1 inadvertent failure to treat that inability as a revocation
2 shall not invalidate any meeting or other action.

3 (f) Unless otherwise agreed between the sender and
4 the recipient, an electronic transmission is received when:

5 (1) it enters an information processing system that
6 the recipient has designated or uses for the purposes of
7 receiving electronic transmissions or information of the type
8 sent, and from which the recipient is able to retrieve the
9 electronic transmission; and

10 (2) it is in a form capable of being processed by
11 that system.

12 (g) Receipt of an electronic acknowledgement from an
13 information processing system described in subsection (f)(1)
14 establishes that an electronic transmission was received but,
15 by itself, does not establish that the content sent
16 corresponds to the content received.

17 (h) An electronic transmission is received under
18 this section even if no person is aware of its receipt.

19 (i) A notice or other communication, if in a
20 comprehensible form or manner, is effective at the earliest of
21 the following:

22 (1) if in a physical form, the earliest of when it
23 is actually received, or when it is left at:

1 (i) a stockholder's address shown on the
2 corporation's record of stockholders maintained by the
3 corporation under Section 10A-2A-16.01(d);

4 (ii) a director's residence or usual place of
5 business; or

6 (iii) the corporation's principal office;

7 (2) if mailed postage prepaid and correctly
8 addressed to a stockholder, upon deposit in the United States
9 mail;

10 (3) if mailed by United States mail postage prepaid
11 and correctly addressed to a recipient other than a
12 stockholder, the earliest of when it is actually received, or:

13 (i) if sent by registered or certified mail, return
14 receipt requested, the date shown on the return receipt signed
15 by or on behalf of the addressee; or

16 (ii) five days after it is deposited in the United
17 States mail;

18 (4) if an electronic transmission, when it is
19 received as provided in subsection (f); and

20 (5) if oral, when communicated.

21 (j) A notice or other communication may be in the
22 form of an electronic transmission that cannot be directly
23 reproduced in paper form by the recipient through an automated
24 process used in conventional commercial practice only if (i)
25 the electronic transmission is otherwise retrievable in

1 perceivable form, and (ii) the sender and the recipient have
2 consented in writing to the use of such form of electronic
3 transmission.

4 (k) If this chapter prescribes requirements for
5 notices or other communications in particular circumstances,
6 those requirements govern. If the certificate of incorporation
7 or bylaws prescribe requirements for notices or other
8 communications, not inconsistent with this section or other
9 provisions of this chapter, those requirements govern. The
10 certificate of incorporation or bylaws may authorize or
11 require delivery of notices of meetings of directors by
12 electronic transmission.

13 (l) In the event that any provisions of this chapter
14 are deemed to modify, limit, or supersede the federal
15 Electronic Signatures in Global and National Commerce Act, 15
16 U.S.C. §§7001 et seq., the provisions of this chapter shall
17 control to the maximum extent permitted by Section 102(a)(2)
18 of that federal act.

19 §10A-2A-1.42. Number of stockholders.

20 (a) For purposes of this chapter, the following
21 identified as a stockholder in a corporation's current record
22 of stockholders constitutes one stockholder:

23 (1) three or fewer co-owners;

24 (2) a corporation, partnership, trust, estate, or
25 other entity; and

1 (3) the trustees, guardians, custodians, or other
2 fiduciaries of a single trust, estate, or account.

3 (b) For purposes of this chapter, stockholdings
4 registered in substantially similar names constitute one
5 stockholder if it is reasonable to believe that the names
6 represent the same person.

7 §10A-2A-1.43. Qualified director.

8 (a) A "qualified director" is a director who, at the
9 time action is to be taken under:

10 (1) Section 10A-2A-2.02(b)(6), is not a director (i)
11 to whom the limitation or elimination of the duty of an
12 officer to offer potential business opportunities to the
13 corporation would apply, or (ii) who has a material
14 relationship with any other person to whom the limitation or
15 elimination would apply;

16 (2) Section 10A-2A-7.44, does not have (i) a
17 material interest in the outcome of the proceeding, or (ii) a
18 material relationship with a person who has such an interest;

19 (3) Section 10A-2A-8.53 or Section 10A-2A-8.55, (i)
20 is not a party to the proceeding, (ii) is not a director as to
21 whom a transaction is a director's conflicting interest
22 transaction or who sought a disclaimer of the corporation's
23 interest in a business opportunity under Section 10A-2A-8.60,
24 which transaction or disclaimer is challenged, and (iii) does

1 not have a material relationship with a director described in
2 either clause (i) or clause (ii) of this subsection (a)(3); or

3 (4) Section 10A-2A-8.60, is not a director (i) as to
4 whom the contract or transaction is a director's conflicting
5 interest transaction, (ii) who has a material relationship
6 with another director as to whom the transaction is a
7 director's conflicting interest transaction, (iii) pursues or
8 takes advantage of the business opportunity, directly, or
9 indirectly through or on behalf of another person, or (iv) has
10 a material relationship with a director or officer who pursues
11 or takes advantage of the business opportunity, directly, or
12 indirectly through or on behalf of another person.

13 (b) For purposes of this section:

14 (1) "material relationship" means a familial,
15 financial, professional, employment, or other relationship
16 that would reasonably be expected to impair the objectivity of
17 the director's judgment when participating in the action to be
18 taken; and

19 (2) "material interest" means an actual or potential
20 benefit or detriment (other than one which would devolve on
21 the corporation or the stockholders generally) that would
22 reasonably be expected to impair the objectivity of the
23 director's judgment when participating in the action to be
24 taken.

1 (c) The presence of one or more of the following
2 circumstances shall not automatically prevent a director from
3 being a qualified director:

4 (1) nomination or election of the director to the
5 current board of directors by any director who is not a
6 qualified director with respect to the matter (or by any
7 person that has a material relationship with that director),
8 acting alone or participating with others;

9 (2) service as a director of another corporation of
10 which a director who is not a qualified director with respect
11 to the matter (or any individual who has a material
12 relationship with that director), is or was also a director;
13 or

14 (3) with respect to action to be taken under Section
15 10A-2A-7.44, status as a named defendant, as a director
16 against whom action is demanded, or as a director who approved
17 the conduct being challenged.

18 §10A-2A-1.44. Householding.

19 (a) A corporation has delivered written notice or
20 any other report or statement under this chapter, the
21 certificate of incorporation, or the bylaws to all
22 stockholders who share a common address if:

23 (1) the corporation delivers one copy of the notice,
24 report, or statement to the common address;

1 (2) the corporation addresses the notice, report, or
2 statement to those stockholders either as a group or to each
3 of those stockholders individually or to the stockholders in a
4 form to which each of those stockholders has consented; and

5 (3) each of those stockholders consents to delivery
6 of a single copy of such notice, report, or statement to the
7 stockholders' common address.

8 (b) Any such consent described in subsection (a)(2)
9 or (a)(3) shall be revocable by any stockholders who deliver
10 written notice of revocation to the corporation. If a written
11 notice of revocation is delivered, the corporation shall begin
12 providing individual notices, reports, or other statements to
13 the revoking stockholder no later than 30 days after delivery
14 of the written notice of revocation.

15 (c) Any stockholder who fails to object by written
16 notice to the corporation, within 60 days of written notice by
17 the corporation of its intention to deliver single copies of
18 notices, reports, or statements to stockholders who share a
19 common address as permitted by subsection (a), shall be deemed
20 to have consented to receiving such single copy at the common
21 address; provided that the notice of intention explains that
22 consent may be revoked and the method for revoking.

23 Division D. RATIFICATION OF DEFECTIVE CORPORATE
24 ACTIONS.

25 §10A-2A-1.45. Definitions.

1 In this article:

2 (1) "Corporate action" means any action taken by or
3 on behalf of the corporation, including any action taken by
4 the incorporator, the board of directors, a committee of the
5 board of directors, an officer or agent of the corporation or
6 the stockholders.

7 (2) "Date of the defective corporate action" means
8 the date (or the approximate date, if the exact date is
9 unknown) the defective corporate action was purported to have
10 been taken.

11 (3) "Defective corporate action" means (i) any
12 corporate action purportedly taken that is, and at the time
13 such corporate action was purportedly taken would have been,
14 within the power of the corporation, but is void or voidable
15 due to a failure of authorization, and (ii) an overissue.

16 (4) "Failure of authorization" means the failure to
17 authorize, approve, or otherwise effect a corporate action in
18 compliance with the provisions of this chapter, the
19 certificate of incorporation or bylaws, a corporate
20 resolution, or any plan or agreement to which the corporation
21 is a party, if and to the extent such failure would render
22 such corporate action void or voidable.

23 (5) "Overissue" means the purported issuance of:

24 (i) stock of a class or series in excess of the
25 number of shares of stock of a class or series the corporation

1 has the power to issue under Section 10A-2A-6.01 at the time
2 of such issuance; or

3 (ii) stock of any class or series that is not then
4 authorized for issuance by the certificate of incorporation.

5 (6) "Putative stock" means the stock of any class or
6 series (including stock issued upon exercise of rights,
7 options, warrants, or other securities convertible into stock
8 of the corporation, or interests with respect to such stock)
9 that was created or issued as a result of a defective
10 corporate action, that (i) but for any failure of
11 authorization would constitute valid stock, or (ii) cannot be
12 determined by the board of directors to be valid stock.

13 (7) "Valid stock" means the stock of any class or
14 series that has been duly authorized and validly issued in
15 accordance with this chapter, including as a result of
16 ratification or validation under this article.

17 (8) "Validation effective time" with respect to any
18 defective corporate action ratified under this article means
19 the later of:

20 (i) the time at which the ratification of the
21 defective corporate action is approved by the stockholders, or
22 if approval of stockholders is not required, the time at which
23 the notice required by Section 10A-2A-1.49 becomes effective
24 in accordance with Section 10A-2A-1.41; and

1 (ii) the time at which any certificate of validation
2 filed in accordance with Section 10A-2A-1.51 becomes
3 effective.

4 The validation effective time shall not be affected
5 by the filing or pendency of a judicial proceeding under
6 Section 10A-2A-1.52 or otherwise, unless otherwise ordered by
7 the court.

8 §10A-2A-1.46. Defective corporate actions.

9 (a) A defective corporate action shall not be void
10 or voidable if ratified in accordance with Section 10A-2A-1.47
11 or validated in accordance with Section 10A-2A-1.52.

12 (b) Ratification under Section 10A-2A-1.47 or
13 validation under Section 10A-2A-1.52 shall not be deemed to be
14 the exclusive means of ratifying or validating any defective
15 corporate action, and the absence or failure of ratification
16 in accordance with this article shall not, of itself, affect
17 the validity or effectiveness of any corporate action properly
18 ratified under common law or otherwise, nor shall it create a
19 presumption that any such corporate action is or was a
20 defective corporate action or void or voidable.

21 (c) In the case of an overissue, putative stock
22 shall be valid stock effective as of the date originally
23 issued or purportedly issued upon:

1 (1) the effectiveness under this article and under
2 Article 10 of an amendment to the certificate of incorporation
3 authorizing, designating, or creating such stock; or

4 (2) the effectiveness of any other corporate action
5 under this article ratifying the authorization, designation,
6 or creation of such stock.

7 §10A-2A-1.47. Ratification of defective corporate
8 actions.

9 (a) To ratify a defective corporate action under
10 this section (other than the ratification of an election of
11 the initial board of directors under subsection (b)), the
12 board of directors shall take action ratifying the action in
13 accordance with Section 10A-2A-1.48, stating:

14 (1) the defective corporate action to be ratified
15 and, if the defective corporate action involved the issuance
16 of putative stock, the number and type of shares of putative
17 stock purportedly issued;

18 (2) the date of the defective corporate action;

19 (3) the nature of the failure of authorization with
20 respect to the defective corporate action to be ratified; and

21 (4) that the board of directors approves the
22 ratification of the defective corporate action.

23 (b) In the event that a defective corporate action
24 to be ratified relates to the election of the initial board of
25 directors of the corporation under Section 10A-2A-2.04(a)(2),

1 a majority of the persons who, at the time of the
2 ratification, are exercising the powers of directors may take
3 an action stating:

4 (1) the name of the person or persons who first took
5 action in the name of the corporation as the initial board of
6 directors of the corporation;

7 (2) the earlier of the date on which such persons
8 first took such action or were purported to have been elected
9 as the initial board of directors; and

10 (3) that the ratification of the election of such
11 person or persons as the initial board of directors is
12 approved.

13 (c) If any provision of this chapter, the
14 certificate of incorporation or bylaws, any corporate
15 resolution, or any plan or agreement to which the corporation
16 is a party in effect at the time action under subsection (a)
17 is taken requires stockholder approval or would have required
18 stockholder approval at the date of the occurrence of the
19 defective corporate action, the ratification of the defective
20 corporate action approved in the action taken by the directors
21 under subsection (a) shall be submitted to the stockholders
22 for approval in accordance with Section 10A-2A-1.48.

23 (d) Unless otherwise provided in the action taken by
24 the board of directors under subsection (a), after the action
25 by the board of directors has been taken and, if required,

1 approved by the stockholders, the board of directors may
2 abandon the ratification at any time before the validation
3 effective time without further action of the stockholders.

4 §10A-2A-1.48. Action on ratification.

5 (a) The quorum and voting requirements applicable to
6 a ratifying action by the board of directors under Section
7 10A-2A-1.47(a) shall be the quorum and voting requirements
8 applicable to the corporate action proposed to be ratified at
9 the time such ratifying action is taken.

10 (b) If the ratification of the defective corporate
11 action requires approval by the stockholders under Section
12 10A-2A-1.47(c), and if the approval is to be given at a
13 meeting, the corporation shall notify each holder of valid and
14 putative stock, regardless of whether entitled to vote, as of
15 the record date for notice of the meeting and as of the date
16 of the occurrence of defective corporate action, provided that
17 notice shall not be required to be given to holders of valid
18 or putative stock whose identities or addresses for notice
19 cannot be determined from the records of the corporation. The
20 notice must state that the purpose, or one of the purposes, of
21 the meeting, is to consider ratification of a defective
22 corporate action and must be accompanied by (i) either a copy
23 of the action taken by the board of directors in accordance
24 with Section 10A-2A-1.47(a) or the information required by
25 Section 10A-2A-1.47(a) (1) through (a) (4), and (ii) a statement

1 that any claim that the ratification of such defective
2 corporate action and any putative stock issued as a result of
3 such defective corporate action should not be effective, or
4 should be effective only on certain conditions, shall be
5 brought within 120 days from the applicable validation
6 effective time.

7 (c) Except as provided in subsection (d) with
8 respect to the voting requirements to ratify the election of a
9 director, the quorum and voting requirements applicable to the
10 approval by the stockholders required by Section
11 10A-2A-1.47(c) shall be the quorum and voting requirements
12 applicable to the corporate action proposed to be ratified at
13 the time of such stockholder approval.

14 (d) The approval by stockholders to ratify the
15 election of a director requires that the votes cast within the
16 voting group favoring such ratification exceed the votes cast
17 opposing the ratification of the election at a meeting at
18 which a quorum is present.

19 (e) Putative stock on the record date for
20 determining the stockholders entitled to vote on any matter
21 submitted to stockholders under Section 10A-2A-1.47(c) (and
22 without giving effect to any ratification of putative stock
23 that becomes effective as a result of such vote) shall neither
24 be entitled to vote nor counted for quorum purposes in any

1 vote to approve the ratification of any defective corporate
2 action.

3 (f) If the approval under this section of putative
4 stock would result in an overissue, in addition to the
5 approval required by Section 10A-2A-1.47, approval of an
6 amendment to the certificate of incorporation under Article 10
7 to increase the number of shares of stock of an authorized
8 class or series or to authorize the creation of a class or
9 series of stock so there would be no overissue shall also be
10 required.

11 §10A-2A-1.49. Notice requirements.

12 (a) Unless stockholder approval is required under
13 Section 10A-2A-1.47(c), prompt notice of an action taken under
14 Section 10A-2A-1.47 shall be given to each holder of valid and
15 putative stock, regardless of whether entitled to vote, as of
16 (i) the date of such action by the board of directors and (ii)
17 the date of the defective corporate action ratified, provided
18 that notice shall not be required to be given to holders of
19 valid and putative stock whose identities or addresses for
20 notice cannot be determined from the records of the
21 corporation.

22 (b) The notice must contain (i) either a copy of the
23 action taken by the board of directors in accordance with
24 Section 10A-2A-1.47(a) or (b) or the information required by
25 Section 10A-2A-1.47(a) (1) through (a) (4) or Section

1 10A-2A-1.47(b) (1) through (b) (3), as applicable, and (ii) a
2 statement that any claim that the ratification of the
3 defective corporate action and any putative stock issued as a
4 result of such defective corporate action should not be
5 effective, or should be effective only on certain conditions,
6 shall be brought within 120 days from the applicable
7 validation effective time.

8 (c) No notice under this section is required with
9 respect to any action required to be submitted to stockholders
10 for approval under Section 10A-2A-1.47(c) if notice is given
11 in accordance with Section 10A-2A-1.48(b).

12 (d) A notice required by this section may be given
13 in any manner permitted by Section 10A-2A-1.41 and, for any
14 corporation subject to the reporting requirements of Section
15 13 or 15(d) of the Securities Exchange Act of 1934, may be
16 given by means of a filing or furnishing of such notice with
17 the United States Securities and Exchange Commission.

18 §10A-2A-1.50. Effect of ratification.

19 From and after the validation effective time, and
20 without regard to the 120-day period during which a claim may
21 be brought under Section 10A-2A-1.52:

22 (a) Each defective corporate action ratified in
23 accordance with Section 10A-2A-1.47 shall not be void or
24 voidable as a result of the failure of authorization
25 identified in the action taken under Section 10A-2A-1.47(a) or

1 (b) and shall be deemed a valid corporate action effective as
2 of the date of the defective corporate action;

3 (b) The issuance of each share of putative stock or
4 fraction of a share of putative stock purportedly issued
5 pursuant to a defective corporate action identified in the
6 action taken under Section 10A-2A-1.47 shall not be void or
7 voidable, and each such share of putative stock or fraction of
8 a share of putative stock shall be deemed to be an identical
9 share of stock or fraction of a valid share of stock as of the
10 time it was purportedly issued; and

11 (c) Any corporate action taken subsequent to the
12 defective corporate action ratified in accordance with this
13 Division D of Article 1 in reliance on such defective
14 corporate action having been validly effected and any
15 subsequent defective corporate action resulting directly or
16 indirectly from such original defective corporate action shall
17 be valid as of the time taken.

18 §10A-2A-1.51. Filings.

19 (a) If the defective corporate action ratified under
20 this Division D of Article 1 would have required under any
21 other section of this chapter a filing in accordance with this
22 chapter, then, regardless of whether a filing was previously
23 made in respect of such defective corporate action and in lieu
24 of a filing otherwise required by this chapter, the
25 corporation shall file a certificate of validation in

1 accordance with this section, and that certificate of
 2 validation shall serve to amend or substitute for any other
 3 filing with respect to such defective corporate action
 4 required by this chapter.

5 (b) The certificate of validation must set forth:

6 (1) the defective corporate action that is the
 7 subject of the certificate of validation (including, in the
 8 case of any defective corporate action involving the issuance
 9 of putative stock, the number and type of shares of putative
 10 stock issued and the date or dates upon which that putative
 11 stock was purported to have been issued);

12 (2) the date of the defective corporate action;

13 (3) the nature of the failure of authorization in
 14 respect of the defective corporate action;

15 (4) a statement that the defective corporate action
 16 was ratified in accordance with Section 10A-2A-1.47, including
 17 the date on which the board of directors ratified that
 18 defective corporate action and the date, if any, on which the
 19 stockholders approved the ratification of that defective
 20 corporate action; and

21 (5) the information required by subsection (c).

22 (c) The certificate of validation must also contain
 23 the following information:

24 (1) if a filing was previously made in respect of
 25 the defective corporate action and no changes to that filing

1 are required to give effect to the ratification of that
2 defective corporate action in accordance with Section
3 10A-2A-1.47, the certificate of validation must set forth (i)
4 the name, title, and filing date of the filing previously made
5 and any certificate of correction to that filing and (ii) a
6 statement that a copy of the filing previously made, together
7 with any certificate of correction to that filing, is attached
8 as an exhibit to the certificate of validation;

9 (2) if a filing was previously made in respect of
10 the defective corporate action and that filing requires any
11 change to give effect to the ratification of that defective
12 corporate action in accordance with Section 10A-2A-1.47, the
13 certificate of validation must set forth (i) the name, title,
14 and filing date of the filing previously made and any
15 certificate of correction to that filing and (ii) a statement
16 that a filing containing all of the information required to be
17 included under the applicable section or sections of this
18 chapter to give effect to that defective corporate action is
19 attached as an exhibit to the certificate of validation, and
20 (iii) the date and time that filing is deemed to have become
21 effective; or

22 (3) if a filing was not previously made in respect
23 of the defective corporate action and the defective corporate
24 action ratified under Section 10A-2A-1.47 would have required
25 a filing under any other section of this chapter, the

1 certificate of validation must set forth (i) a statement that
2 a filing containing all of the information required to be
3 included under the applicable section or sections of this
4 chapter to give effect to that defective corporate action is
5 attached as an exhibit to the certificate of validation, and
6 (ii) the date and time that filing is deemed to have become
7 effective.

8 §10A-2A-1.52. Judicial proceedings regarding
9 validity of corporate actions.

10 (a) Upon application by the corporation, any
11 successor entity to the corporation, a director of the
12 corporation, any stockholder, beneficial stockholder or
13 unrestricted voting trust beneficial owner of the corporation,
14 including any stockholder, beneficial stockholder or
15 unrestricted voting trust beneficial owner as of the date of
16 the defective corporate action ratified under Section
17 10A-2A-1.47, or any other person claiming to be substantially
18 and adversely affected by a ratification under Section
19 10A-2A-1.47, the circuit court of the county where a
20 corporation's principal office, or, if none in this state, its
21 registered office, is located, may:

22 (1) determine the validity and effectiveness of any
23 corporate action or defective corporate action;

24 (2) determine the validity and effectiveness of any
25 ratification under Section 10A-2A-1.47;

1 (3) determine the validity of any putative stock;

2 and

3 (4) modify or waive any of the procedures specified
4 in Section 10A-2A-1.47 or Section 10A-2A-1.48 to ratify a
5 defective corporate action.

6 (b) In connection with an action under this section,
7 the court may make such findings or orders, and take into
8 account any factors or considerations, regarding such matters
9 as it deems proper under the circumstances.

10 (c) Service of process of the application under
11 subsection (a) on the corporation may be made in any manner
12 provided by statute of this state or by rule of the applicable
13 court for service on the corporation, and no other party need
14 be joined in order for the court to adjudicate the matter. In
15 an action filed by the corporation, the court may require
16 notice of the action be provided to other persons specified by
17 the court and permit such other persons to intervene in the
18 action.

19 (d) Notwithstanding any other provision of this
20 section or otherwise under applicable law, any action
21 asserting that the ratification of any defective corporate
22 action and any putative stock issued as a result of a
23 defective corporate action should not be effective, or should
24 be effective only on certain conditions, shall be brought
25 within 120 days of the validation effective time.

1 ARTICLE 2. INCORPORATION.

2 §10A-2A-2.01. Incorporators; filing of certificate
3 of incorporation.

4 Notwithstanding Section 10A-1-3.04, in order to
5 incorporate a corporation, one or more incorporators must
6 execute a certificate of incorporation and deliver it for
7 filing to the Secretary of State.

8 §10A-2A-2.02. Certificate of incorporation.

9 Notwithstanding Section 10A-1-3.05:

10 (a) The certificate of incorporation must set forth:

11 (1) a corporate name for the corporation that
12 satisfies the requirements of Article 5 of Chapter 1;

13 (2) the number of shares of stock the corporation is
14 authorized to issue;

15 (3) the street and mailing addresses of the
16 corporation's initial registered office, the county within
17 this state in which the street and mailing address is located,
18 and the name of the corporation's initial registered agent at
19 that office as required by Article 5 of Chapter 1; and

20 (4) the name and address of each incorporator.

21 (b) The certificate of incorporation may set forth:

22 (1) the names and addresses of the individuals who
23 are to serve as the initial directors;

24 (2) provisions not inconsistent with law regarding:

1 (i) the purpose or purposes for which the
2 corporation is organized;

3 (ii) managing the business and regulating the
4 affairs of the corporation;

5 (iii) defining, limiting, and regulating the powers
6 of the corporation, its board of directors, and stockholders;

7 (iv) a par value for authorized stock or classes of
8 stock; or

9 (v) subject to subsection (f), a provision imposing
10 personal liability for the debts of the corporation on its
11 stockholders to a specified extent and upon specified
12 conditions; otherwise, the stockholders of a corporation shall
13 not be personally liable for the payment of the corporation's
14 debts, except as they may be liable by reason of their own
15 conduct or acts.

16 (3) any provision that under this chapter is
17 permitted to be set forth in the certificate of incorporation
18 or required or permitted to be set forth in the bylaws;

19 (4) a provision eliminating or limiting the
20 liability of a director to the corporation or its stockholders
21 for money damages for any action taken, or any failure to take
22 any action, as a director, except liability for (i) the amount
23 of a financial benefit received by a director to which the
24 director is not entitled; (ii) an intentional infliction of
25 harm on the corporation or the stockholders; (iii) a violation

1 of Section 10A-2A-8.32; or (iv) an intentional violation of
2 criminal law;

3 (5) a provision permitting or making obligatory
4 indemnification of a director for liability as defined in
5 Section 10A-2A-8.50 to any person for any action taken, or any
6 failure to take any action, as a director, except liability
7 for (i) receipt of a financial benefit to which the director
8 is not entitled, (ii) an intentional infliction of harm on the
9 corporation or its stockholders, (iii) a violation of Section
10 10A-2A-8.32, or (iv) an intentional violation of criminal law;
11 and

12 (6) a provision limiting or eliminating any duty of
13 a director or any other person to offer the corporation the
14 right to have or participate in any, or one or more classes or
15 categories of, business opportunities, before the pursuit or
16 taking of the opportunity by the director or other person;
17 provided that any application of that provision to an officer
18 or a related person of that officer (i) also requires approval
19 of that application by the board of directors, subsequent to
20 the effective date of the provision, by action of qualified
21 directors taken in compliance with the same procedures as are
22 set forth in Section 10A-2A-8.60, and (ii) may be limited by
23 the authorizing action of the board of directors.

1 (c) The certificate of incorporation need not set
2 forth any of the corporate powers enumerated in Sections
3 10A-1-2.11, 10A-1-2.12, and 10A-1-2.13.

4 (d) Provisions of the certificate of incorporation
5 may be made dependent upon facts objectively ascertainable
6 outside the certificate of incorporation in accordance with
7 Section 10A-2A-1.20(c).

8 (e) As used in this section, "related person" has
9 the meaning specified in Section 10A-2A-8.60.

10 (f) The certificate of incorporation may not contain
11 any provision that would impose liability on a stockholder for
12 the attorney's fees or expenses of the corporation or any
13 other party in connection with an internal corporate claim, as
14 defined in Section 10A-2A-2.07(d).

15 §10A-2A-2.03. Liability for preincorporation
16 transactions.

17 All persons purporting to act as or on behalf of a
18 corporation, knowing there was no incorporation under this
19 chapter, are jointly and severally liable for all liabilities
20 created while so acting.

21 §10A-2A-2.04. Organization of corporation.

22 (a) After incorporation:

23 (1) if initial directors are named in the
24 certificate of incorporation, the initial directors shall hold
25 an organizational meeting, at the call of a majority of the

1 directors, to complete the organization of the corporation by
2 appointing officers, adopting bylaws, and carrying on any
3 other business brought before the meeting; or

4 (2) if initial directors are not named in the
5 certificate of incorporation, the incorporator or
6 incorporators shall hold an organizational meeting at the call
7 of a majority of the incorporators:

8 (i) to elect initial directors and complete the
9 organization of the corporation; or

10 (ii) to elect a board of directors who shall
11 complete the organization of the corporation.

12 (b) Action required or permitted by this chapter to
13 be taken by incorporators at an organizational meeting may be
14 taken without a meeting if the action taken is evidenced by
15 one or more written consents describing the action taken and
16 signed by each incorporator.

17 (c) An organizational meeting may be held in or out
18 of this state.

19 §10A-2A-2.05. Bylaws.

20 (a) The incorporators or board of directors of a
21 corporation shall adopt initial bylaws for the corporation.

22 (b) The bylaws of a corporation may contain any
23 provision that is not inconsistent with law or the certificate
24 of incorporation.

1 (c) The bylaws may contain one or both of the
2 following provisions:

3 (1) a requirement that if the corporation solicits
4 proxies or consents with respect to an election of directors,
5 the corporation include in its proxy statement and any form of
6 its proxy or consent, to the extent and subject to any
7 procedures or conditions as are provided in the bylaws, one or
8 more individuals nominated by a stockholder in addition to
9 individuals nominated by the board of directors; and

10 (2) a requirement that the corporation reimburse the
11 expenses incurred by a stockholder in soliciting proxies or
12 consents in connection with an election of directors, to the
13 extent and subject to any procedures and conditions as are
14 provided in the bylaws, provided that no provision so adopted
15 shall apply to elections for which any record date precedes
16 its adoption.

17 (d) Notwithstanding Section 10A-2A-10.20(b)(2), the
18 stockholders in amending, repealing, or adopting a provision
19 described in subsection (c) may not limit the authority of the
20 board of directors to amend or repeal any condition or
21 procedure set forth in or to add any procedure or condition to
22 a provision to provide for a reasonable, practical, and
23 orderly process.

24 §10A-2A-2.06. Emergency bylaws.

1 (a) Unless the certificate of incorporation provides
2 otherwise, the board of directors may adopt bylaws to be
3 effective only in an emergency defined in subsection (d). The
4 emergency bylaws, which are subject to amendment or repeal by
5 the stockholders, may make all provisions necessary for
6 managing the corporation during the emergency, including:

7 (1) procedures for calling a meeting of the board of
8 directors;

9 (2) quorum requirements for the meeting; and

10 (3) designation of additional or substitute
11 directors.

12 (b) All provisions of the regular bylaws not
13 inconsistent with the emergency bylaws remain effective during
14 the emergency. The emergency bylaws are not effective after
15 the emergency ends.

16 (c) Corporate action taken in good faith in
17 accordance with the emergency bylaws:

18 (1) binds the corporation; and

19 (2) may not be used to impose liability on a
20 director, officer, employee, or agent of the corporation.

21 (d) An emergency exists for purposes of this section
22 if a quorum of the board of directors cannot readily be
23 assembled because of some catastrophic event.

24 §10A-2A-2.07. Forum selection provisions.

1 (a) The certificate of incorporation or the bylaws
2 may require that any or all internal corporate claims shall be
3 brought exclusively in any specified court or courts of this
4 state and, if so specified, in any additional courts in this
5 state or in any other jurisdictions with which the corporation
6 has a reasonable relationship.

7 (b) A provision of the certificate of incorporation
8 or bylaws adopted under subsection (a) shall not have the
9 effect of conferring jurisdiction on any court or over any
10 person or claim, and shall not apply if none of the courts
11 specified by that provision has the requisite personal and
12 subject matter jurisdiction. If the court or courts of this
13 state specified in a provision adopted under subsection (a) do
14 not have the requisite personal and subject matter
15 jurisdiction and another court of this state does have
16 jurisdiction, then the internal corporate claim may be brought
17 in the other court of this state, notwithstanding that the
18 other court of this state is not specified in that provision,
19 and in any other court specified in that provision that has
20 the requisite jurisdiction.

21 (c) No provision of the certificate of incorporation
22 or the bylaws may prohibit bringing an internal corporate
23 claim in the courts of this state or require those claims to
24 be determined by arbitration.

1 (d) "Internal corporate claim" means, for the
2 purposes of this section, (i) any claim that is based upon a
3 violation of a duty under the laws of this state by a current
4 or former director, officer, or stockholder in their
5 capacities as such, (ii) any derivative action or proceeding
6 brought on behalf of the corporation, (iii) any action
7 asserting a claim arising pursuant to any provision of this
8 chapter or the certificate of incorporation or bylaws, or (iv)
9 any action asserting a claim governed by the internal affairs
10 doctrine that is not included in (i) through (iii) above.

11 ARTICLE 3. PURPOSES AND POWERS.

12 §10A-2A-3.01. Purposes.

13 (a) Every corporation incorporated under this
14 chapter has the purpose of engaging in any lawful business
15 unless a more limited purpose is set forth in the certificate
16 of incorporation.

17 (b) A corporation engaging in a business that is
18 subject to regulation under another statute of this state may
19 incorporate under this chapter only if permitted by, and
20 subject to all limitations of, the other statute.

21 §10A-2A-3.02. General powers.

22 Unless its certificate of incorporation provides
23 otherwise, every corporation has perpetual duration and
24 succession in its corporate name and has the same powers as an
25 individual to do all things necessary or convenient to carry

1 out its business and affairs, including all entity powers
2 provided in Section 10A-1-2.11, Section 10A-1-2.12, and
3 Section 10A-1-2.13.

4 §10A-2A-3.03. Emergency powers.

5 (a) In anticipation of or during an emergency
6 defined in subsection (d), the board of directors of a
7 corporation may:

8 (1) modify lines of succession to accommodate the
9 incapacity of any director, officer, employee, or agent; and

10 (2) relocate the principal office, designate
11 alternative principal offices or regional offices, or
12 authorize the officers to do so.

13 (b) During an emergency defined in subsection (d),
14 unless emergency bylaws provide otherwise:

15 (1) notice of a meeting of the board of directors
16 need be given only to those directors whom it is practicable
17 to reach and may be given in any practicable manner; and

18 (2) one or more officers of the corporation present
19 at a meeting of the board of directors may be deemed to be
20 directors for the meeting, in order of rank and within the
21 same rank in order of seniority, as necessary to achieve a
22 quorum.

23 (c) Corporate action taken in good faith during an
24 emergency under this section to further the ordinary business
25 affairs of the corporation:

1 (1) binds the corporation; and

2 (2) may not be used to impose liability on a
3 director, officer, employee, or agent.

4 (d) An emergency exists for purposes of this section
5 if a quorum of the board of directors cannot readily be
6 assembled because of some catastrophic event.

7 §10A-2A-3.04. Lack of power to act.

8 (a) Except as provided in subsection (b), the
9 validity of corporate action may not be challenged on the
10 ground that the corporation lacks or lacked power to act.

11 (b) A corporation's power to act may be challenged:

12 (1) in a proceeding by a stockholder against the
13 corporation to enjoin the act;

14 (2) in a proceeding by the corporation, directly,
15 derivatively, or through a receiver, trustee, or other legal
16 representative, against an incumbent or former director,
17 officer, employee, or agent of the corporation; or

18 (3) in a proceeding by the Attorney General under
19 Section 10A-2A-14.10.

20 (c) In a stockholder's proceeding under subsection
21 (b) (1) to enjoin an unauthorized corporate act, the court may
22 enjoin or set aside the act, if equitable and if all affected
23 persons are parties to the proceeding, and may award damages
24 for loss (other than anticipated profits) suffered by the

1 corporation or another party because of enjoining the
2 unauthorized act.

3 ARTICLE 4. RESERVED.

4 ARTICLE 5. RESERVED.

5 ARTICLE 6. STOCK AND DISTRIBUTIONS.

6 Division A. AUTHORIZED STOCK.

7 §10A-2A-6.01. Authorized stock.

8 (a) The certificate of incorporation must set forth
9 any classes of stock and series of stock within a class, and
10 the number of shares of stock of each class and series, that
11 the corporation is authorized to issue. If more than one class
12 or series of stock is authorized, the certificate of
13 incorporation must prescribe a distinguishing designation for
14 each class or series and, before the issuance of stock of a
15 class or series, describe the terms, including the
16 preferences, rights, and limitations, of that class or series.
17 Except to the extent varied as permitted by this section, all
18 shares of stock of a class or series must have terms,
19 including preferences, rights, and limitations, that are
20 identical with those of other shares of stock of the same
21 class or series.

22 (b) The certificate of incorporation must authorize:

23 (1) one or more classes or series of stock that
24 together have full voting rights, and

1 (2) one or more classes or series of stock (which
2 may be the same class, classes or series as those with voting
3 rights) that together are entitled to receive the net assets
4 of the corporation upon dissolution.

5 (c) The certificate of incorporation may authorize
6 one or more classes or series of stock that:

7 (1) have special, conditional, or limited voting
8 rights, or no right to vote, except to the extent otherwise
9 provided by this chapter;

10 (2) are redeemable or convertible as specified in
11 the certificate of incorporation:

12 (i) at the option of the corporation, the
13 stockholder, or another person or upon the occurrence of
14 a specified event;

15 (ii) for cash, indebtedness, securities, or other
16 property; and

17 (iii) at prices and in amounts specified or
18 determined in accordance with a formula;

19 (3) entitle the holders to distributions calculated
20 in any manner, including dividends that may be cumulative,
21 noncumulative, or partially cumulative; or

22 (4) have preference over any other class or series
23 of stock with respect to distributions, including
24 distributions upon the dissolution of the corporation.

1 (d) Terms of stock may be made dependent upon facts
 2 objectively ascertainable outside the certificate of
 3 incorporation in accordance with Section 10A-2A-1.20(c).

4 (e) Any of the terms of stock may vary among holders
 5 of the same class or series so long as those variations are
 6 expressly set forth in the certificate of incorporation.

7 (f) The description of the preferences, rights, and
 8 limitations of classes or series of stock in subsection (c) is
 9 not exhaustive.

10 (g) The certificate of incorporation may authorize
 11 the board of directors, without stockholder approval, to adopt
 12 resolutions, prepare and deliver certificates and certificates
 13 of designation to the Secretary of State, and take any other
 14 actions described in Section 10A-2A-6.02.

15 §10A-2A-6.02. Terms of class or series determined by
 16 board of directors.

17 (a) When any corporation desires to issue any shares
 18 of stock of any class or of any series of any class of which
 19 the powers, designations, preferences and relative,
 20 participating, optional or other rights, if any, or the
 21 qualifications, limitations or restrictions thereof, if any,
 22 shall not have been set forth in the certificate of
 23 incorporation or in any amendment thereto but shall be
 24 provided for in a resolution or resolutions adopted by the
 25 board of directors pursuant to authority expressly vested in

1 it by the certificate of incorporation or any amendment
2 thereto, a certificate of designations setting forth a copy of
3 the board resolution or resolutions and the number of shares
4 of stock of the class or series as to which the resolution or
5 resolutions apply shall be executed and delivered to the
6 Secretary of State for filing and shall become effective in
7 accordance with Article 4 of Chapter 1. If the certificate of
8 incorporation vests authority in the board of directors to
9 determine the powers, designations, preferences and relative,
10 participating, optional or other rights, if any, or the
11 qualifications, limitations or restrictions thereof, if any,
12 of any class or series of stock, the board of directors is
13 authorized to do so to the same extent permitted under Section
14 10A-2A-6.01.

15 (b) Unless otherwise provided in any resolution or
16 resolutions described in subsection (a), the number of shares
17 of stock of any class or series to which the resolution or
18 resolutions apply may be increased (but not above the total
19 number of authorized shares of the class) or decreased (but
20 not below the number of shares thereof then outstanding) by a
21 certificate likewise executed and delivered to the Secretary
22 of State for filing setting forth a statement that a specified
23 increase or decrease therein had been authorized and directed
24 by a resolution or resolutions likewise adopted by the board
25 of directors. In case the number of the authorized shares

1 shall be decreased the number of shares so specified in the
2 certificate shall resume the status which they had prior to
3 the adoption of the first resolution or resolutions.

4 (c) When no shares of any authorized class or series
5 are outstanding, either because none were issued or because no
6 issued shares of any authorized class or series remain
7 outstanding, a certificate setting forth a resolution or
8 resolutions adopted by the board of directors that none of the
9 authorized shares of that class or series are outstanding, and
10 that none will be issued subject to the certificate of
11 designations previously filed with respect to that class or
12 series, may be executed and delivered to the Secretary of
13 State for filing and shall become effective in accordance with
14 Article 4 of Chapter 1, and when the certificate becomes
15 effective, it shall have the effect of eliminating from the
16 certificate of incorporation all matters set forth in the
17 certificate of designations with respect to that class or
18 series of stock.

19 (d) Unless otherwise provided in the certificate of
20 incorporation, if no shares of stock have been issued of a
21 class or series of stock established by a resolution of the
22 board of directors, the voting powers, designations,
23 preferences and relative, participating, optional or other
24 rights, if any, or the qualifications, limitations or
25 restrictions thereof, may be amended by a resolution or

1 resolutions adopted by the board of directors. A certificate
2 which: (1) states that no shares of the class or series have
3 been issued; (2) sets forth a copy of the resolution or
4 resolutions; and (3) if the designation of the class or series
5 is being changed, indicates the original designation and the
6 new designation, shall be executed and delivered to the
7 Secretary of State for filing and shall become effective in
8 accordance with Article 4 of Chapter 1.

9 (e) When any certificate filed under this section
10 becomes effective, it shall have the effect of amending the
11 certificate of incorporation; except that neither the filing
12 of that certificate nor the filing of a restated certificate
13 of incorporation pursuant to Section 10A-2A-10.07 shall
14 prohibit the board of directors from subsequently adopting
15 resolutions as authorized by this section.

16 §10A-2A-6.03. Issued and outstanding stock.

17 (a) A corporation may issue the number of shares of
18 stock of each class or series authorized by the certificate of
19 incorporation. Stock that is issued is outstanding stock until
20 it is reacquired, redeemed, converted, or cancelled.

21 (b) The reacquisition, redemption, or conversion of
22 outstanding stock is subject to the limitations of subsection
23 (c) and to Section 10A-2A-6.40.

24 (c) At all times that stock of the corporation is
25 outstanding, one or more shares of stock that together have

1 full voting rights and one or more shares of stock that
2 together are entitled to receive the net assets of the
3 corporation upon dissolution must be outstanding.

4 §10A-2A-6.04. Fractional stock.

5 (a) A corporation may issue fractions of a share of
6 stock or in lieu of doing so may:

7 (1) pay in cash the value of fractions of a share of
8 stock;

9 (2) issue scrip in registered or bearer form
10 entitling the holder to receive a full share of stock upon
11 surrendering enough scrip to equal a full share of stock; or

12 (3) arrange for disposition of fractional stock by
13 the holders of that stock.

14 (b) Each certificate representing scrip must be
15 conspicuously labeled "scrip" and must contain the information
16 required by Section 10A-1-3.42(c).

17 (c) The holder of a fractional share of stock is
18 entitled to exercise the rights of a stockholder, including
19 the rights to vote, to receive dividends, and to receive
20 distributions upon dissolution. The holder of scrip is not
21 entitled to any of these rights unless the scrip provides for
22 them.

23 (d) The board of directors may authorize the
24 issuance of scrip subject to any condition, including that:

1 (1) the scrip will become void if not exchanged for
2 full stock before a specified date; and

3 (2) the stock for which the scrip is exchangeable
4 may be sold and the proceeds paid to the scripholders.

5 Division B. ISSUANCE OF STOCK.

6 §10A-2A-6.20. Subscription for stock before
7 incorporation.

8 (a) A subscription for stock entered into before
9 incorporation is irrevocable for six months unless the
10 subscription agreement provides a longer or shorter period or
11 all the subscribers agree to revocation.

12 (b) The board of directors may determine the payment
13 terms of subscriptions for stock that were entered into before
14 incorporation, unless the subscription agreement specifies
15 them. A call for payment by the board of directors must be
16 uniform so far as practicable as to all stock of the same
17 class or series, unless the subscription agreement specifies
18 otherwise.

19 (c) Stock issued pursuant to subscriptions entered
20 into before incorporation are fully paid and nonassessable
21 when the corporation receives the consideration specified in
22 the subscription agreement.

23 (d) If a subscriber defaults in payment of cash or
24 property under a subscription agreement entered into before
25 incorporation, the corporation may collect the amount owed as

1 any other debt. Alternatively, unless the subscription
2 agreement provides otherwise, the corporation may rescind the
3 agreement and may sell the stock if the debt remains unpaid
4 for more than 20 days after the corporation delivers a written
5 demand for payment to the subscriber.

6 §10A-2A-6.21. Issuance of stock.

7 (a) The powers granted in this section to the board
8 of directors may be reserved to the stockholders by the
9 certificate of incorporation.

10 (b) The board of directors may authorize stock to be
11 issued for consideration consisting of a contribution.

12 (c) Before the corporation issues stock, the board
13 of directors shall determine that the consideration received
14 or to be received for stock to be issued is adequate. That
15 determination by the board of directors is conclusive insofar
16 as the adequacy of consideration for the issuance of stock
17 relates to whether the stock is validly issued, fully paid,
18 and nonassessable.

19 (d) When the corporation receives the consideration
20 for which the board of directors authorized the issuance of
21 stock, the stock issued therefor is fully paid and
22 nonassessable.

23 (e) The corporation may place in escrow stock issued
24 for a contract for future services or benefits or a promissory
25 note, or make other arrangements to restrict the transfer of

1 the stock, and may credit distributions in respect of the
2 stock against its purchase price, until the services are
3 performed, the benefits are received, or the note is paid. If
4 the services are not performed, the benefits are not received,
5 or the note is not paid, the stock escrowed or restricted and
6 the distributions credited may be cancelled in whole or part.

7 §10A-2A-6.22. Liability of stockholders.

8 (a) A purchaser from a corporation of the
9 corporation's own stock is not liable to the corporation or
10 its creditors with respect to the stock except to pay the
11 consideration for which the stock was authorized to be issued
12 or specified in the subscription agreement.

13 (b) A stockholder is not personally liable for any
14 liabilities of the corporation (including liabilities arising
15 from acts of the corporation) except to the extent provided in
16 a provision of the certificate of incorporation permitted by
17 Section 10A-2A-2.02.

18 §10A-2A-6.23. Stock dividends.

19 (a) Unless the certificate of incorporation provides
20 otherwise, stock may be issued pro rata and without
21 consideration to the corporation's stockholders or to the
22 stockholders of one or more classes or series of stock. An
23 issuance of stock under this subsection is a stock dividend.

24 (b) Stock of one class or series may not be issued
25 as a stock dividend in respect of stock of another class or

1 series unless (i) the certificate of incorporation so
2 authorizes, (ii) a majority of the votes entitled to be cast
3 by the class or series to be issued approve the issuance, or
4 (iii) there is no outstanding stock of the class or series to
5 be issued.

6 (c) The board of directors may fix the record date
7 for determining stockholders entitled to a stock dividend,
8 which date may not be retroactive. If the board of directors
9 does not fix the record date for determining stockholders
10 entitled to a stock dividend, the record date is the date the
11 board of directors authorizes the stock dividend.

12 §10A-2A-6.24. Stock rights, options, warrants, and
13 awards.

14 (a) A corporation may issue rights, options, or
15 warrants for the purchase of stock or other securities of the
16 corporation. The board of directors shall determine (i) the
17 terms and conditions upon which the rights, options, or
18 warrants are issued and (ii) the terms, including the
19 consideration for which the stock or other securities are to
20 be issued. The authorization by the board of directors for the
21 corporation to issue rights, options, or warrants constitutes
22 authorization of the issuance of the stock or other securities
23 for which the rights, options, or warrants are exercisable.

24 (b) The terms and conditions of rights, options, or
25 warrants may include restrictions or conditions that:

1 (1) preclude or limit the exercise, transfer, or
2 receipt of rights, options, or warrants by any person or
3 persons owning or offering to acquire a specified number or
4 percentage of the outstanding stock or other securities of the
5 corporation or by any transferee or transferees of that person
6 or persons, or

7 (2) invalidate or void rights, options, or warrants
8 held by that person or persons or any of that person's
9 transferee or transferees.

10 (c) The board of directors may authorize one or more
11 officers to (i) designate the recipients of rights, options,
12 warrants, or other equity compensation awards that involve the
13 issuance of stock and (ii) determine, within an amount and
14 subject to any other limitations established by the board of
15 directors and, if applicable, the stockholders, the number of
16 the rights, options, warrants, or other equity compensation
17 awards and the terms of the rights, options, warrants, or
18 awards to be received by the recipients, provided that an
19 officer may not use that authority to designate himself or
20 herself or any other persons as the board of directors may
21 specify as a recipient of rights, options, warrants, or other
22 equity compensation awards.

23 §10A-2A-6.25. Form and content of certificates.

24 (a) Stock may, but need not, be represented by
25 certificates. Unless this chapter or another statute expressly

1 provides otherwise, the rights and obligations of stockholders
2 are identical regardless of whether their stock is represented
3 by certificates.

4 (b) Each stock certificate must be signed by two
5 officers designated in the certificate of incorporation or
6 bylaws.

7 (c) Each certificate representing stock shall comply
8 with Sections 10A-1-3.42, 10A-1-3.43(b), and 10A-1-3.44.

9 (d) No certificate representing stock shall be
10 issued in bearer form.

11 §10A-2A-6.26. Uncertificated interests.

12 (a) Unless the certificate of incorporation or
13 bylaws provide otherwise, the board of directors of a
14 corporation may authorize the issuance of some or all of the
15 shares of stock of any or all of its classes or series without
16 certificates. The authorization does not affect shares of
17 stock already represented by certificates until they are
18 surrendered to the corporation.

19 (b) Within a reasonable time after the issuance or
20 transfer of shares of stock without certificates, the
21 corporation shall comply with the notice requirements of
22 Section 10A-1-3.45.

23 §10A-2A-6.27. Restriction on transfer of stock.

24 (a) The certificate of incorporation, the bylaws, an
25 agreement among stockholders, or an agreement between

1 stockholders and the corporation may impose restrictions on
2 the transfer or registration of transfer of stock of the
3 corporation. A restriction does not affect stock issued before
4 the restriction was adopted unless the holders of the stock
5 are parties to the restriction agreement or voted in favor of
6 the restriction.

7 (b) A restriction on the transfer or registration of
8 transfer of stock is valid and enforceable against the
9 corporation, the holder, or a transferee of the holder if the
10 restriction is authorized by this section and as provided in
11 Section 10A-1-3.42 its existence is noted conspicuously on the
12 front or back of the certificate or is contained in the
13 information required by Section 10A-1-3.45. Unless so noted or
14 contained, a restriction is not enforceable against a person
15 without knowledge of the restriction.

16 (c) A restriction on the transfer or registration of
17 transfer of stock is authorized:

18 (1) to maintain the corporation's status when it is
19 dependent on the number or identity of its stockholders;

20 (2) to preserve exemptions under federal or state
21 securities law; or

22 (3) for any other reasonable purpose.

23 (d) A restriction on the transfer or registration of
24 transfer of stock may include a restriction that:

1 (1) obligates the stockholder first to offer the
2 corporation or other persons (separately, consecutively, or
3 simultaneously) an opportunity to acquire the restricted
4 stock;

5 (2) obligates the corporation or other persons
6 (separately, consecutively, or simultaneously) to acquire the
7 restricted stock;

8 (3) requires the corporation, the holders of any
9 class or series of its stock, or other persons to approve the
10 transfer of the restricted stock, if the requirement is not
11 manifestly unreasonable;

12 (4) prohibits the transfer or registration of the
13 restricted stock to designated persons or classes of persons,
14 if the prohibition is not manifestly unreasonable; or

15 (5) requires the corporation to refuse to transfer
16 the stock.

17 (e) For purposes of this section, "stock" includes a
18 security convertible into or carrying a right to subscribe for
19 or acquire stock.

20 §10A-2-6.28. Expense of issue.

21 A corporation may pay the expenses of selling or
22 underwriting its shares, and of organizing or reorganizing the
23 corporation, from the consideration received for shares.

24 Division C. SUBSEQUENT ACQUISITION OF STOCK BY
25 STOCKHOLDERS AND CORPORATION.

1 §10A-2A-6.30. Stockholders' preemptive rights.

2 (a) The stockholders of a corporation do not have a
3 preemptive right to acquire the corporation's unissued stock
4 except to the extent the certificate of incorporation so
5 provides.

6 (b) A statement included in the certificate of
7 incorporation that "the corporation elects to have preemptive
8 rights" (or words of similar effect) means that the following
9 principles apply except to the extent the certificate of
10 incorporation expressly provides otherwise:

11 (1) The stockholders of the corporation have a
12 preemptive right, granted on uniform terms and conditions
13 prescribed by the board of directors to provide a fair and
14 reasonable opportunity to exercise the right, to acquire
15 proportional amounts of the corporation's unissued stock upon
16 the decision of the board of directors to issue them.

17 (2) A preemptive right may be waived by a
18 stockholder. A waiver evidenced by a writing is irrevocable
19 even though it is not supported by consideration.

20 (3) There is no preemptive right with respect to:

21 (i) stock issued as compensation to directors,
22 officers, employees, or agents of the corporation, its
23 subsidiaries, or affiliates;

24 (ii) stock issued to satisfy conversion or option
25 rights created to provide compensation to directors, officers,

1 employees, or agents of the corporation, its subsidiaries, or
2 affiliates;

3 (iii) stock authorized in the certificate of
4 incorporation that is issued within six months from the
5 effective date of incorporation; or

6 (iv) stock sold otherwise than for cash.

7 (4) Holders of stock of any class or series without
8 voting power but with preferential rights to distributions
9 have no preemptive rights with respect to stock of any class
10 or series.

11 (5) Holders of stock of any class or series with
12 voting power but without preferential rights to distributions
13 have no preemptive rights with respect to stock of any class
14 or series with preferential rights to distributions unless the
15 stock with preferential rights is convertible into or carry a
16 right to subscribe for or acquire the stock without
17 preferential rights.

18 (6) Stock subject to preemptive rights that is not
19 acquired by stockholders may be issued to any person for
20 a period of one year after being offered to stockholders at a
21 consideration set by the board of directors that is not lower
22 than the consideration set for the exercise of preemptive
23 rights. An offer at a lower consideration or after the
24 expiration of one year is subject to the stockholders'
25 preemptive rights.

1 (c) For purposes of this section, "stock" includes a
2 security convertible into or carrying a right to subscribe for
3 or acquire stock.

4 §10A-2A-6.31. Corporation's acquisition of its own
5 stock.

6 (a) A corporation may acquire its own stock, and,
7 unless otherwise provided in the certificate of incorporation,
8 stock so acquired constitutes authorized but unissued stock.

9 (b) If the certificate of incorporation prohibits
10 the reissue of the acquired stock, the number of authorized
11 shares of stock is reduced by the number of shares of stock
12 acquired.

13 Division D. DISTRIBUTIONS.

14 §10A-2A-6.40. Distributions to stockholders.

15 (a) The board of directors may authorize and the
16 corporation may make distributions to its stockholders subject
17 to restriction by the certificate of incorporation and the
18 limitation in subsection (c).

19 (b) The board of directors may fix the record date
20 for determining stockholders entitled to a distribution, which
21 date may not be retroactive. If the board of directors does
22 not fix a record date for determining stockholders entitled to
23 a distribution (other than one involving a purchase,
24 redemption, or other acquisition of the corporation's stock),

1 the record date is the date the board of directors authorizes
2 the distribution.

3 (c) No distribution may be made if, after giving it
4 effect:

5 (1) the corporation would not be able to pay its
6 debts as they become due in the usual course of business; or

7 (2) the corporation's total assets would be less
8 than the sum of its total liabilities plus (unless the
9 certificate of incorporation permits otherwise) the amount
10 that would be needed, if the corporation were to be dissolved
11 at the time of the distribution, to satisfy the preferential
12 rights upon dissolution of stockholders whose preferential
13 rights are superior to those receiving the distribution.

14 (d) The board of directors may base a determination
15 that a distribution is not prohibited under subsection (c)
16 either on financial statements prepared on the basis of
17 accounting practices and principles that are reasonable in the
18 circumstances or on a fair valuation or other method that is
19 reasonable in the circumstances.

20 (e) Except as provided in subsection (g), the effect
21 of a distribution under subsection (c) is measured:

22 (1) in the case of distribution by purchase,
23 redemption, or other acquisition of the corporation's stock,
24 as of the earlier of (i) the date cash or other property is
25 transferred or debt to a stockholder is incurred by the

1 corporation or (ii) the date the stockholder ceases to be a
2 stockholder with respect to the acquired stock;

3 (2) in the case of any other distribution of
4 indebtedness, as of the date the indebtedness is distributed;
5 and

6 (3) in all other cases, as of (i) the date the
7 distribution is authorized if the payment occurs within 120
8 days after the date of authorization or (ii) the date the
9 payment is made if it occurs more than 120 days after the date
10 of authorization.

11 (f) A corporation's indebtedness to a stockholder
12 incurred by reason of a distribution made in accordance with
13 this section is at parity with the corporation's indebtedness
14 to its general, unsecured creditors except to the extent
15 subordinated by agreement.

16 (g) Indebtedness of a corporation, including
17 indebtedness issued as a distribution, is not considered a
18 liability for purposes of determinations under subsection (c)
19 if its terms provide that payment of principal and interest
20 are made only if and to the extent that payment of a
21 distribution to stockholders could then be made under this
22 section. If the indebtedness is issued as a distribution, each
23 payment of principal or interest is treated as a distribution,
24 the effect of which is measured on the date the payment is
25 actually made.

1 (h) This section shall not apply to distributions in
2 liquidation under Article 14.

3 ARTICLE 7. STOCKHOLDERS.

4 Division A. MEETINGS.

5 §10A-2A-7.01. Annual meetings.

6 (a) Unless directors are elected by written consent
7 in lieu of an annual meeting as permitted by Section
8 10A-2A-7.04, a corporation shall hold a meeting of
9 stockholders annually at a time stated in or fixed in
10 accordance with the certificate of incorporation or bylaws at
11 which directors shall be elected.

12 (b) Unless the board of directors determines to hold
13 the meeting solely by means of remote communication in
14 accordance with Section 10A-2A-7.09(c), annual meetings may be
15 held (i) in or out of this state at the place stated in or
16 fixed in accordance with the certificate of incorporation or
17 bylaws or (ii) if no place is stated in or fixed in accordance
18 with the certificate of incorporation or bylaws, at the
19 corporation's principal office.

20 (c) The failure to hold an annual meeting at the
21 time stated in or fixed in accordance with a corporation's
22 certificate of incorporation or bylaws does not affect the
23 validity of any corporate action.

24 §10A-2A-7.02. Special meetings.

1 (a) Special meetings of the stockholders may be
2 called by the board of directors or by such person or persons
3 as may be authorized by the certificate of incorporation or by
4 the bylaws.

5 (b) In the event that the certificate of
6 incorporation or bylaws allow stockholders to demand a special
7 meeting of the stockholders, then if not otherwise fixed under
8 Section 10A-2A-7.03 or Section 10A-2A-7.07, the record date
9 for determining stockholders entitled to demand a special
10 meeting shall be the first date on which a signed stockholder
11 demand is delivered to the corporation. No written demand for
12 a special meeting shall be effective unless, within 60 days of
13 the earliest date on which the demand delivered to the
14 corporation as allowed by the certificate of incorporation or
15 bylaws was signed, written demands signed by stockholders
16 holding at least the percentage of votes specified in or fixed
17 in accordance with the certificate of incorporation or bylaws
18 have beendeliveredto the corporation.

19 (c) Unless the board of directors determines to hold
20 the meeting solely by means of remote participation in
21 accordance with Section 10A-2A-7.09(c), special meetings of
22 stockholders may be held (i) in or out of this state at the
23 place stated in or fixed in accordance with the certificate of
24 incorporation or bylaws or (ii) if no place is stated in or

1 fixed in accordance with the certificate of incorporation or
2 bylaws, at the corporation's principal office.

3 (d) Only business within the purpose or purposes
4 described in the meeting notice required by Section
5 10A-2A-7.05(c) may be conducted at a special meeting of
6 stockholders.

7 §10A-2A-7.03. Court-ordered meetings.

8 (a) The circuit court of the county where a
9 corporation's principal office, or, if none in this state, its
10 registered office, is located may summarily order a meeting to
11 be held:

12 (1) on application of any stockholder of the
13 corporation entitled to participate in an annual meeting if an
14 annual meeting was not held or action by written consent in
15 lieu of an annual meeting did not become effective within the
16 earlier of 12 months after the end of the corporation's fiscal
17 year or 15 months after its last annual meeting; or

18 (2) on application of one or more stockholders who
19 signed a demand for a special meeting valid under Section
20 10A-2A-7.02, if:

21 (i) notice of the special meeting was not given
22 within 30 days after the first day on which the requisite
23 number of demands have been delivered to the corporation; or

24 (ii) the special meeting was not held in accordance
25 with the notice.

1 (b) The court may fix the time and place of the
2 meeting, determine the stock entitled to participate in the
3 meeting, specify a record date or dates for determining
4 stockholders entitled to notice of and to vote at the meeting,
5 prescribe the form and content of the meeting notice, fix the
6 quorum required for specific matters to be considered at the
7 meeting (or direct that the stock represented at the meeting
8 constitute a quorum for action on those matters), and enter
9 other orders necessary to accomplish the purpose or purposes
10 of the meeting.

11 (c) For purposes of subsection (a) (1), "stockholder"
12 means a record stockholder, a beneficial stockholder, and an
13 unrestricted voting trust beneficial owner.

14 §10A-2A-7.04. Action without meeting.

15 (a) Unless otherwise provided in the certificate of
16 incorporation, any action required or permitted by this
17 chapter to be taken at any meeting of the stockholders may be
18 taken without a meeting, and without prior notice, if one or
19 more consents in writing setting forth the action so taken are
20 signed by the holders of outstanding stock having not less
21 than the minimum number of votes that would be required to
22 authorize or take the action at a meeting at which all shares
23 of stock entitled to vote on the action were present and
24 voted; provided, however, that if a corporation's certificate
25 of incorporation authorizes stockholders to cumulate their

1 votes when electing directors pursuant to Section 10A-2A-7.28,
2 directors may not be elected by less than unanimous written
3 consent. The action must be evidenced by one or more written
4 consents describing the action taken, signed by the
5 stockholders approving the action and delivered to the
6 corporation for filing by the corporation with the minutes or
7 corporate records.

8 (b) If not otherwise fixed under Section 10A-2A-7.07
9 and if prior action by the board of directors is not required
10 respecting the action to be taken without a meeting, the
11 record date for determining the stockholders entitled to take
12 action without a meeting shall be the first date on which a
13 signed written consent is delivered to the corporation. If not
14 otherwise fixed under Section 10A-2A-7.07 and if prior action
15 by the board of directors is required respecting the action to
16 be taken without a meeting, the record date shall be the close
17 of business on the day the resolution of the board of
18 directors taking the prior action is adopted. No written
19 consent shall be effective to take the corporate action
20 referred to therein unless, within 60 days of the earliest
21 date on which a consent is delivered to the corporation as
22 required by this section, written consents signed by
23 sufficient stockholders to take the action have been delivered
24 to the corporation. A written consent may be revoked by a
25 writing to that effect delivered to the corporation before

1 unrevoked written consents sufficient in number to take the
2 corporate action have been delivered to the corporation.

3 (c) A consent signed pursuant to the provisions of
4 this section has the effect of a vote taken at a meeting and
5 may be described as such in any document. Unless the
6 certificate of incorporation, bylaws or a resolution of the
7 board of directors provides for a reasonable delay to permit
8 tabulation of written consents, the action taken by written
9 consent shall be effective when written consents signed by
10 sufficient stockholders to take the action have been delivered
11 to the corporation.

12 (d) If this chapter requires that notice of a
13 proposed action be given to nonvoting stockholders and the
14 action is to be taken by written consent of the voting
15 stockholders, the corporation shall give its nonvoting
16 stockholders written notice of the action not more than 10
17 days after (i) written consents sufficient to take the action
18 have been delivered to the corporation, or (ii) any later date
19 that tabulation of consents is completed pursuant to an
20 authorization under subsection (d). The notice must reasonably
21 describe the action taken and contain or be accompanied by the
22 same material that, under any provision of this chapter, would
23 have been required to be sent to nonvoting stockholders in a
24 notice of a meeting at which the proposed action would have
25 been submitted to the stockholders for action.

1 (e) If action is taken by less than unanimous
2 written consent of the voting stockholders, the corporation
3 shall give its nonconsenting voting stockholders written
4 notice of the action not more than 10 days after (i) written
5 consents sufficient to take the action have been delivered to
6 the corporation, or (ii) any later date that tabulation of
7 consents is completed pursuant to an authorization under
8 subsection (c). The notice must reasonably describe the action
9 taken and contain or be accompanied by the same material that,
10 under any provision of this chapter, would have been required
11 to be sent to voting stockholders in a notice of a meeting at
12 which the action would have been submitted to the stockholders
13 for action.

14 (f) The notice requirements in subsections (d) and
15 (e) shall not delay the effectiveness of actions taken by
16 written consent, and a failure to comply with those notice
17 requirements shall not invalidate actions taken by written
18 consent, provided that this subsection shall not be deemed to
19 limit judicial power to fashion any appropriate remedy in
20 favor of a stockholder adversely affected by a failure to give
21 the notice within the required time period.

22 §10A-2A-7.05. Notice of meeting.

23 (a) A corporation shall notify stockholders of the
24 place, if any, date, and time of each annual and special
25 stockholders' meeting no fewer than 10 nor more than 60 days

1 before the meeting date. If the board of directors has
2 authorized participation by means of remote communication
3 pursuant to Section 10A-2A-7.09 for holders of any class or
4 series of stock, the notice to the holders of that class or
5 series of stock must describe the means of remote
6 communication to be used. The notice must include the record
7 date for determining the stockholders entitled to vote at the
8 meeting, if that date is different from the record date for
9 determining stockholders entitled to notice of the meeting.
10 Unless this chapter or the certificate of incorporation
11 requires otherwise, the corporation is required to give notice
12 only to stockholders entitled to vote at the meeting as of the
13 record date for determining the stockholders entitled to
14 notice of the meeting.

15 (b) Unless this chapter or the certificate of
16 incorporation requires otherwise, the notice of an annual
17 meeting of stockholders need not include a description of the
18 purpose or purposes for which the meeting is called.

19 (c) Notice of a special meeting of stockholders must
20 include a description of the purpose or purposes for which the
21 meeting is called.

22 (d) If not otherwise fixed under Section 10A-2A-7.03
23 or Section 10A-2A-7.07, the record date for determining
24 stockholders entitled to notice of and to vote at an annual or

1 special stockholders' meeting is the day before the first
2 notice is delivered to stockholders.

3 (e) Unless the certificate of incorporation or
4 bylaws require otherwise, if an annual or special
5 stockholders' meeting is adjourned to a different place, if
6 any, date, or time, notice need not be given of the new place,
7 if any, date, or time if the new place, if any, date, or time
8 is announced at the meeting before adjournment. If a new
9 record date for the adjourned meeting is or must be fixed
10 under Section 10A-2A-7.07, however, notice of the adjourned
11 meeting shall be given under this section to stockholders
12 entitled to vote at the adjourned meeting as of the record
13 date fixed for notice of the adjourned meeting.

14 §10A-2A-7.06. Waiver of notice.

15 (a) A stockholder may waive any notice required by
16 this chapter or the certificate of incorporation or bylaws,
17 before or after the date and time stated in the notice. The
18 waiver must be in writing, be signed by the stockholder
19 entitled to the notice, and be delivered to the corporation
20 for filing by the corporation with the minutes or corporate
21 records.

22 (b) A stockholder's attendance at a meeting:

23 (1) waives objection to lack of notice or defective
24 notice of the meeting, unless the stockholder at the beginning

1 of the meeting objects to holding the meeting or transacting
2 business at the meeting; and

3 (2) waives objection to consideration of a
4 particular matter at the meeting that is not within the
5 purpose or purposes described in the meeting notice, unless
6 the stockholder objects to considering the matter when it is
7 presented.

8 §10A-2A-7.07. Record date for meeting.

9 (a) The certificate of incorporation or bylaws may
10 fix or provide the manner of fixing the record date or dates
11 for one or more voting groups to determine the stockholders
12 entitled to notice of a stockholders' meeting, to demand a
13 special meeting, to vote, or to take any other action. If the
14 certificate of incorporation or bylaws do not fix or provide
15 for fixing a record date, the board of directors may fix the
16 record date.

17 (b) A record date fixed under this section may not
18 be more than 70 days before the meeting or action requiring
19 a determination of stockholders and may not be retroactive.

20 (c) A determination of stockholders entitled to
21 notice of or to vote at a stockholders' meeting is effective
22 for any adjournment of the meeting unless the board of
23 directors fixes a new record date or dates, which it shall do
24 if the meeting is adjourned to a date more than 120 days after
25 the date fixed for the original meeting.

1 (d) If a court orders a meeting adjourned to a date
2 more than 120 days after the date fixed for the original
3 meeting, it may provide that the original record date or dates
4 continues in effect or it may fix a new record date or dates.

5 (e) The record dates for a stockholders' meeting
6 fixed by or in the manner provided in the certificate of
7 incorporation or bylaws or by the board of directors shall be
8 the record date for determining stockholders entitled both to
9 notice of and to vote at the stockholders' meeting, unless in
10 the case of a record date fixed by the board of directors and
11 to the extent not prohibited by the certificate of
12 incorporation or bylaws, the board of directors, at the time
13 it fixes the record date for stockholders entitled to notice
14 of the meeting, fixes a later record date on or before the
15 date of the meeting to determine the stockholders entitled to
16 vote at the meeting.

17 §10A-2A-7.08. Conduct of meeting.

18 Unless the certificate of incorporation or bylaws
19 provide otherwise, a meeting of the stockholders shall be
20 conducted as follows:

21 (a) At each meeting of stockholders, a chair shall
22 preside. The chair shall be appointed by the board of
23 directors.

1 (b) The board of directors shall determine the order
2 of business and shall have the authority to establish rules
3 for the conduct of the meeting.

4 (c) The chair of the meeting shall announce at the
5 meeting when the polls close for each matter voted upon. If no
6 announcement is made, the polls shall be deemed to have closed
7 upon the final adjournment of the meeting. After the polls
8 close, no ballots, proxies or votes nor any revocations or
9 changes to ballots, proxies or votes may be accepted.

10 §10A-2A-7.09. Remote participation in stockholders'
11 meetings; meetings held solely by remote participation.

12 (a) Stockholders of any class or series of stock may
13 participate in any meeting of stockholders by means of remote
14 communication to the extent the board of directors authorizes
15 participation for that class or series. Participation as a
16 stockholder by means of remote communication shall be subject
17 to guidelines and procedures as the board of directors adopts,
18 and shall be in conformity with subsection (b).

19 (b) Stockholders participating in a stockholders'
20 meeting by means of remote communication shall be deemed
21 present and may vote at that meeting if the corporation has
22 implemented reasonable measures:

23 (1) to verify that each person participating
24 remotely as a stockholder is a stockholder; and

1 (2) to provide stockholders participating remotely a
2 reasonable opportunity to participate in the meeting and to
3 vote on matters submitted to the stockholders, including an
4 opportunity to communicate, and to read or hear the
5 proceedings of the meeting, substantially concurrently with
6 the proceedings.

7 (c) Unless the certificate of incorporation or
8 bylaws require the meeting of stockholders to be held at a
9 place, the board of directors may determine that any meeting
10 of stockholders shall not be held at any place and shall
11 instead be held solely by means of remote communication, but
12 only if the corporation implements the measures specified in
13 subsection (b).

14 Division B. VOTING.

15 §10A-2A-7.20. Stockholders' list for meeting.

16 (a) After fixing a record date for a meeting, a
17 corporation shall prepare an alphabetical list of the names of
18 all its stockholders who are entitled to notice of a
19 stockholders' meeting. If the board of directors fixes a
20 different record date under Section 10A-2A-7.07(e) to
21 determine the stockholders entitled to vote at the meeting, a
22 corporation also shall prepare an alphabetical list of the
23 names of all its stockholders who are entitled to vote at the
24 meeting. A list must be arranged by voting group (and within
25 each voting group by class or series of stock) and show the

1 address of and number of shares of stock held by each
2 stockholder. Nothing contained in this subsection shall
3 require the corporation to include on that list the electronic
4 mail address or other electronic contact information of a
5 stockholder.

6 (b) The stockholders' list for notice shall be
7 available for inspection by any stockholder, beginning two
8 business days after notice of the meeting is given for which
9 the list was prepared and continuing through the meeting, (i)
10 at the corporation's principal office or at a place identified
11 in the meeting notice in the city where the meeting will be
12 held or (ii) on a reasonably accessible electronic network,
13 provided that the information required to gain access to such
14 list is provided with the notice of the meeting. In the event
15 that the corporation determines to make the list available on
16 an electronic network, the corporation may take reasonable
17 steps to ensure that such information is available only to
18 stockholders of the corporation. A stockholders' list for
19 voting shall be similarly available for inspection promptly
20 after the record date for voting. A stockholder, or the
21 stockholder's agent or attorney, is entitled on written demand
22 to inspect and, subject to the requirements of Section
23 10A-2A-16.02(c), to copy a list, during regular business hours
24 and at the stockholder's expense, during the period it is
25 available for inspection.

1 (c) If the meeting is to be held at a place, the
2 corporation shall make the list of stockholders entitled to
3 vote available at the meeting, and any stockholder, or the
4 stockholder's agent or attorney, is entitled to inspect the
5 list at any time during the meeting or any adjournment. If the
6 meeting is to be held solely by means of remote communication,
7 then such list shall also be open to such inspection during
8 the meeting on a reasonably accessible electronic network, and
9 the information required to access such list shall be provided
10 with the notice of the meeting.

11 (d) If the corporation refuses to allow a
12 stockholder, or the stockholder's agent or attorney, to
13 inspect a stockholders' list before or at the meeting (or copy
14 a list as permitted by subsection (b)), the circuit court of
15 the county where the corporation's principal office, or, if
16 none in this state, its registered office, is located, on
17 application of the stockholder, may summarily order the
18 inspection or copying at the corporation's expense and may
19 postpone the meeting for which the list was prepared until the
20 inspection or copying is complete.

21 (e) Refusal or failure to prepare or make available
22 the stockholders' list does not affect the validity of action
23 taken at the meeting.

24 (f) The stock transfer records of the corporation
25 shall be prima facie evidence as to who are the stockholders

1 entitled to examine the stockholders' list or transfer records
2 or to vote at any meeting of stockholders.

3 §10A-2A-7.21. Voting entitlement of stock.

4 (a) Except as provided in subsections (b) and (d) or
5 unless the certificate of incorporation provides otherwise,
6 each outstanding share of stock, regardless of class or
7 series, is entitled to one vote on each matter voted on at a
8 stockholders' meeting. Only stock is entitled to vote.

9 (b) Stock of a corporation is not entitled to vote
10 if it is owned by or otherwise belongs to the corporation
11 directly, or indirectly through an entity of which a majority
12 of the voting power is held directly or indirectly by the
13 corporation or which is otherwise controlled by the
14 corporation.

15 (c) Stock held by the corporation in a fiduciary
16 capacity for the benefit of any person is entitled to vote
17 unless it is held for the benefit of, or otherwise belongs to,
18 the corporation directly, or indirectly through an entity of
19 which a majority of the voting power is held directly or
20 indirectly by the corporation or which is otherwise controlled
21 by the corporation.

22 (d) Redeemable stock is not entitled to vote after
23 delivery of written notice of redemption is effective and a
24 sum sufficient to redeem the stock has been deposited with a
25 bank, trust company, or other financial institution under an

1 irrevocable obligation to pay the holders the redemption price
2 on surrender of the stock.

3 (e) For purposes of this section, "voting power"
4 means the current power to vote in the election of directors
5 of a corporation or to elect, select or appoint governing
6 persons of another entity.

7 §10A-2A-7.22. Proxies.

8 (a) A stockholder may vote the stockholder's stock
9 in person or by proxy.

10 (b) A stockholder, or the stockholder's agent or
11 attorney-in-fact, may appoint a proxy to vote or otherwise act
12 for the stockholder by signing an appointment form, or by an
13 electronic transmission. An electronic transmission must
14 contain or be accompanied by information from which the
15 recipient can determine the date of the transmission and that
16 the transmission was authorized by the sender or the sender's
17 agent or attorney-in-fact.

18 (c) An appointment of a proxy is effective when a
19 signed appointment form or an electronic transmission of the
20 appointment is received by the inspector of election or the
21 officer or agent of the corporation authorized to count votes.
22 An appointment is valid for the term provided in the
23 appointment form, and, if no term is provided, is valid for 11
24 months unless the appointment is irrevocable under subsection
25 (d).

1 (d) An appointment of a proxy is revocable unless
2 the appointment form or electronic transmission states that it
3 is irrevocable and the appointment is coupled with an
4 interest. Appointments coupled with an interest include the
5 appointment of:

6 (1) a pledgee;

7 (2) a person who purchased or agreed to purchase the
8 stock;

9 (3) a creditor of the corporation who extended it
10 credit under terms requiring the appointment;

11 (4) an employee of the corporation whose employment
12 contract requires the appointment; or

13 (5) a party to a voting agreement created under
14 Section 10A-2A-7.31.

15 (e) The death or incapacity of the stockholder
16 appointing a proxy does not affect the right of the
17 corporation to accept the proxy's authority unless notice of
18 the death or incapacity is received by the secretary or other
19 officer or agent authorized to tabulate votes before the proxy
20 exercises authority under the appointment.

21 (f) An appointment made irrevocable under subsection
22 (d) is revoked when the interest with which it is coupled is
23 extinguished.

24 (g) Unless it otherwise provides, an appointment
25 made irrevocable under subsection (d) continues in effect

1 after a transfer of the stock and a transferee takes subject
2 to the appointment, except that a transferee for value of
3 stock subject to an irrevocable appointment may revoke the
4 appointment if the transferee did not know of its existence
5 when acquiring the stock and the existence of the irrevocable
6 appointment was not noted conspicuously on the certificate
7 representing the stock or on the information statement for
8 stock without certificates.

9 (h) Subject to Section 10A-2A-7.24 and to any
10 express limitation on the proxy's authority stated in the
11 appointment form or electronic transmission, a corporation is
12 entitled to accept the proxy's vote or other action as that of
13 the stockholder making the appointment.

14 (i) Nothing in this section shall be construed as
15 limiting, or extending, authority granted under a durable
16 power of attorney under Section 26-1-2 or Chapter 1A of Title
17 26, and any successor statute or statutes thereto.

18 §10A-2A-7.23. Stock held by intermediaries and
19 nominees.

20 (a) A corporation's board of directors may establish
21 a procedure under which a person on whose behalf stock is
22 registered in the name of an intermediary or nominee may elect
23 to be treated by the corporation as the record stockholder by
24 filing with the corporation a beneficial ownership
25 certificate. The terms, conditions, and limitations of this

1 treatment shall be specified in the procedure. To the extent
2 that person is treated under those procedures as having rights
3 or privileges that the record stockholder otherwise would
4 have, the record stockholder shall not have those rights or
5 privileges.

6 (b) The procedure must specify:

7 (1) the types of intermediaries or nominees to which
8 it applies;

9 (2) the rights or privileges that the corporation
10 recognizes in a person with respect to whom a beneficial
11 ownership certificate is filed;

12 (3) the manner in which the procedure is selected
13 which must include that the beneficial ownership certificate
14 be signed or assented to by or on behalf of the record
15 stockholder and the person on whose behalf the stock is held;

16 (4) the information that must be provided when the
17 procedure is selected;

18 (5) the period for which selection of the procedure
19 is effective;

20 (6) requirements for notice to the corporation with
21 respect to the arrangement; and

22 (7) the form and contents of the beneficial
23 ownership certificate.

1 (c) The procedure may specify any other aspects of
2 the rights and duties created by the filing of a beneficial
3 ownership certificate.

4 §10A-2A-7.24. Acceptance of votes and other
5 instruments.

6 (a) If the name signed on a vote, ballot, consent,
7 waiver, stockholder demand, or proxy appointment corresponds
8 to the name of a stockholder, the corporation, if acting in
9 good faith, is entitled to accept the vote, ballot, consent,
10 waiver, stockholder demand, or proxy appointment and give it
11 effect as the act of the stockholder.

12 (b) If the name signed on a vote, ballot, consent,
13 waiver, stockholder demand, or proxy appointment does not
14 correspond to the name of its stockholder, the corporation, if
15 acting in good faith, is nevertheless entitled to accept the
16 vote, ballot, consent, waiver, stockholder demand, or proxy
17 appointment and give it effect as the act of the stockholder
18 if:

19 (1) the stockholder is an entity and the name signed
20 purports to be that of an officer or agent of the entity;

21 (2) the name signed purports to be that of an
22 administrator, executor, guardian, or conservator representing
23 the stockholder and, if the corporation requests, evidence of
24 fiduciary status acceptable to the corporation has been

1 presented with respect to the vote, ballot, consent, waiver,
2 stockholder demand, or proxy appointment;

3 (3) the name signed purports to be that of a
4 receiver or trustee in bankruptcy of the stockholder and, if
5 the corporation requests, evidence of this status acceptable
6 to the corporation has been presented with respect to the
7 vote, ballot, consent, waiver, stockholder demand, or proxy
8 appointment;

9 (4) the name signed purports to be that of a
10 pledgee, beneficial owner, or attorney-in-fact of the
11 stockholder and, if the corporation requests, evidence
12 acceptable to the corporation of the signatory's authority to
13 sign for the stockholder has been presented with respect to
14 the vote, ballot, consent, waiver, stockholder demand, or
15 proxy appointment; or

16 (5) two or more persons are the stockholder as
17 co-tenants or fiduciaries and the name signed purports to be
18 the name of at least one of the co-owners and the person
19 signing appears to be acting on behalf of all the co-owners.

20 (c) The corporation is entitled to reject a vote,
21 ballot, consent, waiver, stockholder demand, or proxy
22 appointment if the person authorized to accept or reject that
23 instrument, acting in good faith, has reasonable basis for
24 doubt about the validity of the signature on it or about the
25 signatory's authority to sign for the stockholder.

1 (d) Neither the corporation or any person authorized
2 by it, nor an inspector of election appointed under Section
3 10A-2A-7.29, that accepts or rejects a vote, ballot, consent,
4 waiver, stockholder demand, or proxy appointment in good faith
5 and in accordance with the standards of this Section
6 10A-2A-7.24 or Section 10A-2A-7.22(b) is liable in damages to
7 the stockholder for the consequences of the acceptance or
8 rejection.

9 (e) Corporate action based on the acceptance or
10 rejection of a vote, ballot, consent, waiver, stockholder
11 demand, or proxy appointment under this section is valid
12 unless a court of competent jurisdiction determines otherwise.

13 (f) If an inspector of election has been appointed
14 under Section 10A-2A-7.29, the inspector of election also has
15 the authority to request information and make determinations
16 under subsections (a), (b), and (c). Any determination made by
17 the inspector of election under those subsections is
18 controlling.

19 §10A-2A-7.25. Quorum and voting requirements for
20 voting groups.

21 (a) Stock entitled to vote as a separate voting
22 group may take action on a matter at a meeting only if a
23 quorum of those shares of stock exists with respect to that
24 matter. Unless the certificate of incorporation provides
25 otherwise, stock representing a majority of the votes entitled

1 to be cast on the matter by the voting group constitutes a
2 quorum of that voting group for action on that matter.
3 Whenever this chapter requires a particular quorum for a
4 specified action, the certificate of incorporation may not
5 provide for a lower quorum.

6 (b) Once a share of stock is represented for any
7 purpose at a meeting, it is deemed present for quorum purposes
8 for the remainder of the meeting and for any adjournment of
9 that meeting unless a new record date is or must be fixed for
10 that adjourned meeting.

11 (c) If a quorum exists, action on a matter (other
12 than the election of directors) by a voting group is approved
13 if the votes cast within the voting group favoring the action
14 exceed the votes cast opposing the action, unless the
15 certificate of incorporation requires a greater number of
16 affirmative votes.

17 (d) An amendment of the certificate of incorporation
18 adding, changing, or deleting a quorum or voting requirement
19 for a voting group greater than specified in subsection (a) or
20 subsection (c) is governed by Section 10A-2A-7.27.

21 (e) The election of directors is governed by Section
22 10A-2A-7.28.

23 (f) Whenever a provision of this chapter provides
24 for voting of classes or series as separate voting groups, the

1 rules provided in Section 10A-2A-10.04(c) for amendments of
2 the certificate of incorporation apply to that provision.

3 §10A-2A-7.26. Action by single and multiple voting
4 groups.

5 (a) If the certificate of incorporation or this
6 chapter provides for voting by a single voting group on a
7 matter, action on that matter is taken when voted upon by that
8 voting group as provided in Section 10A-2A-7.25.

9 (b) If the certificate of incorporation or this
10 chapter provides for voting by two or more voting groups on a
11 matter, action on that matter is taken only when voted upon by
12 each of those voting groups counted separately as provided in
13 Section 10A-2A-7.25. Action may be taken by different voting
14 groups on a matter at different times.

15 §10A-2A-7.27. Modifying quorum or voting
16 requirements.

17 An amendment to the certificate of incorporation
18 that adds, changes, or deletes a quorum or voting requirement
19 shall meet the same quorum requirement and be adopted by the
20 same vote and voting groups required to take action under the
21 quorum and voting requirements then in effect or proposed to
22 be adopted, whichever is greater.

23 §10A-2A-7.28. Voting for directors; cumulative
24 voting.

1 (a) Unless otherwise provided in the certificate of
2 incorporation, directors are elected by a plurality of the
3 votes cast by the stock entitled to vote in the election at a
4 meeting at which a quorum is present.

5 (b) Stockholders do not have a right to cumulate
6 their votes for directors unless the certificate of
7 incorporation so provides.

8 (c) A statement included in the certificate of
9 incorporation that "[all] [a designated voting group of]
10 stockholders are entitled to cumulate their votes for
11 directors" (or words of similar import) means that the
12 stockholders designated are entitled to multiply the number of
13 votes they are entitled to cast by the number of directors for
14 whom they are entitled to vote and cast the product for a
15 single candidate or distribute the product among two or more
16 candidates.

17 (d) Stock otherwise entitled to vote cumulatively
18 may not be voted cumulatively at a particular meeting unless:

19 (1) the meeting notice or proxy statement
20 accompanying the notice states conspicuously that cumulative
21 voting is authorized; or

22 (2) a stockholder who has the right to cumulate the
23 stockholder's votes gives notice to the corporation not less
24 than 48 hours before the time set for the meeting of the
25 stockholder's intent to cumulate votes during the meeting, and

1 if one stockholder gives this notice all other stockholders in
2 the same voting group participating in the election
3 are entitled to cumulate their votes without giving further
4 notice.

5 §10A-2A-7.29. Inspectors of election.

6 (a) The corporation shall, in advance of any meeting
7 of stockholders, appoint one or more inspectors to act at the
8 meeting and make a written report thereof. The corporation may
9 designate one or more persons as alternate inspectors to
10 replace any inspector who fails to act. If no inspector or
11 alternate is able to act at a meeting of stockholders, the
12 person presiding at the meeting shall appoint one or more
13 inspectors to act at the meeting. Each inspector, before
14 entering upon the discharge of the duties of inspector, shall
15 take and sign an oath faithfully to execute the duties of
16 inspector with strict impartiality and according to the best
17 of the inspector's ability.

18 (b) The inspectors shall:

19 (1) Ascertain the number of shares of stock
20 outstanding and the voting power of each;

21 (2) Determine the shares of stock represented at a
22 meeting and the validity of proxies and ballots;

23 (3) Count all votes and ballots;

1 (4) Determine and retain for a reasonable period a
2 record of the disposition of any challenges made to any
3 determination by the inspectors; and

4 (5) Certify their determination of the number of
5 shares represented at the meeting, and their count of all
6 votes and ballots. The inspectors may appoint or retain other
7 persons or entities to assist the inspectors in the
8 performance of the duties of the inspectors.

9 (c) The date and time of the opening and the closing
10 of the polls for each matter upon which the stockholders will
11 vote at a meeting shall be announced at the meeting. No
12 ballot, proxies or votes, nor any revocations thereof or
13 changes thereto, shall be accepted by the inspectors after the
14 closing of the polls unless a court of competent jurisdiction
15 upon application by a stockholder shall determine otherwise.

16 (d) In determining the validity and counting of
17 proxies and ballots, the inspectors shall be limited to an
18 examination of the proxies, any envelopes submitted with those
19 proxies, any information provided in accordance with Section
20 10-2A-7.22, or any information provided pursuant to Section
21 10A-2A-7.09(b), ballots and the regular books and records of
22 the corporation, except that the inspectors may consider other
23 reliable information for the limited purpose of reconciling
24 proxies and ballots submitted by or on behalf of banks,
25 brokers, their nominees or similar persons which represent

1 more votes than the holder of a proxy is authorized by the
2 record owner to cast or more votes than the stockholder holds
3 of record. If the inspectors consider other reliable
4 information for the limited purpose permitted herein, the
5 inspectors at the time they make their certification pursuant
6 to paragraph (b) (5) of this section shall specify the precise
7 information considered by them including the person or persons
8 from whom they obtained the information, when the information
9 was obtained, the means by which the information was obtained
10 and the basis for the inspectors' belief that the information
11 is accurate and reliable.

12 (e) Unless otherwise provided in the certificate of
13 incorporation or bylaws, this section shall not apply to a
14 corporation that does not have a class of voting stock that
15 is:

16 (1) Listed on a national securities exchange;

17 (2) Authorized for quotation on an interdealer
18 quotation system of a registered national securities
19 association; or

20 (3) Held of record by more than 2,000 stockholders.

21 Division C. VOTING TRUSTS AND AGREEMENTS.

22 §10A-2A-7.30. Voting trusts.

23 (a) One or more stockholders may create a voting
24 trust, conferring on a trustee the right to vote or otherwise
25 act for them, by signing an agreement setting out the

1 provisions of the trust (which may include anything consistent
2 with its purpose) and transferring their stock to the trustee.
3 When a voting trust agreement is signed, the trustee shall
4 prepare a list of the names and addresses of all voting trust
5 beneficial owners, together with the number and class of stock
6 each transferred to the trust, and deliver copies of the list
7 and agreement to the corporation at its principal office.

8 (b) A voting trust becomes effective on the date the
9 first shares of stock subject to the trust are registered in
10 the trustee's name.

11 (c) Limits, if any, on the duration of a voting
12 trust shall be as set forth in the voting trust. A voting
13 trust that became effective when this chapter provided a
14 10-year limit on its duration remains governed by the
15 provisions of this section concerning duration then in effect,
16 unless the voting trust is amended to provide otherwise by
17 unanimous agreement of the parties to the voting trust.

18 §10A-2A-7.31. Voting agreements.

19 (a) Two or more stockholders may provide for the
20 manner in which they will vote their stock by signing an
21 agreement for that purpose. A voting agreement created under
22 this section is not subject to the provisions of Section
23 10A-2A-7.30.

24 (b) A voting agreement created under this section is
25 specifically enforceable.

1 §10A-2A-7.32. Stockholder agreements.

2 (a) An agreement among the stockholders of a
3 corporation that complies with this section is effective among
4 the stockholders and the corporation even though it is
5 inconsistent with one or more other provisions of this chapter
6 in that it:

7 (1) eliminates the board of directors or restricts
8 the discretion or powers of the board of directors;

9 (2) governs the authorization or making of
10 distributions, regardless of whether they are in proportion to
11 ownership of stock, subject to the limitations in Section
12 10A-2A-6.40;

13 (3) establishes who shall be directors or officers
14 of the corporation, or their terms of office or manner of
15 selection or removal;

16 (4) governs, in general or in regard to specific
17 matters, the exercise or division of voting power by or
18 between the stockholders and directors or by or among any of
19 them, including use of weighted voting rights or director
20 proxies;

21 (5) establishes the terms and conditions of any
22 agreement for the transfer or use of property or the provision
23 of services between the corporation and any stockholder,
24 director, officer or employee of the corporation or among any
25 of them;

1 (6) transfers to one or more stockholders or other
2 persons all or part of the authority to exercise the corporate
3 powers or to manage the business and affairs of the
4 corporation, including the resolution of any issue about which
5 there exists a deadlock among directors or stockholders;

6 (7) requires dissolution of the corporation at the
7 request of one or more of the stockholders or upon the
8 occurrence of a specified event or contingency; or

9 (8) otherwise governs the exercise of the corporate
10 powers or the management of the business and affairs of the
11 corporation or the relationship among the stockholders, the
12 directors and the corporation, or among any of them, and is
13 not contrary to public policy.

14 (b) An agreement authorized by this section shall
15 be:

16 (1) as set forth (i) in the certificate of
17 incorporation or bylaws and approved by all persons who are
18 stockholders at the time of the agreement, or (ii) in a
19 written agreement that is signed by all persons who are
20 stockholders at the time of the agreement and is made known to
21 the corporation; and

22 (2) subject to amendment only by all persons who are
23 stockholders at the time of the amendment, unless the
24 agreement provides otherwise.

1 (c) The existence of an agreement authorized by this
2 section shall be noted conspicuously on the front or back of
3 each certificate for outstanding stock or in the information
4 required by Section 10A-1-3.45. If at the time of the
5 agreement the corporation has stock outstanding represented by
6 certificates, the corporation shall recall the outstanding
7 certificates and issue substitute certificates that comply
8 with this subsection. The failure to note the existence of the
9 agreement as required by this subsection shall not affect the
10 validity of the agreement or any action taken pursuant to it.
11 Any purchaser of stock who, at the time of purchase, did not
12 have knowledge of the existence of the agreement shall be
13 entitled to rescission of the purchase. A purchaser shall be
14 deemed to have knowledge of the existence of the agreement if
15 its existence is noted on the certificate or if the stock is
16 not represented by a certificate, the information required by
17 Section 10A-1-3.45 is delivered to the purchaser at or before
18 the time of purchase of the stock. An action to enforce the
19 right of rescission authorized by this subsection shall be
20 commenced within the earlier of 90 days after discovery of the
21 existence of the agreement or two years after the time of
22 purchase of the stock.

23 (d) If the agreement ceases to be effective for any
24 reason, the board of directors may, if the agreement is
25 contained or referred to in the corporation's certificate of

1 incorporation or bylaws, adopt an amendment to the certificate
2 of incorporation or bylaws, without stockholder action, to
3 delete the agreement and any references to it.

4 (e) An agreement authorized by this section that
5 limits the discretion or powers of the board of directors
6 shall relieve the directors of, and impose upon the person or
7 persons in whom the discretion or powers are vested, liability
8 for acts or omissions imposed by law on directors to the
9 extent that the discretion or powers of the directors are
10 limited by the agreement. An agreement authorized by this
11 section that eliminates the board of directors shall impose on
12 the person or persons in whom the discretion or powers of the
13 directors are vested the liability for acts or omissions as
14 are imposed by law on directors.

15 (f) The existence or performance of an agreement
16 authorized by this section shall not be a ground for imposing
17 personal liability on any stockholder for the acts or debts of
18 the corporation even if the agreement or its performance
19 treats the corporation as if it were a partnership or results
20 in failure to observe the corporate formalities otherwise
21 applicable to the matters governed by the agreement.

22 (g) Incorporators or subscribers for stock may act
23 as stockholders with respect to an agreement authorized by
24 this section if no stock has been issued when the agreement is
25 made.

1 (h) Limits, if any, on the duration of an agreement
2 authorized by this section must be set forth in the agreement.

3 Division D. DERIVATIVE PROCEEDINGS.

4 §10A-2A-7.40. Division definitions.

5 In this division:

6 (1) "Derivative proceeding" means a civil suit in
7 the right of a corporation or, to the extent provided in
8 Section 10A-2A-7.48, in the right of a foreign corporation.

9 (2) "Stockholder" means a record stockholder, a
10 beneficial stockholder, and an unrestricted voting trust
11 beneficial owner.

12 §10A-2A-7.41. Right of derivative action.

13 A stockholder may commence or maintain a derivative
14 action in the right of a corporation to enforce a right of the
15 corporation by complying with this division.

16 §10A-2A-7.42. Standing.

17 A stockholder may commence or maintain a derivative
18 action in the right of the corporation only if the
19 stockholder:

20 (1) fairly and adequately represents the interests
21 of the corporation in enforcing the right of the corporation;
22 and

23 (2) either:

24 (A) was a stockholder of the corporation at the time
25 of the act or omission of which the stockholder complains; or

1 (B) whose status as a stockholder devolved upon the
2 person by operation of law from a person who was a stockholder
3 at the time of the act or omission of which the stockholder
4 complains.

5 §10A-2A-7.43. Demand.

6 A stockholder may commence a derivative action in
7 the right of the corporation, if:

8 (a) the stockholder first makes a written demand
9 upon the corporation requesting that it bring an action to
10 enforce the right and the corporation does not bring the
11 action within a reasonable time; or

12 (b) a demand under subsection (a) would be futile.

13 §10A-2A-7.44. Pleading.

14 In a derivative action, the complaint must state
15 with particularity:

16 (a) the date and content of plaintiff's demand and
17 the corporation's response by the corporation to the demand;
18 or

19 (b) why the demand should be excused as futile.

20 §10A-2A-7.45. Stay of proceedings.

21 For the purpose of allowing the corporation time to
22 undertake an inquiry into the allegations made in the demand
23 or complaint commenced pursuant to this division, the court
24 may stay any derivative action for the period the court deems
25 appropriate.

1 §10A-2A-7.46. Discontinuance or settlement.

2 A derivative action may not be dismissed or
3 compromised without the approval of the court, and notice of
4 the proposed dismissal or compromise shall be given to
5 stockholders of the corporation in such manner as the court
6 directs.

7 §10A-2A-7.47. Proceeds and expenses.

8 (a) Except as otherwise provided in subsection (b):

9 (1) any proceeds or other benefits of a derivative
10 action, whether by judgment, compromise, or settlement, belong
11 to the corporation and not to the derivative plaintiff; and

12 (2) if the derivative plaintiff receives any
13 proceeds, the derivative plaintiff shall immediately remit
14 them to the corporation.

15 (b) If a derivative action is successful in whole or
16 in part, the court may award the plaintiff reasonable
17 expenses, including reasonable attorney's fees, from the
18 recovery of the corporation.

19 §10A-2A-7.48. Applicability to foreign corporations.

20 In any derivative action in the right of a foreign
21 corporation, the right of a person to commence or maintain a
22 derivative action in the right of a foreign corporation, and
23 any matters raised in the action covered by Sections
24 10A-2A-7.42 through 10A-2A-7.47, shall be governed by the law
25 of the jurisdiction under which the foreign corporation was

1 formed; except that any matters raised in the action covered
2 by Sections 10A-2A-7.45, 10A-2A-7.46, and 10A-2A-7.47 shall be
3 governed by the law of this state.

4 ARTICLE 8. DIRECTORS AND OFFICERS.

5 Division A. BOARD OF DIRECTORS.

6 §10A-2A-8.01. Requirement for and functions of board
7 of directors.

8 (a) Except as may be provided in an agreement
9 authorized under Section 10A-2A-7.32, each corporation shall
10 have a board of directors.

11 (b) Except as may be provided in an agreement
12 authorized under Section 10A-2A-7.32, and subject to any
13 limitation in the certificate of incorporation permitted by
14 Section 10A-2A-2.02(b), all corporate powers shall be
15 exercised by or under the authority of the board of directors,
16 and the business and affairs of the corporation shall be
17 managed by or under the direction, and subject to the
18 oversight, of the board of directors.

19 §10A-2A-8.02. Qualifications of directors.

20 (a) The certificate of incorporation or bylaws may
21 prescribe qualifications for directors or for nominees for
22 directors. Qualifications must be reasonable as applied to the
23 corporation and be lawful.

24 (b) A requirement that is based on a past,
25 prospective, or current action, or expression of opinion, by a

1 nominee for director or a director that could limit the
2 ability of a nominee for director or a director to discharge
3 his or her duties as a director is not a permissible
4 qualification under this section. Notwithstanding the
5 foregoing, qualifications may include not being or having been
6 subject to specified criminal, civil, or regulatory sanctions
7 or not having been removed as a director by judicial action or
8 for cause.

9 (c) A director shall be a natural person of the age
10 of at least 19 years but need not be a resident of this state
11 or a stockholder unless the certificate of incorporation or
12 bylaws so prescribe.

13 (d) A qualification for nomination for director
14 prescribed before a person's nomination shall apply to that
15 person at the time of nomination. A qualification for
16 nomination for director prescribed after a person's nomination
17 shall not apply to that person with respect to that person's
18 nomination.

19 (e) A qualification for director prescribed before a
20 director has been elected or appointed may apply only at the
21 time an individual becomes a director or may apply during a
22 director's term. A qualification prescribed after a director
23 has been elected or appointed shall not apply to that director
24 before the end of that director's term.

25 §10A-2A-8.03. Number and election of directors.

1 (a) A board of directors shall consist of one or
2 more individuals, with the number specified in or fixed in
3 accordance with the certificate of incorporation or bylaws.

4 (b) The number of directors may be increased or
5 decreased from time to time by amendment to, or in the manner
6 provided in, the certificate of incorporation or bylaws.

7 (c) Except as set forth in Section 10A-2A-2.04,
8 directors are elected at the first annual stockholders'
9 meeting and at each annual stockholders' meeting thereafter
10 unless elected by written consent in lieu of an annual meeting
11 as permitted by Section 10A-2A-7.04 or unless their terms are
12 staggered under Section 10A-2A-8.06.

13 §10A-2A-8.04. Election of directors by certain
14 classes or series of stock.

15 If the certificate of incorporation or action by the
16 board of directors pursuant to Section 10A-2A-6.02 authorizes
17 dividing the stock into classes or series, the certificate of
18 incorporation may also authorize the election of all or a
19 specified number of directors by the holders of one or more
20 authorized classes or series of stock. A class or series (or
21 multiple classes or series) of stock entitled to elect one or
22 more directors is a separate voting group for purposes of the
23 election of directors.

24 §10A-2A-8.05. Terms of directors generally.

1 (a) The terms of the initial directors of a
2 corporation expire at the first stockholders' meeting at which
3 directors are elected.

4 (b) The terms of all other directors expire at the
5 next, or if their terms are staggered in accordance with
6 Section 10A-2A-8.06, at the applicable second or third, annual
7 stockholders' meeting following their election, except to the
8 extent (i) provided in Section 10A-2A-10.22 if a bylaw
9 electing to be governed by that section is in effect, or (ii)
10 a shorter term is specified in the certificate of
11 incorporation in the event of a director nominee failing to
12 receive a specified vote for election.

13 (c) A decrease in the number of directors does not
14 shorten an incumbent director's term.

15 (d) Except as set forth in the next sentence of this
16 subsection, the term of a director elected to fill a vacancy
17 expires at the next stockholders' meeting at which directors
18 are elected. The term of a director elected to fill a vacancy
19 in a corporation, the directors of which have been divided
20 into groups under Section 10A-2A-8.06, shall hold office until
21 the next election of the group for which that group of
22 directors has been chosen, and until their successors shall be
23 elected and qualified.

24 (e) Except to the extent otherwise provided in the
25 certificate of incorporation or under Section 10A-2A-10.22 if

1 a bylaw electing to be governed by that section is in effect,
2 despite the expiration of a director's term, the director
3 continues to serve until the director's successor is elected
4 and qualifies or there is a decrease in the number of
5 directors.

6 §10A-2A-8.06. Staggered terms for directors.

7 The certificate of incorporation may provide for
8 staggering the terms of directors by dividing the total number
9 of directors into two or three groups, with each group
10 containing half or one-third of the total, as near as may be
11 practicable. In that event, the terms of directors in the
12 first group expire at the first annual stockholders' meeting
13 after their election, the terms of the second group expire at
14 the second annual stockholders' meeting after their election,
15 and the terms of the third group, if any, expire at the third
16 annual stockholders' meeting after their election. At each
17 annual stockholders' meeting held thereafter, directors shall
18 be elected for a term of two years or three years, as the case
19 may be, to succeed those whose terms expire.

20 §10A-2A-8.07. Resignation of directors.

21 (a) A director may resign at any time by delivering
22 a written notice of resignation to the board of directors or
23 its chair, to the secretary, or to the corporation.

24 (b) A resignation is effective as provided in
25 Section 10A-2A-1.41(i) unless the resignation provides for a

1 delayed effectiveness, including effectiveness determined upon
2 a future event or events. A resignation that is conditioned
3 upon failing to receive a specified vote for election as a
4 director may provide that it is irrevocable.

5 §10A-2A-8.08. Removal of directors by stockholders.

6 (a) The stockholders may remove one or more
7 directors with or without cause unless the certificate of
8 incorporation provides that directors may be removed only for
9 cause.

10 (b) If a director is elected by a voting group of
11 stockholders, only the stockholders of that voting group may
12 participate in the vote to remove that director.

13 (c) A director may be removed if the number of votes
14 cast to remove exceeds the number of votes cast not to remove
15 the director, except to the extent the certificate of
16 incorporation or bylaws require a greater number; provided
17 that if cumulative voting is authorized, a director may not be
18 removed if, in the case of a meeting, the number of votes
19 sufficient to elect the director under cumulative voting is
20 voted against removal and, if in the case of an action by
21 written consent, the action is taken by less than unanimous
22 consent.

23 (d) A director may be removed by the stockholders
24 only at a meeting called for the purpose of removing the

1 director and the meeting notice must state that removal of the
2 director is a purpose of the meeting.

3 §10A-2A-8.09. Removal of directors by judicial
4 proceeding.

5 (a) The circuit court of the county where the
6 corporation's principal office, or if none in this state, its
7 registered office, is located may remove a director from
8 office or may order other relief, including barring the
9 director from reelection for a period prescribed by the court,
10 in a proceeding commenced by or in the right of the
11 corporation if the court finds that (i) the director engaged
12 in fraudulent conduct with respect to the corporation or its
13 stockholders, grossly abused the position of director, or
14 intentionally inflicted harm on the corporation; and (ii)
15 considering the director's course of conduct and the
16 inadequacy of other available remedies, removal or such other
17 relief would be in the best interest of the corporation.

18 (b) A stockholder proceeding on behalf of the
19 corporation under subsection (a) shall comply with all of the
20 requirements of Division D of Article 7, except clause (2) of
21 Section 10A-2A-7.42.

22 §10A-2A-8.10. Vacancy on board of directors.

23 (a) Unless the certificate of incorporation provides
24 otherwise, if a vacancy occurs on a board of directors,

1 including a vacancy resulting from an increase in the number
2 of directors:

3 (1) the stockholders may fill the vacancy;

4 (2) the board of directors may fill the vacancy; or

5 (3) if the directors remaining in office are less
6 than a quorum, they may fill the vacancy by the affirmative
7 vote of a majority of all the directors remaining in office.

8 (b) If the vacant office was held by a director
9 elected by a voting group of stockholders, only the holders of
10 stock of that voting group are entitled to vote to fill the
11 vacancy if it is filled by the stockholders, and only the
12 remaining directors elected by that voting group, even if less
13 than a quorum, are entitled to fill the vacancy if it is
14 filled by the directors.

15 (c) A vacancy that will occur at a specific later
16 date (by reason of a resignation effective at a later date
17 under Section 10A-2A-8.07(b) or otherwise) may be filled
18 before the vacancy occurs but the new director may not take
19 office until the vacancy occurs.

20 §10A-2A-8.11. Compensation of directors.

21 Unless the certificate of incorporation or bylaws
22 provide otherwise, the board of directors may fix the
23 compensation of directors.

24 Division B. MEETINGS AND ACTION OF THE BOARD OF
25 DIRECTORS.

1 §10A-2A-8.20. Meetings.

2 (a) The board of directors may hold regular or
3 special meetings in or out of this state.

4 (b) Unless restricted by the certificate of
5 incorporation or bylaws, any or all directors may participate
6 in any meeting of the board of directors through the use of
7 any means of communication by which all directors
8 participating may simultaneously hear each other during the
9 meeting. A director participating in a meeting by this means
10 is deemed to be present in person at the meeting.

11 §10A-2A-8.21. Action without meeting.

12 (a) Except to the extent that the certificate of
13 incorporation or bylaws require that action by the board of
14 directors be taken at a meeting, action required or permitted
15 by this chapter to be taken by the board of directors may be
16 taken without a meeting if each director signs a consent
17 describing the action to be taken and delivers it to the
18 corporation.

19 (b) Action taken under this section is the act of
20 the board of directors when one or more consents signed by all
21 the directors are delivered to the corporation. The consent
22 may specify a later time as the time at which the action taken
23 is to be effective. A director's consent may be withdrawn by a
24 revocation signed by the director and delivered to the

1 corporation before delivery to the corporation of unrevoked
2 written consents signed by all the directors.

3 (c) A consent signed under this section has the
4 effect of action taken at a meeting of the board of directors
5 and may be described as such in any document.

6 §10A-2A-8.22. Notice of meeting.

7 (a) Unless the certificate of incorporation or
8 bylaws provide otherwise, regular meetings of the board of
9 directors may be held without notice of the date, time, place,
10 or purpose of the meeting.

11 (b) Unless the certificate of incorporation or
12 bylaws provide for a longer or shorter period, special
13 meetings of the board of directors shall be preceded by at
14 least two days' notice of the date, time, and place of the
15 meeting. The notice need not describe the purpose of the
16 special meeting unless required by the certificate of
17 incorporation or bylaws.

18 §10A-2A-8.23. Waiver of notice.

19 (a) A director may waive any notice required by this
20 chapter, the certificate of incorporation or the bylaws before
21 or after the date and time stated in the notice. Except as
22 provided by subsection (b), the waiver must be in writing,
23 signed by the director entitled to the notice and delivered to
24 the corporation for filing by the corporation with the minutes
25 or corporate records.

1 (b) A director's attendance at or participation in a
2 meeting waives any required notice to the director of the
3 meeting unless the director at the beginning of the meeting
4 (or promptly upon arrival) objects to holding the meeting or
5 transacting business at the meeting and does not after
6 objecting vote for or assent to action taken at the meeting.

7 §10A-2A-8.24. Quorum and voting.

8 (a) Unless the certificate of incorporation or
9 bylaws provide for a greater or lesser number or unless
10 otherwise expressly provided in this chapter, a quorum of a
11 board of directors consists of a majority of the number of
12 directors specified in or fixed in accordance with the
13 certificate of incorporation or bylaws.

14 (b) The quorum of the board of directors specified
15 in or fixed in accordance with the certificate of
16 incorporation or bylaws may not consist of less than one-third
17 of the specified or fixed number of directors.

18 (c) If a quorum is present when a vote is taken, the
19 affirmative vote of a majority of directors present is the act
20 of the board of directors unless the certificate of
21 incorporation or bylaws require the vote of a greater number
22 of directors or unless otherwise expressly provided in this
23 chapter.

24 (d) A director who is present at a meeting of the
25 board of directors or a committee when corporate action is

1 taken is deemed to have assented to the action taken unless:
2 (i) the director objects at the beginning of the meeting (or
3 promptly upon arrival) to holding it or transacting business
4 at the meeting; (ii) the dissent or abstention from the action
5 taken is entered in the minutes of the meeting; or (iii) the
6 director delivers written notice of the director's dissent or
7 abstention to the presiding officer of the meeting before its
8 adjournment or to the corporation immediately after
9 adjournment of the meeting. The right of dissent or abstention
10 is not available to a director who votes in favor of the
11 action taken.

12 §10A-2A-8.25. Committees of the board.

13 (a) Unless this chapter, the certificate of
14 incorporation, or the bylaws provide otherwise, a board of
15 directors may establish one or more board committees composed
16 exclusively of one or more directors to perform functions of
17 the board of directors.

18 (b) The establishment of a board committee and
19 appointment of members to it shall be approved by the greater
20 of (i) a majority of all the directors in office when the
21 action is taken or (ii) the number of directors required by
22 the certificate of incorporation or bylaws to take action
23 under Section 10A-2A-8.24, unless, in either case, this
24 chapter or the certificate of incorporation provides
25 otherwise.

1 (c) Section 10A-2A-8.20 through Section 10A-2A-8.24
2 apply to board committees and their members.

3 (d) A board committee may exercise the powers of the
4 board of directors under Section 10A-2A-8.01, to the extent
5 specified by the board of directors or in the certificate of
6 incorporation or bylaws, except that a board committee may
7 not:

8 (1) authorize or approve distributions, except
9 according to a formula or method, or within limits, prescribed
10 by the board of directors;

11 (2) approve or propose to stockholders action that
12 this chapter requires be approved by stockholders;

13 (3) fill vacancies on the board of directors or,
14 subject to subsection (e), on any board committees; or

15 (4) adopt, amend, or repeal bylaws or amend or
16 restate the certificate of incorporation.

17 (e) The board of directors may appoint one or more
18 directors as alternate members of any board committee to
19 replace any absent or disqualified member during the member's
20 absence or disqualification. If the certificate of
21 incorporation, the bylaws, or the resolution creating the
22 board committee so provide, the member or members present at
23 any board committee meeting and not disqualified from voting
24 may, by unanimous action, appoint another director to act in

1 place of an absent or disqualified member during that member's
2 absence or disqualification.

3 §10A-2A-8.26. Submission of matters for stockholder
4 vote.

5 A corporation may agree to submit a matter to a vote
6 of its stockholders even if, after approving the matter, the
7 board of directors determines it no longer recommends the
8 matter.

9 Division C. DIRECTORS.

10 §10A-2A-8.30. Standards of conduct for directors.

11 Notwithstanding Division C of Article 3 of Chapter
12 1:

13 (a) Each member of the board of directors, when
14 discharging the duties of a director, shall act: (i) in good
15 faith, and (ii) in a manner the director reasonably believes
16 to be in the best interests of the corporation.

17 (b) The members of the board of directors or a board
18 committee, when becoming informed in connection with their
19 decision-making function or devoting attention to their
20 oversight function, shall discharge their duties with the care
21 that a person in a like position would reasonably believe
22 appropriate under similar circumstances.

23 (c) In discharging board of directors or board
24 committee duties, a director shall disclose, or cause to be
25 disclosed, to the other board of directors or board committee

1 members information not already known by them but known by the
2 director to be material to the discharge of their
3 decision-making or oversight functions, except that disclosure
4 is not required to the extent that the director reasonably
5 believes that doing so would violate a duty imposed under law,
6 a legally enforceable obligation of confidentiality, or a
7 professional ethics rule.

8 (d) In discharging board of directors or board
9 committee duties, a director who does not have knowledge that
10 makes reliance unwarranted is entitled to rely on the
11 performance by any of the persons specified in subsection
12 (f) (1) or subsection (f) (3) to whom the board of directors may
13 have delegated, formally or informally by course of conduct,
14 the authority or duty to perform one or more of the board of
15 directors' functions that are delegable under applicable law.

16 (e) In discharging board of directors or board
17 committee duties, a director who does not have knowledge that
18 makes reliance unwarranted is entitled to rely on information,
19 opinions, reports, or statements, including financial
20 statements and other financial data, prepared or presented by
21 any of the persons specified in subsection (f).

22 (f) A director is entitled to rely, in accordance
23 with subsection (d) or (e), on:

24 (1) one or more officers or employees of the
25 corporation whom the director reasonably believes to be

1 reliable and competent in the functions performed or the
2 information, opinions, reports or statements provided;

3 (2) legal counsel, public accountants, or other
4 persons retained by the corporation as to matters involving
5 skills or expertise the director reasonably believes are
6 matters (i) within the particular person's professional or
7 expert competence, or (ii) as to which the particular person
8 merits confidence; or

9 (3) a board committee of which the director is not a
10 member if the director reasonably believes the committee
11 merits confidence.

12 §10A-2A-8.31. Standards of liability for directors.

13 Notwithstanding Division C of Article 3 of Chapter
14 1:

15 (a) A director shall not be liable to the
16 corporation or its stockholders for any decision to take or
17 not to take action, or any failure to take any action, as a
18 director, unless the party asserting liability in a proceeding
19 establishes that:

20 (1) no defense interposed by the director based on
21 (i) any provision in the certificate of incorporation
22 authorized by Section 10A-2A-2.02(b) (4) or by Section
23 10A-2A-2.02(b) (6) or (ii) the protection afforded by Section
24 10A-2A-8.60, precludes liability; and

1 (2) the challenged conduct consisted or was the
2 result of:

3 (i) action not in good faith; or

4 (ii) a decision

5 (A) which the director did not reasonably believe to
6 be in the best interests of the corporation, or

7 (B) as to which the director was not informed to an
8 extent the director reasonably believed appropriate in the
9 circumstances; or

10 (iii) a lack of objectivity due to the director's
11 familial, financial or business relationship with, or a lack
12 of independence due to the director's domination or control
13 by, another person having a material interest in the
14 challenged conduct,

15 (A) which relationship or which domination or
16 control could reasonably be expected to have affected the
17 director's judgment respecting the challenged conduct in a
18 manner adverse to the corporation, and

19 (B) after a reasonable expectation to that effect
20 has been established, the director shall not have established
21 that the challenged conduct was reasonably believed by the
22 director to be in the best interests of the corporation; or

23 (iv) a sustained failure of the director to devote
24 attention to ongoing oversight of the business and affairs of
25 the corporation, or a failure to devote timely attention, by

1 making (or causing to be made) appropriate inquiry, when
2 particular facts and circumstances of significant concern
3 materialize that would alert a reasonably attentive director
4 to the need for that inquiry; or

5 (v) receipt of a financial benefit to which the
6 director was not entitled or any other breach of the
7 director's duties to deal fairly with the corporation and its
8 stockholders that is actionable under applicable law.

9 (b) The party seeking to hold the director liable:

10 (1) for money damages, shall also have the burden of
11 establishing that:

12 (i) harm to the corporation or its stockholders has
13 been suffered, and

14 (ii) the harm suffered was proximately caused by the
15 director's challenged conduct; or

16 (2) for other money payment under a legal remedy,
17 such as compensation for the unauthorized use of corporate
18 assets, shall also have whatever persuasion burden may be
19 called for to establish that the payment sought is appropriate
20 in the circumstances; or

21 (3) for other money payment under an equitable
22 remedy, such as profit recovery by or disgorgement to the
23 corporation, shall also have whatever persuasion burden may be
24 called for to establish that the equitable remedy sought is
25 appropriate in the circumstances.

1 (c) Nothing contained in this section shall (i) in
2 any instance where fairness is at issue alter the burden of
3 proving the fact or lack of fairness otherwise applicable,
4 (ii) alter the fact or lack of liability of a director under
5 another section of this chapter, such as the provisions
6 governing the consequences of an unlawful distribution under
7 Section 10A-2A-8.32 or a transactional interest under Section
8 10A-2A-8.60, or (iii) affect any rights to which the
9 corporation or a stockholder may be entitled under another
10 statute of this state or the United States.

11 §10A-2A-8.32. Directors' liability for unlawful
12 distributions.

13 (a) A director who votes for or assents to a
14 distribution in excess of what may be authorized and made
15 pursuant to Section 10A-2A-6.40(a) or Section 10A-2A-14.08(a)
16 is personally liable to the corporation for the amount of the
17 distribution that exceeds what could have been distributed
18 without violating Section 10A-2A-6.40(a) or Section
19 10A-2A-14.08(a) if the party asserting liability establishes
20 that when taking the action the director did not comply with
21 Section 10A-2A-8.30.

22 (b) A director held liable under subsection (a) for
23 an unlawful distribution is entitled to:

1 (1) contribution from every other director who could
2 be held liable under subsection (a) for the unlawful
3 distribution; and

4 (2) recoupment from each stockholder of the pro-rata
5 portion of the amount of the unlawful distribution the
6 stockholder accepted, knowing the distribution was made in
7 violation of Section 10A-2A-6.40(a) or Section
8 10A-2A-14.08(a).

9 (c) A proceeding to enforce:

10 (1) the liability of a director under subsection (a)
11 is barred unless it is commenced within two years after the
12 date (i) on which the effect of the distribution was measured
13 under Section 10A-2A-6.40(e) or (g), (ii) as of which the
14 violation of Section 10A-2A-6.40(a) occurred as the
15 consequence of disregard of a restriction in the certificate
16 of incorporation, or (iii) on which the distribution of assets
17 to stockholders under Section 10A-2A-14.08(a) was made; or

18 (2) contribution or recoupment under subsection (b)
19 is barred unless it is commenced within one year after the
20 liability of the claimant has been finally adjudicated under
21 subsection (a).

22 Division D. OFFICERS.

23 §10A-2A-8.40. Officers.

24 (a) A corporation has the officers described in its
25 certificate of incorporation or bylaws or appointed by the

1 board of directors in accordance with the certificate of
2 incorporation or bylaws.

3 (b) The board of directors may elect individuals to
4 fill one or more offices of the corporation. An officer may
5 appoint one or more officers if authorized by the certificate
6 of incorporation or bylaws or the board of directors.

7 (c) The certificate of incorporation, bylaws, or the
8 board of directors shall assign to an officer responsibility
9 for maintaining and authenticating the records of the
10 corporation required to be kept under Section 10A-2A-16.01(a).

11 (d) Unless the certificate of incorporation or
12 bylaws provide otherwise, the same individual may
13 simultaneously hold more than one office in a corporation.

14 §10A-2A-8.41. Functions of officers.

15 Each officer has the authority and shall perform the
16 functions set forth in the certificate of incorporation or
17 bylaws or, to the extent consistent with the certificate of
18 incorporation or bylaws, the functions prescribed by the board
19 of directors or by direction of an officer authorized by the
20 board of directors to prescribe the functions of other
21 officers.

22 §10A-2A-8.42. Standards of conduct for officers.

23 Notwithstanding Division C of Article 3 of Chapter
24 1:

1 (a) An officer, when performing in his or her
2 capacity as such, has the duty to act:

3 (1) in good faith;

4 (2) with the care that a person in a like position
5 would reasonably exercise under similar circumstances; and

6 (3) in a manner the officer reasonably believes to
7 be in the best interests of the corporation.

8 (b) The duty of an officer includes the obligation:

9 (1) to inform the superior officer to whom, or the
10 board of directors or the board committee to which, the
11 officer reports of information about the affairs of the
12 corporation known to the officer, within the scope of the
13 officer's functions, and known to the officer to be material
14 to that superior officer, board of directors or board
15 committee; and

16 (2) to inform his or her superior officer, or
17 another appropriate person within the corporation, or the
18 board of directors, or a board committee, of any actual or
19 probable material violation of law involving the corporation
20 or material breach of duty to the corporation by an officer,
21 employee, or agent of the corporation, that the officer
22 believes has occurred or is likely to occur.

23 (c) In discharging an officer's duties, an officer
24 who does not have knowledge that makes reliance unwarranted is
25 entitled to rely on:

1 (1) the performance of properly delegated
2 responsibilities by one or more employees of the corporation
3 whom the officer reasonably believes to be reliable and
4 competent in performing the responsibilities delegated; or

5 (2) information, opinions, reports or statements,
6 including financial statements and other financial data,
7 prepared or presented by one or more employees of the
8 corporation whom the officer reasonably believes to be
9 reliable and competent in the matters presented or by legal
10 counsel, public accountants, or other persons retained by the
11 corporation as to matters involving skills or expertise the
12 officer reasonably believes are matters (i) within the
13 particular person's professional or expert competence or (ii)
14 as to which the particular person merits confidence.

15 (d) An officer shall not be liable to the
16 corporation or its stockholders for any decision to take or
17 not to take action, or any failure to take any action, as an
18 officer, if the duties of the office are performed in
19 compliance with this section. Whether an officer who does not
20 comply with this section shall have liability will depend in
21 each instance on applicable law, including those principles of
22 Section 10A-2A-8.31 that have relevance.

23 §10A-2A-8.43. Resignation and removal of officers.

24 Notwithstanding Division C of Article 3 of Chapter

25 1:

1 (a) An officer may resign at any time by delivering
2 a written notice to the board of directors, its chair, the
3 appointing officer, the secretary, or the corporation. A
4 resignation is effective as provided in Section 10A-2A-1.41(i)
5 unless the notice provides for a delayed effectiveness,
6 including effectiveness determined upon a future event or
7 events. If effectiveness of a resignation is stated to be
8 delayed and the board of directors or the appointing officer
9 accepts the delay, the board of directors or the appointing
10 officer may fill the pending vacancy before the delayed
11 effectiveness but the new officer may not take office until
12 the vacancy occurs.

13 (b) An officer may be removed at any time with or
14 without cause by (i) the board of directors; (ii) the
15 appointing officer, unless the certificate of incorporation,
16 bylaws, or the board of directors provide otherwise; or (iii)
17 any other officer if authorized by the certificate of
18 incorporation, bylaws, or the board of directors.

19 (c) In this section, "appointing officer" means the
20 officer (including any successor to that officer) who
21 appointed the officer resigning or being removed.

22 §10A-2A-8.44. Contract rights of officers.

23 (a) The election or appointment of an officer does
24 not itself create contract rights.

1 (b) An officer's removal does not affect the
2 officer's contract rights, if any, with the corporation. An
3 officer's resignation does not affect the corporation's
4 contract rights, if any, with the officer.

5 Division E. INDEMNIFICATION AND ADVANCE FOR
6 EXPENSES.

7 §10A-2A-8.50. Division definitions.

8 In this division:

9 "Corporation" includes any domestic or foreign
10 predecessor entity of a corporation.

11 "Director" or "officer" means an individual who is
12 or was a director or officer, respectively, of a corporation
13 or who, while a director or officer of the corporation, is or
14 was serving at the corporation's request as a director,
15 officer, manager, partner, trustee, employee, or agent of
16 another entity or employee benefit plan. A director or officer
17 is considered to be serving an employee benefit plan at the
18 corporation's request if the individual's duties to the
19 corporation also impose duties on, or otherwise involve
20 services by, the individual to the plan or to participants in
21 or beneficiaries of the plan. "Director" or "officer"
22 includes, unless the context requires otherwise, the estate or
23 personal representative of a director or officer.

24 "Liability" means the obligation to pay a judgment,
25 settlement, penalty, fine (including an excise tax assessed

1 with respect to an employee benefit plan), or expenses
2 incurred with respect to a proceeding.

3 "Official capacity" means: (i) when used with
4 respect to a director, the office of director in a
5 corporation; and (ii) when used with respect to an officer, as
6 contemplated in Section 10A-2A-8.56, the office in a
7 corporation held by the officer. "Official capacity" does not
8 include service for any other corporation or foreign
9 corporation or any joint venture, trust, employee benefit
10 plan, or other entity.

11 "Party" means an individual who was, is, or is
12 threatened to be made, a defendant or respondent in a
13 proceeding.

14 "Proceeding" means any threatened, pending, or
15 completed action, suit, or proceeding, whether civil,
16 criminal, administrative, arbitrative, or investigative and
17 whether formal or informal.

18 §10A-2A-8.51. Permissible indemnification.

19 (a) Except as otherwise provided in this section, a
20 corporation may indemnify an individual who is a party to a
21 proceeding because the individual is a director against
22 liability incurred in the proceeding if:

23 (1) (i) the director conducted himself or herself in
24 good faith; and

25 (ii) the director reasonably believed:

1 (A) in the case of conduct in an official capacity,
2 that his or her conduct was in the best interests of the
3 corporation; and

4 (B) in all other cases, that his or her conduct was
5 at least not opposed to the best interests of the corporation;
6 and

7 (iii) in the case of any criminal proceeding, the
8 director had no reasonable cause to believe his or her conduct
9 was unlawful; or

10 (2) the director engaged in conduct for which
11 broader indemnification has been made permissible or
12 obligatory under a provision of the certificate of
13 incorporation (as authorized by Section 10A-2A-2.02(b)(5)).

14 (b) A director's conduct with respect to an employee
15 benefit plan for a purpose the director reasonably believed to
16 be in the interests of the participants in, and the
17 beneficiaries of, the plan is conduct that satisfies the
18 requirement of subsection (a)(1)(ii)(B).

19 (c) The termination of a proceeding by judgment,
20 order, settlement, or conviction, or upon a plea of nolo
21 contendere or its equivalent, is not, of itself, determinative
22 that the director did not meet the relevant standard of
23 conduct described in this section.

24 (d) Unless ordered by a court under Section
25 10A-2A-8.54(a)(3), a corporation may not indemnify a director:

1 (1) in connection with a proceeding by or in the
2 right of the corporation, except for expenses incurred in
3 connection with the proceeding if it is determined that the
4 director has met the relevant standard of conduct under
5 subsection (a); or

6 (2) in connection with any proceeding with respect
7 to conduct for which the director was adjudged liable on the
8 basis of receiving a financial benefit to which he or she was
9 not entitled, regardless of whether it involved action in the
10 director's official capacity.

11 §10A-2A-8.52. Mandatory indemnification.

12 A corporation shall indemnify a director who was
13 wholly successful, on the merits or otherwise, in the defense
14 of any proceeding to which the director was a party because he
15 or she was a director of the corporation against expenses
16 incurred by the director in connection with the proceeding.

17 §10A-2A-8.53. Advance for expenses.

18 (a) A corporation may, before final disposition of a
19 proceeding, advance funds to pay for or reimburse expenses
20 incurred in connection with the proceeding by an individual
21 who is a party to the proceeding because that individual is a
22 director if the director delivers to the corporation a signed
23 written undertaking of the director to repay any funds
24 advanced if (i) the director is not entitled to mandatory
25 indemnification under Section 10A-2A-8.52 and (ii) it is

1 ultimately determined under Section 10A-2A-8.54 or Section
2 10A-2A-8.55 that the director is not entitled to
3 indemnification.

4 (b) The undertaking required by subsection (a) must
5 be an unlimited general obligation of the director but need
6 not be secured and may be accepted without reference to the
7 financial ability of the director to make repayment.

8 (c) Authorizations under this section shall be made:

9 (1) by the board of directors:

10 (i) if there are two or more qualified directors, by
11 a majority vote of all the qualified directors (a majority of
12 whom shall for that purpose constitute a quorum) or by a
13 majority of the members of a committee consisting solely of
14 two or more qualified directors appointed by a majority vote
15 of qualified directors; or

16 (ii) if there are fewer than two qualified
17 directors, by the vote necessary for action by the board of
18 directors in accordance with Section 10A-2A-8.24(c), in which
19 authorization directors who are not qualified directors may
20 participate; or

21 (2) by the stockholders, but stock owned by or voted
22 under the control of a director who at the time is not a
23 qualified director may not be voted on the authorization.

24 §10A-2A-8.54. Court-ordered indemnification and
25 advance for expenses.

1 (a) A director who is a party to a proceeding
2 because he or she is a director may apply for indemnification
3 or an advance for expenses to the court conducting the
4 proceeding or to another court of competent jurisdiction.
5 After receipt of an application and after giving any notice it
6 considers necessary, the court shall:

7 (1) order indemnification if the court determines
8 that the director is entitled to mandatory indemnification
9 under Section 10A-2A-8.52;

10 (2) order indemnification or advance for expenses if
11 the court determines that the director is entitled to
12 indemnification or advance for expenses pursuant to a
13 provision authorized by Section 10A-2A-8.58(a); or

14 (3) order indemnification or advance for expenses if
15 the court determines, in view of all the relevant
16 circumstances, that it is fair and reasonable (i) to indemnify
17 the director, or (ii) to advance expenses to the director,
18 even if, in the case of (i) or (ii), he or she has not met the
19 relevant standard of conduct set forth in Section
20 10A-2A-8.51(a), failed to comply with Section 10A-2A-8.53 or
21 was adjudged liable in a proceeding referred to in Section
22 10A-2A-8.51(d) (1) or Section 10A-2A-8.51(d) (2), but if the
23 director was adjudged so liable indemnification shall be
24 limited to expenses incurred in connection with the
25 proceeding.

1 (b) If the court determines that the director is
2 entitled to indemnification under subsection (a)(1) or to
3 indemnification or advance for expenses under subsection
4 (a)(2), it shall also order the corporation to pay the
5 director's expenses incurred in connection with obtaining
6 court-ordered indemnification or advance for expenses. If the
7 court determines that the director is entitled to
8 indemnification or advance for expenses under subsection
9 (a)(3), it may also order the corporation to pay the
10 director's expenses to obtain court-ordered indemnification or
11 advance for expenses.

12 §10A-2A-8.55. Determination and authorization of
13 indemnification.

14 (a) A corporation may not indemnify a director under
15 Section 10A-2A-8.51 unless authorized for a specific
16 proceeding after a determination has been made that
17 indemnification is permissible because the director has met
18 the relevant standard of conduct set forth in Section
19 10A-2A-8.51.

20 (b) The determination shall be made:

21 (1) if there are two or more qualified directors, by
22 the board of directors by a majority vote of all the qualified
23 directors (a majority of whom shall for that purpose
24 constitute a quorum), or by a majority of the members of a

1 committee of two or more qualified directors appointed by
2 a majority vote of qualified directors;

3 (2) by special legal counsel:

4 (i) selected in the manner prescribed in subsection
5 (b) (1); or

6 (ii) if there are fewer than two qualified
7 directors, selected by the board of directors (in which
8 selection directors who are not qualified directors may
9 participate); or

10 (3) by the stockholders, but stock owned by or voted
11 under the control of a director who at the time is not a
12 qualified director may not be voted on the determination.

13 (c) Authorization of indemnification shall be made
14 in the same manner as the determination that indemnification
15 is permissible except that if there are fewer than two
16 qualified directors, or if the determination is made by
17 special legal counsel, authorization of indemnification shall
18 be made by those entitled to select special legal counsel
19 under subsection (b) (2) (ii).

20 §10A-2A-8.56. Indemnification of officers.

21 (a) A corporation may indemnify and advance expenses
22 under this Division E of this Article 8 to an officer who is a
23 party to a proceeding because he or she is an officer

24 (1) to the same extent as a director; and

1 (2) if he or she is an officer but not a director,
2 to such further extent as may be provided by the certificate
3 of incorporation or the bylaws, or by a resolution adopted or
4 a contract approved by the board of directors or stockholders,
5 except for

6 (i) liability in connection with a proceeding by or
7 in the right of the corporation other than for expenses
8 incurred in connection with the proceeding, or

9 (ii) liability arising out of conduct that
10 constitutes

11 (A) receipt by the officer of a financial benefit to
12 which he or she is not entitled,

13 (B) an intentional infliction of harm on the
14 corporation or the stockholders, or

15 (C) an intentional violation of criminal law.

16 (b) Subsection (a) (2) shall apply to an officer who
17 is also a director if he or she is made a party to the
18 proceeding based on an act or omission solely as an officer.

19 (c) An officer who is not a director is entitled to
20 mandatory indemnification under Section 10A-2A-8.52, and may
21 apply to a court under Section 10A-2A-8.54 for indemnification
22 or an advance for expenses, in each case to the same extent to
23 which a director may be entitled to indemnification or advance
24 for expenses under those sections.

25 §10A-2A-8.57. Insurance.

1 A corporation may purchase and maintain insurance on
2 behalf of an individual who is a director or officer of the
3 corporation, or who, while a director or officer of the
4 corporation, serves at the corporation's request as a
5 director, officer, partner, trustee, employee, or agent of
6 another corporation or foreign corporation or a joint venture,
7 trust, employee benefit plan, or other entity, against
8 liability asserted against or incurred by the individual in
9 that capacity or arising from the individual's status as a
10 director or officer, regardless of whether the corporation
11 would have power to indemnify or advance expenses to the
12 individual against the same liability under this Division E of
13 this Article 8.

14 §10A-2A-8.58. Variation by corporate action;
15 application of division.

16 (a) A corporation may, by a provision in its
17 certificate of incorporation, bylaws, or in a resolution
18 adopted or a contract approved by the board of directors or
19 stockholders, obligate itself in advance of the act or
20 omission giving rise to a proceeding to provide
21 indemnification in accordance with Section 10A-2A-8.51 or
22 advance funds to pay for or reimburse expenses in accordance
23 with Section 10A-2A-8.53. Any obligatory provision shall be
24 deemed to satisfy the requirements for authorization referred
25 to in Section 10A-2A-8.53(c) and in Section 10A-2A-8.55(c).

1 Any provision that obligates the corporation to provide
2 indemnification to the fullest extent permitted by law shall
3 be deemed to obligate the corporation to advance funds to pay
4 for or reimburse expenses in accordance with Section
5 10A-2A-8.53 to the fullest extent permitted by law, unless the
6 provision expressly provides otherwise.

7 (b) A right of indemnification or to advances for
8 expenses created by this Division E of this Article 8 or under
9 subsection (a) and in effect at the time of an act or omission
10 shall not be eliminated or impaired with respect to the act or
11 omission by an amendment of the certificate of incorporation,
12 bylaws, or a resolution of the board of directors or
13 stockholders, adopted after the occurrence of the act or
14 omission, unless, in the case of a right created under
15 subsection (a), the provision creating the right and in effect
16 at the time of the act or omission explicitly authorizes
17 elimination or impairment after the act or omission has
18 occurred.

19 (c) Any provision pursuant to subsection (a) shall
20 not obligate the corporation to indemnify or advance expenses
21 to a director of a predecessor of the corporation, pertaining
22 to conduct with respect to the predecessor, unless otherwise
23 expressly provided. Any provision for indemnification or
24 advance for expenses in the certificate of incorporation,
25 bylaws, or a resolution of the board of directors or

1 stockholders of a predecessor of the corporation in a merger
2 or in a contract to which the predecessor is a party, existing
3 at the time the merger takes effect, shall be governed by
4 Section 10A-2A-11.07(a) (4).

5 (d) Subject to subsection (b), a corporation may, by
6 a provision in its certificate of incorporation, limit any of
7 the rights to indemnification or advance for expenses created
8 by or pursuant to this Division E of this Article 8.

9 (e) This Division E of this Article 8 does not limit
10 a corporation's power to pay or reimburse expenses incurred by
11 a director or an officer in connection with appearing as a
12 witness in a proceeding at a time when he or she is not a
13 party.

14 (f) This Division E of this Article 8 does not limit
15 a corporation's power to indemnify, advance expenses to or
16 provide or maintain insurance on behalf of an employee or
17 agent.

18 §10A-2A-8.59. Exclusivity of division.

19 Notwithstanding Division A of Article 6 of Chapter
20 1, a corporation may provide indemnification or advance
21 expenses to a director or an officer only as permitted by this
22 Division E of this Article 8.

23 Division F. INTERESTED DIRECTORS; QUORUM.

24 §10A-2A-8.60. Interested directors; quorum.

1 (a) No contract or transaction between a corporation
2 and one or more of its directors or officers, or between a
3 corporation and any other corporation, partnership,
4 association, or other entity in which one or more of its
5 directors or officers, are directors or officers, or have a
6 financial interest, shall be void or voidable solely for this
7 reason, or solely because the director or officer is present
8 at or participates in the meeting of the board of directors or
9 committee which authorizes the contract or transaction, or
10 solely because the director's or officer's votes are counted for
11 that purpose, if:

12 (1) The material facts as to the director's or
13 officer's relationship or interest and as to the contract or
14 transaction are disclosed or are known to the board of
15 directors or the committee, and the board or committee in good
16 faith authorizes the contract or transaction by the
17 affirmative votes of a majority of the qualified directors,
18 even though the qualified directors be less than a quorum; or

19 (2) The material facts as to the director's or
20 officer's relationship or interest and as to the contract or
21 transaction are disclosed or are known to the stockholders
22 entitled to vote thereon, and the contract or transaction is
23 specifically approved in good faith by vote of the
24 stockholders; or

1 (3) The contract or transaction is fair as to the
2 corporation as of the time it is authorized, approved or
3 ratified, by the board of directors, a committee, or the
4 stockholders.

5 (b) Common or interested directors may be counted in
6 determining the presence of a quorum at a meeting of the board
7 of directors or of a committee which authorizes the contract
8 or transaction.

9 ARTICLE 9. CONVERSIONS.

10 Division A. ARTICLE DEFINITIONS.

11 §10A-2A-9.01. Definitions.

12 As used in this Article 9:

13 Notwithstanding Section 10A-1-1.03, as used in this
14 article, unless the context otherwise requires, the following
15 terms have the following meanings:

16 (1) "Converted organization" means the organization
17 into which a converting organization converts pursuant to this
18 article.

19 (2) "Converting corporation" means a converting
20 organization that is a corporation.

21 (3) "Converting organization" means an organization
22 that converts into another organization pursuant to this
23 article.

24 (4) "Governing statute" of an organization means the
25 statute that governs the organization's internal affairs.

1 (5) "Organization" means a general partnership,
2 including a limited liability partnership; limited
3 partnership, including a limited liability limited
4 partnership; limited liability company; business trust;
5 corporation; nonprofit corporation; professional corporation;
6 or any other person having a governing statute. The term
7 includes domestic and foreign organizations whether or not
8 organized for profit.

9 (6) "Organizational documents" means:

10 (A) for a general partnership or foreign general
11 partnership, its partnership agreement and if applicable, its
12 registration as a limited liability partnership or a foreign
13 limited liability partnership;

14 (B) for a limited partnership or foreign limited
15 partnership, its certificate of formation and partnership
16 agreement, or comparable writings as provided in its governing
17 statute;

18 (C) for a limited liability company or foreign
19 limited liability company, its certificate of formation and
20 limited liability company agreement, or comparable writings as
21 provided in its governing statute;

22 (D) for a business or statutory trust or foreign
23 business or statutory trust its agreement of trust and
24 declaration of trust, or comparable writings as provided in
25 its governing statute;

1 (E) for a corporation for profit or foreign
2 corporation for profit, its certificate of incorporation,
3 bylaws, and other agreements among its stockholders that are
4 authorized by its governing statute, or comparable writings as
5 provided in its governing statute;

6 (F) for a nonprofit corporation or foreign nonprofit
7 corporation, its certificate of incorporation, bylaws, and
8 other agreements that are authorized by its governing statute,
9 or comparable writings as provided in its governing statute;

10 (G) for a professional corporation or foreign
11 professional corporation, its certificate of incorporation,
12 bylaws, and other agreements among its stockholders that are
13 authorized by its governing statute, or comparable writings as
14 provided in its governing statute; and

15 (H) for any other organization, the basic writings
16 that create the organization and determine its internal
17 governance and the relations among the persons that own it,
18 have an interest in it, or are members of it.

19 Division B. CONVERSION.

20 §10A-2A-9.11. Conversion.

21 (a) An organization other than a corporation may
22 convert to a corporation, and a corporation may convert to an
23 organization other than a corporation pursuant to this
24 article, and a plan of conversion, if:

1 (1) the governing statute of the organization that
2 is not a corporation authorizes the conversion;

3 (2) the law of the jurisdiction governing the
4 converting organization and the converted organization does
5 not prohibit the conversion; and

6 (3) the converting organization and the converted
7 organization each comply with the governing statute and
8 organizational documents applicable to that organization in
9 effecting the conversion.

10 (b) A plan of conversion must be in writing and must
11 include:

12 (1) the name, type of organization, and mailing
13 address of the principal office of the converting organization
14 and its unique identifying number or other designation as
15 assigned by the Secretary of State, if any, before conversion;

16 (2) the name, type of organization, and mailing
17 address of the principal office of the converted organization
18 after conversion;

19 (3) the terms and conditions of the conversion,
20 including the manner and basis for converting interests in the
21 converting organization into any combination of money,
22 interests in the converted organization, and other
23 consideration allowed in Section 10A-9A-10.02(c); and

24 (4) the organizational documents of the converted
25 organization.

1 (c) In connection with a conversion, rights or
2 securities of or interests in the converting organization may
3 be exchanged for or converted into cash, property, or rights
4 or securities of or interests in the converted organization,
5 or, in addition to or in lieu thereof, may be exchanged for or
6 converted into cash, property, or rights or securities of or
7 interests in another organization or may be cancelled.

8 (d) In addition to the requirements of subsection
9 (a), a plan of conversion may contain any other provision not
10 prohibited by law.

11 (e) The terms of a plan of conversion may be made
12 dependent upon facts objectively ascertainable outside the
13 plan in accordance with Section 10A-2A-1.20(c).

14 §10A-2A-9.12. Action on a plan of conversion.

15 In the case of a conversion of a corporation the
16 plan of conversion shall be adopted in the following manner:

17 (a) The plan of conversion shall first be adopted by
18 the board of directors.

19 (b) The plan of conversion shall then be approved by
20 the stockholders. In submitting the plan of conversion to the
21 stockholders for their approval, the board of directors must
22 recommend that the stockholders approve the plan, unless (i)
23 the board of directors makes a determination that because of
24 conflicts of interest or other special circumstances it should
25 not make a recommendation, or (ii) Section 10A-2A-8.26

1 applies. If either (i) or (ii) applies, the board of directors
2 shall inform the stockholders of the basis for its so
3 proceeding.

4 (c) The board of directors may set conditions for
5 approval of the plan of conversion by the stockholders or the
6 effectiveness of the plan of conversion.

7 (d) If the approval of the stockholders is to be
8 given at a meeting, the corporation shall notify each
9 stockholder, regardless of whether entitled to vote, of the
10 meeting of stockholders at which the plan of conversion is to
11 be submitted for approval. The notice must state that the
12 purpose, or one of the purposes, of the meeting is to consider
13 the plan of conversion and must contain or be accompanied by a
14 copy or summary of the plan. The notice must include or be
15 accompanied by a copy of the organizational documents of the
16 converted organization which are to be in writing as they will
17 be in effect immediately after the conversion.

18 (e) Unless the certificate of incorporation, or the
19 board of directors acting pursuant to subsection (c), requires
20 a greater vote or a greater quorum, approval of the plan of
21 conversion requires (i) the approval of the stockholders at a
22 meeting at which a quorum exists consisting of a majority of
23 the votes entitled to be cast on the plan, and (ii) the
24 approval of each class or series of stock voting as a separate
25 voting group at a meeting at which a quorum of the voting

1 group exists consisting of a majority of the votes entitled to
2 be cast on the plan by that voting group.

3 (f) If as a result of the conversion one or more
4 stockholders of the converting corporation would become
5 subject to personal liability, approval of the plan of
6 conversion shall require the signing in connection with the
7 transaction, by each stockholder who would become subject to
8 personal liability, of a separate written consent to become
9 subject to personal liability.

10 §10A-2A-9.13. Statement of conversion;
11 effectiveness.

12 (a) After a plan of conversion is approved:

13 (1) if the converting organization is an
14 organization formed under, or its internal affairs are
15 governed by, the laws of this state, the converting
16 organization shall file a statement of conversion in
17 accordance with subsection (c), which statement of conversion
18 must be signed in accordance with Section 10A-1-4.01 and which
19 must include:

20 (A) the name, type of organization, and mailing
21 address of the principal office of the converting
22 organization, and its unique identifying number or other
23 designation as assigned by the Secretary of State, if any;

24 (B) the date of the filing of the certificate of
25 formation of the converting organization, if any, and all

1 prior amendments and the filing office or offices, if any,
2 where the certificate of formation and amendments are filed;

3 (C) a statement that the converting organization has
4 been converted into the converted organization;

5 (D) the name and type of organization of the
6 converted organization and the jurisdiction of its governing
7 statute;

8 (E) the street and mailing address of the principal
9 office of the converted organization;

10 (F) the date the conversion is effective under the
11 governing statute of the converted organization;

12 (G) a statement that the conversion was approved as
13 required by this chapter;

14 (H) a statement that the conversion was approved as
15 required by the governing statute of the converted
16 organization;

17 (I) a statement that a copy of the plan of
18 conversion will be furnished by the converted organization, on
19 request and without cost, to any owner of the converting
20 organization; and

21 (J) if the converted organization is a foreign
22 organization not authorized to conduct activities and affairs
23 in this state, the street and mailing address of an office for
24 the purposes of Section 10A-2A-9.15(b); and

1 (2) if the converted organization is a corporation,
2 the converting organization shall deliver for filing a
3 certificate of incorporation in accordance with subsection
4 (d), which certificate of incorporation must include, in
5 addition to the information required by Section 10A-2A-2.02:

6 (A) a statement that the corporation was converted
7 from the converting organization;

8 (B) the name and type of organization of the
9 converting organization, the jurisdiction of the converting
10 organization's governing statute, and the converting
11 organization's unique identifying number or other designation
12 as assigned by the Secretary of State, if any; and

13 (C) a statement that the conversion was approved in
14 a manner that complied with the converting organization's
15 governing statute.

16 (b) A conversion becomes effective:

17 (1) if the converted organization is a corporation,
18 when the certificate of incorporation takes effect; and

19 (2) if the converted organization is not a
20 corporation, as provided by the governing statute of the
21 converted organization.

22 (c) If the converting organization is an
23 organization formed under, or its internal affairs are
24 governed by, the laws of this state, then the converting
25 organization shall deliver for filing the statement of

1 conversion required under subsection (a) (1) to the Secretary
2 of State.

3 (d) If the converted organization is a corporation,
4 then, the converting organization shall deliver for filing the
5 certificate of incorporation required under subsection (a) (2)
6 to the Secretary of State.

7 (e) If the converting organization is required to
8 deliver for filing a statement of conversion and a certificate
9 of formation to the Secretary of State, then the converting
10 organization shall deliver for filing the statement of
11 conversion and the certificate of formation to the Secretary
12 of State simultaneously.

13 (f) After a conversion becomes effective, if the
14 converted organization is a corporation, then, except for
15 certified copies of the statement of conversion permitted to
16 be delivered to the judge of probate for filing pursuant to
17 subsection (h), all filing instruments required to be filed
18 under this title regarding that converted organization shall
19 be delivered for filing to the Secretary of State.

20 (g) If:

21 (1) the converting organization is a filing entity
22 or a foreign filing entity registered to conduct activities
23 and affairs in this state;

1 (2) the converted organization will be a filing
2 entity or a foreign filing entity registered to conduct
3 activities and affairs in this state;

4 (3) the name of the converting organization and the
5 converted organization are to be the same, other than words,
6 phrases or abbreviations indicating the type of entity; and

7 (4) the name of the converted organization complies
8 with Division A of Article 5 of Chapter 1 or Section
9 10A-1-7.07, as the case may be; then notwithstanding Division
10 B of Article 5 of Chapter 1, no name reservation shall be
11 required and the converted organization shall for all purposes
12 of this title be entitled to utilize the name of the
13 converting organization without any further action by the
14 converting organization or the converted organization.

15 (h) A certified copy of any document required to be
16 filed under this section may be filed in the real estate
17 records in the office of the judge of probate in any county in
18 which the converting organization owned real property, without
19 payment and without collection by the judge of probate of any
20 deed or other transfer tax or fee. The judge of probate shall,
21 however, be entitled to collect a filing fee of five dollars
22 (\$5). Any such filing with the judge of probate shall evidence
23 chain of title, but lack of filing shall not affect the
24 converted organization's title to such real property.

1 (i) A statement of conversion is a filing instrument
2 under Chapter 1.

3 (j) The filing fees for a statement of conversion
4 shall be as set forth in Chapter 1.

5 §10A-2A-9.14. Amendment of plan of conversion;
6 abandonment.

7 (a) A plan of conversion of a converting
8 organization that is a corporation may be amended:

9 (1) in the same manner as the plan was approved, if
10 the plan does not provide for the manner in which it may be
11 amended; or

12 (2) in the manner provided in the plan, except that
13 if the plan has been approved by the stockholders that were
14 entitled to vote on, consent to, or approve of the plan, then
15 those stockholders are entitled to vote on, consent to, or
16 approve of any amendment of the plan that will change:

17 (i) the amount or kind of eligible interests or
18 other securities, obligations, rights to acquire eligible
19 interests or other securities, cash, other property, or any
20 combination of the foregoing, to be received by any of the
21 stockholders of the converting corporation under the plan;

22 (ii) the organizational documents of the converted
23 organization that will be in effect immediately after the
24 conversion becomes effective, except for changes that do not
25 require approval of the eligible interest holders of the

1 converted organization under its governing statute or
2 organizational documents; or

3 (iii) any other terms or conditions of the plan, if
4 the change would adversely affect the stockholders in any
5 material respect.

6 (b) After a plan of conversion has been approved by
7 a converting organization that is a corporation in the manner
8 required by this Division B of this Article 9 and before the
9 statement of conversion becomes effective, the plan may be
10 abandoned by the corporation without action by its
11 stockholders in accordance with any procedures set forth in
12 the plan or, if no procedures are set forth in the plan, in
13 the manner determined by the board of directors.

14 (c) If a conversion is abandoned after the statement
15 of conversion has been delivered to the Secretary of State for
16 filing and before the statement of conversion becomes
17 effective, a statement of abandonment, signed by the
18 converting organization, must be delivered to the Secretary of
19 State for filing before the statement of conversion becomes
20 effective. The statement of abandonment takes effect on
21 filing, and the conversion is abandoned and does not become
22 effective. The statement of abandonment must contain:

23 (1) the name of the converting organization;

24 (2) the date on which the statement of conversion
25 were filed by the Secretary of State; and

1 (3) a statement that the conversion has been
2 abandoned in accordance with this section.

3 §10A-2A-9.15. Effect of conversion.

4 (a) When a conversion takes effect:

5 (1) all property and contract rights owned by the
6 converting organization remain vested in the converted
7 organization without transfer, reversion or impairment and the
8 title to any property vested by deed or otherwise in the
9 converting organization shall not revert or be in any way
10 impaired by reason of the conversion;

11 (2) all debts, obligations, or other liabilities of
12 the converting organization continue as debts, obligations, or
13 other liabilities of the converted organization and neither
14 the rights of creditors, nor the liens upon the property of
15 the converting organization shall be impaired by the
16 conversion;

17 (3) an action or proceeding pending by or against
18 the converting organization continues as if the conversion had
19 not occurred and the name of the converted organization may,
20 but need not, be substituted for the name of the converting
21 organization in any pending action or proceeding;

22 (4) except as prohibited by law other than this
23 chapter, all of the rights, privileges, immunities, powers,
24 and purposes of the converting organization remain vested in
25 the converted organization;

1 (5) except as otherwise provided in the plan of
2 conversion, the terms and conditions of the plan of conversion
3 take effect;

4 (6) except as otherwise agreed, for all purposes of
5 the laws of this state, the converting organization shall not
6 be required to wind up its affairs or pay its liabilities and
7 distribute its assets, and the conversion shall not be deemed
8 to constitute a dissolution of the converting organization;

9 (7) for all purposes of the laws of this state, the
10 rights, privileges, powers, interests in property, debts,
11 liabilities and duties of the converting organization, shall
12 be the rights, privileges, powers, interests in property,
13 debts, liabilities and duties of the converted organization,
14 and shall not be deemed as a consequence of the conversion, to
15 have been transferred to the converted organization;

16 (8) if the converted organization is a corporation,
17 for all purposes of the laws of this state, the corporation
18 shall be deemed to be the same organization as the converting
19 organization, and the conversion shall constitute a
20 continuation of the existence of the converting organization
21 in the form of a corporation;

22 (9) if the converted organization is a corporation,
23 the existence of the corporation shall be deemed to have
24 commenced on the date the converting organization commenced
25 its existence in the jurisdiction in which the converting

1 organization was first created, formed, organized,
2 incorporated, or otherwise came into being;

3 (10) the conversion shall not affect the choice of
4 law applicable to matters arising prior to conversion;

5 (11) if the Secretary of State has assigned a unique
6 identifying number or other designation to the converting
7 organization and (i) the converted organization is formed
8 pursuant to, or its internal affairs are governed by, the laws
9 of this state or (ii) the converted organization is, within 30
10 days after the effective date of the conversion, registered to
11 transact business in this State, then that unique identifying
12 number or other designation shall continue to be assigned to
13 the converted organization; and

14 (12) the stock or eligible interests of the
15 converting organization are reclassified into stock, eligible
16 interests or other securities, obligations, rights to acquire
17 stock, eligible interests or other securities, cash, or other
18 property in accordance with the terms of the conversion, and
19 the stockholders or interest holders of the converting
20 organization are entitled only to the rights provided to them
21 by those terms and to any appraisal rights they may have under
22 the governing statute of the converting organization.

23 (b) A converted organization that is a foreign
24 entity consents to the jurisdiction of the courts of this
25 state to enforce any debt, obligation or other liability for

1 which the converting corporation, is liable if, before the
2 conversion, the converting corporation was subject to suit in
3 this state on the debt, obligation or other liability or was
4 subject to pay amounts to its stockholders under Article 13.
5 If a converted organization is a foreign entity and fails to
6 designate or maintain a registered agent, or the designated
7 registered agent cannot with reasonable diligence be served,
8 then service of process on that converted organization for the
9 purposes of enforcing a debt, obligation, or other liability
10 under this subsection may be made in the same manner and has
11 the same consequences as provided in Section 10A-1-5.35.

12 (c) When the converting organization is a
13 corporation and the conversion becomes effective, the
14 converted organization is deemed to agree that it will
15 promptly pay the amount, if any, to which the stockholders of
16 the converting corporation are entitled under Article 13.

17 §10A-2A-9.16. Nonexclusive.

18 This article is not exclusive. This article does not
19 preclude a corporation from converting under law other than
20 this chapter.

21 ARTICLE 10. AMENDMENT OF CERTIFICATE OF
22 INCORPORATION AND BYLAWS.

23 Division A. AMENDMENT OF CERTIFICATE OF
24 INCORPORATION.

25 §10A-2A-10.01. Authority to amend.

1 (a) A corporation may amend its certificate of
2 incorporation at any time to add or change a provision that is
3 required or permitted in the certificate of incorporation as
4 of the effective date of the amendment or to delete a
5 provision that is not required to be contained in the
6 certificate of incorporation. Whether a provision is required
7 or permitted in the certificate of incorporation is determined
8 as of the effective date of the amendment.

9 (b) A stockholder of the corporation does not have a
10 vested property right resulting from any provision in the
11 certificate of incorporation, including provisions relating to
12 management, control, capital structure, dividend entitlement,
13 or purpose or duration of the corporation.

14 §10A-2A-10.02. Amendment before issuance of stock.

15 If a corporation has not yet issued stock, its board
16 of directors, or its incorporators if it has no board of
17 directors, may adopt one or more amendments to the
18 corporation's certificate of incorporation.

19 §10A-2A-10.03. Amendment by board of directors and
20 stockholders.

21 If a corporation has issued stock, an amendment to
22 the certificate of incorporation shall be adopted in the
23 following manner:

24 (a) The proposed amendment shall first be adopted by
25 the board of directors.

1 (b) Except as provided in Sections 10A-2A-10.05,
2 10A-2A-10.07, and 10A-2A-10.08, the amendment shall then be
3 approved by the stockholders. In submitting the proposed
4 amendment to the stockholders for approval, the board of
5 directors shall recommend that the stockholders approve the
6 amendment, unless (i) the board of directors makes a
7 determination that because of conflicts of interest or other
8 special circumstances it should not make a recommendation, or
9 (ii) Section 10A-2A-8.26 applies. If either (i) or (ii)
10 applies, the board of directors must inform the stockholders
11 of the basis for its so proceeding.

12 (c) The board of directors may set conditions for
13 the approval of the amendment by the stockholders or the
14 effectiveness of the amendment.

15 (d) If the amendment is required to be approved by
16 the stockholders, and the approval is to be given at a
17 meeting, the corporation shall notify each stockholder,
18 regardless of whether entitled to vote, of the meeting of
19 stockholders at which the amendment is to be submitted for
20 approval. The notice must state that the purpose, or one of
21 the purposes, of the meeting is to consider the amendment. The
22 notice must contain or be accompanied by a copy of the
23 amendment.

24 (e) Unless the certificate of incorporation, or the
25 board of directors acting pursuant to subsection (c), requires

1 a greater vote or a greater quorum, approval of the amendment
2 requires the approval of the stockholders at a meeting at
3 which a quorum consisting of a majority of the votes entitled
4 to be cast on the amendment exists, and, if any class or
5 series of stock is entitled to vote as a separate group on the
6 amendment, except as provided in Section 10A-2A-10.04(c), the
7 approval of each separate voting group at a meeting at which a
8 quorum of the voting group exists consisting of a majority of
9 the votes entitled to be cast on the amendment by that voting
10 group.

11 (f) If as a result of an amendment of the
12 certificate of incorporation one or more stockholders of a
13 corporation would become subject to new personal liability,
14 approval of the amendment requires the signing in connection
15 with the amendment, by each stockholder who will become
16 subject to new personal liability, of a separate written
17 consent to become subject to new personal liability, unless in
18 the case of a stockholder that already has personal liability
19 the terms and conditions of the new personal liability (i) are
20 substantially identical to those of the existing personal
21 liability, or (ii) are substantially identical to those of the
22 existing personal liability (other than changes that eliminate
23 or reduce existing personal liability).

24 (g) For purposes of subsection (f) and Section
25 10A-2A-10.09, "new personal liability" means personal

1 liability of a person resulting from an amendment of the
2 certificate of incorporation if (i) the person did not have
3 personal liability before the amendment becomes effective, or
4 (ii) the person had personal liability before the amendment
5 becomes effective, the terms and conditions of which are
6 changed when the amendment becomes effective.

7 §10A-2A-10.04. Voting on amendments by voting
8 groups.

9 (a) The holders of the outstanding stock of a class
10 are entitled to vote as a separate voting group (if
11 stockholder voting is otherwise required by this chapter) on a
12 proposed amendment to the certificate of incorporation if the
13 amendment would:

14 (1) effect an exchange or reclassification of all or
15 part of the stock of the class into stock of another class;

16 (2) effect an exchange or reclassification, or
17 create the right of exchange, of all or part of the stock of
18 another class into stock of the class;

19 (3) change the rights, preferences, or limitations
20 of all or part of the stock of the class;

21 (4) change the stock of all or part of the class
22 into a different number of shares of stock of the same class;

23 (5) create a new class of stock having rights or
24 preferences with respect to distributions that are prior or
25 superior to the stock of the class;

1 (6) increase the rights, preferences, or number of
2 authorized shares of stock of any class that, after giving
3 effect to the amendment, have rights or preferences with
4 respect to distributions that are prior or superior to the
5 stock of the class;

6 (7) limit or deny an existing preemptive right of
7 all or part of the stock of the class; or

8 (8) cancel or otherwise affect rights to
9 distributions that have accumulated but not yet been
10 authorized on all or part of the stock of the class.

11 (b) If a proposed amendment would affect a series of
12 a class of stock in one or more of the ways described in
13 subsection (a), the holders of stock of that series are
14 entitled to vote as a separate voting group on the proposed
15 amendment.

16 (c) If a proposed amendment that entitles the
17 holders of two or more classes or series of stock to vote as
18 separate voting groups under this section would affect those
19 two or more classes or series in the same or a substantially
20 similar way, the holders of stock of all the classes or series
21 so affected shall vote together as a single voting group on
22 the proposed amendment, unless otherwise provided in the
23 certificate of incorporation or added as a condition by the
24 board of directors pursuant to Section 10A-2A-10.03(c).

1 (d) A class or series of stock is entitled to the
2 voting rights granted by this section even if the certificate
3 of incorporation provides that the stock is nonvoting stock.

4 §10A-2A-10.05. Amendment by board of directors.

5 Unless the certificate of incorporation provides
6 otherwise, a corporation's board of directors may adopt
7 amendments to the corporation's certificate of incorporation
8 without stockholder approval:

9 (a) to extend the duration of the corporation if it
10 was incorporated at a time when limited duration was required
11 by law;

12 (b) to delete the names and addresses of the
13 incorporators or initial directors;

14 (c) to delete the name and address of the initial
15 registered agent or registered office, if a statement of
16 change is on file with the Secretary of State;

17 (d) if the corporation has only one class of stock
18 outstanding:

19 (1) to change each issued and unissued authorized
20 share of stock of the class into a greater number of whole
21 shares of stock of that class; or

22 (2) to increase the number of authorized shares of
23 stock of the class to the extent necessary to permit the
24 issuance of stock as a stock dividend;

1 (e) to change the corporate name, provided that the
2 name complies with Article 5 of Chapter 1;

3 (f) to reflect a reduction in authorized stock, as a
4 result of the operation of Section 10A-2A-6.31(b), when the
5 corporation has acquired its own stock and the certificate of
6 incorporation prohibits the reissue of the acquired stock;

7 (g) to delete a class of stock from the certificate
8 of incorporation, as a result of the operation of Section
9 10A-2A-6.31(b), when there is no remaining stock of the class
10 because the corporation has acquired all stock of the class
11 and the certificate of incorporation prohibits the reissue of
12 the acquired stock; or

13 (h) to take actions expressly permitted by Section
14 10A-2A-6.02 to be made without stockholder approval.

15 §10A-2A-10.06. Certificate of amendment.

16 Notwithstanding Division B of Article 3 of Chapter
17 1:

18 (a) After an amendment to the certificate of
19 incorporation has been adopted and approved in the manner
20 required by this chapter and by the certificate of
21 incorporation, the corporation shall deliver to the Secretary
22 of State for filing a certificate of amendment, which must set
23 forth:

24 (1) the name of the corporation;

1 (2) the text of each amendment adopted, or the
2 information required by Section 10A-2A-1.20(c) (5);

3 (3) if an amendment provides for an exchange,
4 reclassification, or cancellation of issued stock, provisions
5 for implementing the amendment if not contained in the
6 amendment itself, (which may be made dependent upon facts
7 objectively ascertainable outside the certificate of amendment
8 in accordance with Section 10A-2A-1.20(c) (5);

9 (4) the date of each amendment's adoption; and

10 (5) if an amendment:

11 (i) was adopted by the incorporators or board of
12 directors without stockholder approval, a statement that the
13 amendment was duly adopted by the incorporators or by the
14 board of directors, as the case may be, and that stockholder
15 approval was not required;

16 (ii) required approval by the stockholders, a
17 statement that the amendment was duly approved by the
18 stockholders in the manner required by this chapter and by the
19 certificate of incorporation; or

20 (iii) is being filed pursuant to Section
21 10A-2A-1.20(c) (5), a statement to that effect.

22 (b) A certificate of amendment shall take effect at
23 the effective date determined in accordance with Article 4 of
24 Chapter 1.

1 §10A-2A-10.07. Restated certificate of
2 incorporation.

3 Notwithstanding Division B of Article 3 of Chapter
4 1:

5 (a) A corporation's board of directors may restate
6 its certificate of incorporation at any time, without
7 stockholder approval, to consolidate all amendments into a
8 single document.

9 (b) If the restated certificate of incorporation
10 includes one or more new amendments that require stockholder
11 approval, the amendments shall be adopted and approved as
12 provided in Section 10A-2A-10.03.

13 (c) A corporation that restates its certificate of
14 incorporation shall deliver to the Secretary of State for
15 filing a certificate of restatement setting forth:

16 (1) the name of the corporation;

17 (2) the text of the restated certificate of
18 incorporation;

19 (3) a statement that the restated certificate of
20 incorporation consolidates all amendments into a single
21 document; and

22 (4) if a new amendment is included in the restated
23 certificate of incorporation, the statements required under
24 Section 10A-2A-10.06 with respect to the new amendment.

1 (d) The duly adopted restated certificate of
2 incorporation supersedes the original certificate of
3 incorporation and all amendments to the certificate of
4 incorporation.

5 (e) The Secretary of State may certify the restated
6 certificate of incorporation as the certificate of
7 incorporation currently in effect, without including the
8 statements required by subsection (c) (4).

9 §10A-2A-10.08. Amendment pursuant to reorganization.

10 Notwithstanding Division B of Article 3 of Chapter
11 1:

12 (a) A corporation's certificate of incorporation may
13 be amended without action by the board of directors or
14 stockholders to carry out a plan of reorganization ordered or
15 decreed by a court of competent jurisdiction under the
16 authority of a law of the United States if the certificate of
17 incorporation after the amendment only contains provisions
18 required or permitted by Section 10A-2A-2.02.

19 (b) The individual or individuals designated by the
20 court shall deliver to the Secretary of State for filing a
21 certificate of amendment setting forth:

22 (1) the name of the corporation;

23 (2) the text of each amendment approved by the
24 court;

1 (3) the date of the court's order or decree
2 approving the certificate of amendment;

3 (4) the title of the reorganization proceeding in
4 which the order or decree was entered; and

5 (5) a statement that the court had jurisdiction of
6 the proceeding under federal statute.

7 (c) Stockholders of a corporation undergoing
8 reorganization do not have dissenters' rights except as and to
9 the extent provided in the reorganization plan.

10 (d) This section does not apply after entry of a
11 final decree in the reorganization proceeding even though the
12 court retains jurisdiction of the proceeding for limited
13 purposes unrelated to consummation of the reorganization plan.

14 §10A-2A-10.09. Effect of amendment.

15 (a) An amendment to the certificate of incorporation
16 does not affect a cause of action existing against or in favor
17 of the corporation, a proceeding to which the corporation is a
18 party, or the existing rights of persons other than the
19 stockholders. An amendment changing a corporation's name does
20 not affect a proceeding brought by or against the corporation
21 in its former name.

22 (b) A stockholder who becomes subject to new
23 personal liability in respect of the corporation as a result
24 of an amendment to the certificate of incorporation shall have

1 that new personal liability only in respect of interest holder
2 liabilities that arise after the amendment becomes effective.

3 (c) Except as otherwise provided in the certificate
4 of incorporation of the corporation, the personal liability of
5 a stockholder who had personal liability in respect of the
6 corporation before the amendment becomes effective and has new
7 personal liability after the amendment becomes effective shall
8 be as follows:

9 (1) The amendment does not discharge that prior
10 personal liability with respect to any interest holder
11 liabilities that arose before the amendment becomes effective.

12 (2) The provisions of the certificate of
13 incorporation relating to personal liability as in effect
14 immediately prior to the amendment shall continue to apply to
15 the collection or discharge of any interest holder liabilities
16 preserved by subsection (c) (1), as if the amendment had not
17 occurred.

18 (3) The stockholder shall have the rights of
19 contribution from other persons as are provided by the
20 certificate of incorporation relating to personal liability as
21 in effect immediately prior to the amendment with respect to
22 any interest holder liabilities preserved by subsection
23 (c) (1), as if the amendment had not occurred.

24 (4) The stockholder shall not, by reason of any
25 prior personal liability, have personal liability with respect

1 to any interest holder liabilities that arise after the
2 amendment becomes effective.

3 Division B. AMENDMENT OF BYLAWS.

4 §10A-2A-10.20. Authority to amend.

5 (a) A corporation's stockholders may amend or repeal
6 the corporation's bylaws.

7 (b) A corporation's board of directors may amend or
8 repeal the corporation's bylaws, unless:

9 (1) the certificate of incorporation, Section
10 10A-2A-10.21 or, if applicable, Section 10A-2A-10.22, reserves
11 that power exclusively to the stockholders in whole or part;
12 or

13 (2) except as provided in Section 10A-2A-2.05(d),
14 the stockholders in amending, repealing, or adopting a bylaw
15 expressly provide that the board of directors may not amend,
16 repeal, or adopt that bylaw.

17 (c) A stockholder of the corporation does not have a
18 vested property right resulting from any provision in the
19 bylaws.

20 §10A-2A-10.21. Bylaw increasing quorum or voting
21 requirement for directors or requiring a meeting place.

22 (a) A bylaw that increases a quorum or voting
23 requirement for the board of directors or that requires a
24 meeting of stockholders to be held at a place may be amended
25 or repealed:

1 (1) if originally adopted by the stockholders, only
2 by the stockholders, unless the bylaw otherwise provides; or

3 (2) if adopted by the board of directors, either by
4 the stockholders or by the board of directors.

5 (b) A bylaw adopted or amended by the stockholders
6 that increases a quorum or voting requirement for the board of
7 directors may provide that it can be amended or repealed only
8 by a specified vote of either the stockholders or the board of
9 directors.

10 (c) Action by the board of directors under
11 subsection (a) to amend or repeal a bylaw that changes a
12 quorum or voting requirement for the board of directors shall
13 meet the same quorum requirement and be adopted by the same
14 vote required to take action under the quorum and voting
15 requirement then in effect or proposed to be adopted,
16 whichever is greater.

17 §10A-2A-10.22. Bylaw provisions relating to the
18 election of directors.

19 (a) Unless the certificate of incorporation (i)
20 specifically prohibits the adoption of a bylaw pursuant to
21 this section, (ii) alters the vote specified in Section
22 10A-2A-7.28(a), or (iii) provides for cumulative voting, a
23 corporation may elect in its bylaws to be governed in the
24 election of directors as follows:

1 (1) each vote entitled to be cast may be voted for
2 or against up to that number of candidates that is equal to
3 the number of directors to be elected, or a stockholder may
4 indicate an abstention, but without cumulating the votes;

5 (2) to be elected, a nominee shall have received a
6 plurality of the votes cast by holders of stock entitled to
7 vote in the election at a meeting at which a quorum is
8 present, provided that a nominee who is elected but receives
9 more votes against than for election shall serve as a director
10 for a term that shall terminate on the date that is the
11 earlier of (i) 90 days from the date on which the voting
12 results are determined pursuant to Section 10A-2A-7.29(b) (5)
13 or (ii) the date on which an individual is selected by the
14 board of directors to fill the office held by that director,
15 which selection shall be deemed to constitute the filling of a
16 vacancy by the board of directors to which Section 10A-2A-8.10
17 applies. Subject to subsection (a) (3), a nominee who is
18 elected but receives more votes against than for election
19 shall not serve as a director beyond the 90-day period
20 referenced above; and

21 (3) the board of directors may select any qualified
22 individual to fill the office held by a director who received
23 more votes against than for election.

24 (b) Subsection (a) does not apply to an election of
25 directors by a voting group if (i) at the expiration of the

1 time fixed under a provision requiring advance notification of
2 director candidates, or (ii) absent that provision, at a time
3 fixed by the board of directors which is not more than 14 days
4 before notice is given of the meeting at which the election is
5 to occur, there are more candidates for election by the voting
6 group than the number of directors to be elected, one or more
7 of whom are properly proposed by stockholders. An individual
8 shall not be considered a candidate for purposes of this
9 subsection if the board of directors determines before the
10 notice of meeting is given that the individual's candidacy
11 does not create a bona fide election contest.

12 (c) A bylaw electing to be governed by this section
13 may be repealed:

14 (1) if originally adopted by the stockholders, only
15 by the stockholders, unless the bylaw otherwise provides;

16 (2) if adopted by the board of directors, by the
17 board of directors or the stockholders.

18 ARTICLE 11. MERGERS AND STOCK EXCHANGES.

19 §10A-2A-11.01. Definitions.

20 Notwithstanding Section 10A-1-1.03, as used in this
21 article, unless the context otherwise requires, the following
22 terms mean:

23 (1) "Acquired entity" means the corporation or
24 foreign corporation that will have all of one or more classes
25 or series of its stock acquired in a stock exchange.

1 (2) "Acquiring entity" means the corporation or
2 foreign corporation that will acquire all of one or more
3 classes or series of stock of the acquired entity in a stock
4 exchange.

5 (3) "Constituent corporation" means a constituent
6 organization that is a corporation.

7 (4) "Constituent organization" means an organization
8 that is party to a merger under this article.

9 (5) "Governing statute" of an organization means the
10 statute that governs the organization's internal affairs.

11 (6) "Organization" means a general partnership,
12 including a limited liability partnership; limited
13 partnership, including a limited liability limited
14 partnership; limited liability company; business trust;
15 corporation; nonprofit corporation; professional corporation;
16 or any other person having a governing statute. The term
17 includes domestic and foreign organizations whether or not
18 organized for profit.

19 (7) "Organizational documents" means:

20 (A) for a general partnership or foreign general
21 partnership, its partnership agreement and if applicable, its
22 registration as a limited liability partnership or a foreign
23 limited liability partnership;

24 (B) for a limited partnership or foreign limited
25 partnership, its certificate of formation and partnership

1 agreement, or comparable writings as provided in its governing
2 statute;

3 (C) for a limited liability company or foreign
4 limited liability company, its certificate of formation and
5 limited liability company agreement, or comparable writings as
6 provided in its governing statute;

7 (D) for a business or statutory trust or foreign
8 business or statutory trust its agreement of trust and
9 declaration of trust, or comparable writings as provided in
10 its governing statute;

11 (E) for a corporation or foreign corporation, its
12 certificate of incorporation, bylaws, and other agreements
13 among its stockholders that are authorized by its governing
14 statute, or comparable writings as provided in its governing
15 statute;

16 (F) for a nonprofit corporation or foreign nonprofit
17 corporation, its certificate of incorporation, bylaws, and
18 other agreements that are authorized by its governing statute,
19 or comparable writings as provided in its governing statute;

20 (G) for a professional corporation or foreign
21 professional corporation, its certificate of incorporation,
22 bylaws, and other agreements among its stockholders that are
23 authorized by its governing statute, or comparable writings as
24 provided in its governing statute; and

1 (H) for any other organization, the basic writings
2 that create the organization and determine its internal
3 governance and the relations among the persons that own it,
4 have an interest in it, or are members of it.

5 (8) "New personal liability" means personal
6 liability of a person, resulting from a merger or stock
7 exchange, that is (i) (A) in respect of an entity which is
8 different from the entity in which the person held stock or
9 eligible interests immediately before the merger became
10 effective, or (B) in respect of an entity which is different
11 from the entity in which the person held stock immediately
12 before the stock exchange became effective; or (ii) in respect
13 of the same entity as the one in which the person held stock
14 or eligible interests immediately before the merger became
15 effective if (A) the person did not have personal liability
16 immediately before the merger became effective, or (B) the
17 person had personal liability immediately before the merger
18 became effective, the terms and conditions of which were
19 changed when the merger became effective; or (iii) in respect
20 of the same entity as the one in which the person held stock
21 immediately before the stock exchange became effective if (A)
22 the person did not have personal liability immediately before
23 the stock exchange became effective, or (B) the person had
24 personal liability immediately before the stock exchange

1 became effective, the terms and conditions of which were
2 changed when the stock exchange became effective.

3 (9) "Surviving organization" means an organization
4 into which one or more other organizations are merged under
5 this article, whether the organization pre-existed the merger
6 or was created pursuant to the merger.

7 §10A-2A-11.02. Merger.

8 (a) A corporation may merge with one or more other
9 constituent organizations pursuant to this article, and a plan
10 of merger, if:

11 (1) the governing statute of each of the other
12 organizations authorizes the merger;

13 (2) the merger is not prohibited by the law of a
14 jurisdiction that enacted any of those governing statutes; and

15 (3) each of the other organizations complies with
16 its governing statute in effecting the merger.

17 (b) A plan of merger must be in writing and must
18 include:

19 (1) the name, type of organization, and mailing
20 address of the principal office of each constituent
21 organization, the jurisdiction of the governing statute of
22 each constituent organization, and the respective unique
23 identifying number or other designation as assigned by the
24 Secretary of State, if any, of each constituent organization;

1 (2) the name, type of organization, and mailing
2 address of the principal office of the surviving organization,
3 the unique identifying number or other designation as assigned
4 by the Secretary of State, if any, of the surviving
5 organization, the jurisdiction of the governing statute of the
6 surviving organization, and, if the surviving organization is
7 created pursuant to the merger, a statement to that effect;

8 (3) the terms and conditions of the merger,
9 including the manner and basis for converting the stock or
10 eligible interests in each constituent organization into any
11 combination of money, stock, eligible interests in the
12 surviving organization, and other consideration as allowed by
13 subsection (c);

14 (4) if the surviving organization is to be created
15 pursuant to the merger, the surviving organization's
16 organizational documents; and

17 (5) if the surviving organization is not to be
18 created pursuant to the merger, any amendments to be made by
19 the merger to the surviving organization's organizational
20 documents.

21 (c) In connection with a merger, rights, securities,
22 stock, or eligible interests in a constituent organization may
23 be exchanged for or converted into cash, property, rights,
24 securities, stock, or eligible interests in the surviving
25 organization, or, in addition to or in lieu thereof, may be

1 exchanged for or converted into cash, property, rights,
2 securities, stock, or eligible interests in another
3 organization or may be cancelled.

4 (d) In addition to the requirements of subsection
5 (b), a plan of merger may contain any other provision not
6 prohibited by law.

7 (e) Terms of a plan of merger may be made dependent
8 on facts objectively ascertainable outside the plan in
9 accordance with Section 10A-2A-1.20(c).

10 (f) A plan of merger may be amended only with the
11 consent of each constituent organization, except as provided
12 in the plan. A domestic constituent organization may approve
13 an amendment to a plan:

14 (1) in the same manner as the plan was approved, if
15 the plan does not provide for the manner in which it may be
16 amended; or

17 (2) in the manner provided in the plan, except that
18 if the plan has been approved by the stockholders, members, or
19 interest holders that were entitled to vote on, consent to, or
20 approve of, the plan, then those stockholders, members, or
21 interest holders are entitled to vote on, consent to, or
22 approve of any amendment of the plan that will change:

23 (i) the amount or kind of stock or other securities,
24 eligible interests, obligations, rights to acquire stock,
25 other securities or eligible interests, cash, or other

1 property to be received under the plan by the stockholders,
 2 members, or interest holders of a constituent organization;

3 (ii) the certificate of incorporation of any
 4 corporation, foreign corporation, nonprofit corporation,
 5 foreign nonprofit corporation or the organizational documents
 6 of any unincorporated entity or foreign unincorporated entity,
 7 that will be the surviving organization, except for changes
 8 permitted by Section 10A-2A-10.05 or by comparable provisions
 9 of the governing statute of the foreign corporation, nonprofit
 10 corporation, foreign nonprofit corporation, unincorporated
 11 entity or foreign unincorporated entity; or

12 (iii) any of the other terms or conditions of the
 13 plan if the change would adversely affect the stockholders,
 14 members, or interest holders in any material respect.

15 §10A-2A-11.03. Stock exchange.

16 (a) By complying with this Article 11:

17 (1) a corporation may acquire all of the stock of
 18 one or more classes or series of stock, of another corporation
 19 or foreign corporation, in exchange for stock or other
 20 securities, obligations, rights to acquire stock or other
 21 securities, cash, other property, or any combination of the
 22 foregoing, pursuant to a plan of stock exchange; or

23 (2) all of the stock of one or more classes or
 24 series of stock of a corporation may be acquired by another
 25 corporation or foreign corporation, in exchange for stock or

1 other securities, obligations, rights to acquire stock or
2 other securities, cash, other property, or any combination of
3 the foregoing, pursuant to a plan of stock exchange.

4 (b) A foreign corporation may be the acquired entity
5 in a stock exchange only if the stock exchange is permitted by
6 the governing statute of that foreign corporation.

7 (c) The plan of stock exchange must include:

8 (1) the name of each corporation or foreign
9 corporation the stock of which will be acquired, the name of
10 the corporation or foreign corporation that will acquire that
11 stock, and the respective unique identifying numbers or other
12 designations as assigned by the Secretary of State, if any, of
13 the corporation or foreign corporation;

14 (2) the terms and conditions of the stock exchange;

15 (3) the manner and basis of exchanging stock of a
16 corporation or foreign corporation, the stock of which will be
17 acquired under the stock exchange for stock or other
18 securities, obligations, rights to acquire stock, other
19 securities, cash, other property, or any combination of the
20 foregoing; and

21 (4) any other provisions required by the governing
22 statute governing the acquired entity or its certificate of
23 incorporation or organizational documents.

1 (d) Terms of a plan of stock exchange may be made
2 dependent on facts objectively ascertainable outside the plan
3 in accordance with Section 10A-2A-1.20(c).

4 (e) A plan of stock exchange may be amended only
5 with the consent of each party to the stock exchange, except
6 as provided in the plan. A corporation may approve an
7 amendment to a plan:

8 (1) in the same manner as the plan was approved, if
9 the plan does not provide for the manner in which it may be
10 amended; or

11 (2) in the manner provided in the plan, except that
12 if the plan has been approved by the stockholders that were
13 entitled to vote on, consent to, or approve of the plan then
14 those stockholders are entitled to vote on, consent to, or
15 approve of any amendment of the plan that will change:

16 (i) the amount or kind of stock or other securities,
17 obligations, rights to acquire stock, other securities, cash,
18 or other property to be received under the plan by the
19 stockholders of the acquired entity; or

20 (ii) any of the other terms or conditions of the
21 plan if the change would adversely affect the stockholders in
22 any material respect.

23 §10A-2A-11.04. Action on a plan of merger or stock
24 exchange.

1 In the case of a corporation that is a constituent
2 organization or the acquired entity in a stock exchange, the
3 plan of merger or stock exchange shall be adopted in the
4 following manner:

5 (a) The plan of merger or stock exchange shall first
6 be adopted by the board of directors.

7 (b) Except as provided in subsections (h), (j), and
8 (l) and in Section 10A-2A-11.05, the plan of merger or stock
9 exchange shall then be approved by the stockholders. In
10 submitting the plan of merger or stock exchange to the
11 stockholders for approval, the board of directors shall
12 recommend that the stockholders approve the plan or, in the
13 case of an offer referred to in subsection (j)(2), that the
14 stockholders tender their stock to the offeror in response to
15 the offer, unless (i) the board of directors makes a
16 determination that because of conflicts of interest or other
17 special circumstances it should not make a recommendation or
18 (ii) Section 10A-2A-8.26 applies. If either (i) or (ii)
19 applies, the board of directors shall inform the stockholders
20 of the basis for its so proceeding.

21 (c) The board of directors may set conditions for
22 the approval of the plan of merger or stock exchange by the
23 stockholders or the effectiveness of the plan of merger or
24 stock exchange.

1 (d) If the plan of merger or stock exchange is
2 required to be approved by the stockholders, and if the
3 approval is to be given at a meeting, the corporation shall
4 notify each stockholder, regardless of whether entitled to
5 vote, of the meeting of stockholders at which the plan is to
6 be submitted for approval. The notice must state that the
7 purpose, or one of the purposes, of the meeting is to consider
8 the plan and must contain or be accompanied by a copy or
9 summary of the plan. If the corporation is to be merged into
10 an existing corporation, foreign corporation, or eligible
11 entity, the notice must also include or be accompanied by a
12 copy or summary of the certificate of incorporation and bylaws
13 or the organizational documents of that corporation, foreign
14 corporation, or eligible entity. If the corporation is to be
15 merged with a corporation, foreign corporation, or eligible
16 entity and a new corporation, foreign corporation, or eligible
17 entity is to be created pursuant to the merger, the notice
18 must include or be accompanied by a copy or a summary of the
19 certificate of incorporation and bylaws or the organizational
20 documents of the new corporation, foreign corporation, or
21 eligible entity.

22 (e) Unless the certificate of incorporation, or the
23 board of directors acting pursuant to subsection (c), requires
24 a greater vote or a greater quorum, approval of the plan of
25 merger or stock exchange requires the approval of the

1 stockholders at a meeting at which a quorum exists consisting
2 of a majority of the votes entitled to be cast on the plan,
3 and, if any class or series of stock is entitled to vote as a
4 separate group on the plan of merger or stock exchange, the
5 approval of each separate voting group at a meeting at which a
6 quorum of the voting group is present consisting of a majority
7 of the votes entitled to be cast on the merger or stock
8 exchange by that voting group.

9 (f) Subject to subsection (g), separate voting by
10 voting groups is required:

11 (1) on a plan of merger, by each class or series of
12 stock that:

13 (i) are to be converted under the plan of merger
14 into stock, other securities, eligible interests, obligations,
15 rights to acquire stock, other securities or eligible
16 interests, cash, other property, or any combination of the
17 foregoing; or

18 (ii) are entitled to vote as a separate group on a
19 provision in the plan that constitutes a proposed amendment to
20 the certificate of incorporation of a surviving corporation
21 that requires action by separate voting groups under Section
22 10A-2A-10.04;

23 (2) on a plan of stock exchange, by each class or
24 series of stock included in the exchange, with each class or
25 series constituting a separate voting group; and

1 (3) on a plan of merger or stock exchange, if the
2 voting group is entitled under the certificate of
3 incorporation to vote as a voting group to approve a plan of
4 merger or stock exchange, respectively.

5 (g) The certificate of incorporation may expressly
6 limit or eliminate the separate voting rights provided in
7 subsection (f) (1) (i) and subsection (f) (2) as to any class or
8 series of stock, except when the plan of merger or stock
9 exchange (i) includes what is or would be in effect an
10 amendment subject to subsection (f) (1) (ii), and (ii) will not
11 effect a substantive business combination.

12 (h) Unless the certificate of incorporation
13 otherwise provides, approval by the corporation's stockholders
14 of a plan of merger is not required if:

15 (1) the corporation will survive the merger;

16 (2) except for amendments permitted by Section
17 10A-2A-10.05, its certificate of incorporation will not be
18 changed; and

19 (3) each stockholder of the corporation whose stock
20 was outstanding immediately before the effective date of the
21 merger or stock exchange will hold the same number of shares
22 of stock, with identical preferences, rights and limitations,
23 immediately after the effective date of the merger.

24 (i) If as a result of a merger or stock exchange one
25 or more stockholders of a corporation will have new personal

1 liability with respect to the surviving organization or the
2 acquiring entity, approval of the plan of merger or stock
3 exchange will be ineffective without the consent to the plan
4 of merger or stock exchange of the stockholder who will have
5 new personal liability. A stockholder does not give consent
6 required in this subsection (i) merely by consenting to a
7 provision in the certification of incorporation, the bylaws,
8 or an agreement of the stockholders, that allows for a plan of
9 merger or stock exchange to impose new personal liability on
10 that stockholder without that stockholder's consent at the
11 time of the plan of merger or stock exchange.

12 (j) Unless the certificate of incorporation
13 otherwise provides, approval by the stockholders of a plan of
14 merger or stock exchange is not required if:

15 (1) the plan of merger or stock exchange expressly
16 (i) permits or requires the merger or stock exchange to be
17 effected under this subsection and (ii) provides that, if the
18 merger or stock exchange is to be effected under this
19 subsection, the merger or stock exchange will be effected as
20 soon as practicable following the satisfaction of the
21 requirement set forth in subsection (j)(6);

22 (2) another party to the merger, the acquiring
23 entity in the stock exchange, or a parent of another party to
24 the merger or the acquiring entity in the stock exchange,
25 makes an offer to purchase, on the terms provided in the plan

1 of merger or stock exchange, any and all of the outstanding
2 stock of the corporation that, absent this subsection, would
3 be entitled to vote on the plan of merger or stock exchange,
4 except that the offer may exclude stock of the corporation
5 that is owned at the commencement of the offer by the
6 corporation, the offeror, or any parent of the offeror, or by
7 any wholly owned subsidiary of any of the foregoing;

8 (3) the offer discloses that the plan of merger or
9 stock exchange provides that the merger or stock exchange will
10 be effected as soon as practicable following the satisfaction
11 of the requirement set forth in subsection (j)(6) and that the
12 stock of the corporation that is not tendered in response to
13 the offer will be treated as set forth in subsection (j)(8);

14 (4) the offer remains open for at least 10 days;

15 (5) the offeror purchases all stock properly
16 tendered in response to the offer and not properly withdrawn;

17 (6) the stock listed below is collectively entitled
18 to cast at least the minimum number of votes on the merger or
19 stock exchange that, absent this subsection, would be required
20 by this Article 11 and by the certificate of incorporation for
21 the approval of the merger or stock exchange by the
22 stockholders, and by any other voting group entitled to vote
23 on the merger or stock exchange at a meeting at which all
24 stock entitled to vote on the approval was present and voted,

1 and with the consent of the stockholders required under
2 Section 10A-2A-11.04(i):

3 (i) stock purchased by the offeror in accordance
4 with the offer;

5 (ii) stock otherwise owned by the offeror or by any
6 parent of the offeror or any wholly owned subsidiary of any of
7 the foregoing; and

8 (iii) stock subject to an agreement that the stock
9 is to be transferred, contributed or delivered to the offeror,
10 any parent of the offeror, or any wholly owned subsidiary of
11 any of the foregoing in exchange for stock or eligible
12 interests in the offeror, parent or subsidiary;

13 (7) the offeror or a wholly owned subsidiary of the
14 offeror merges with or into, or effects a stock exchange in
15 which it acquires stock of, the corporation; and

16 (8) each outstanding share of stock of each class or
17 series of stock of the corporation that the offeror is
18 offering to purchase in accordance with the offer, and that is
19 not purchased in accordance with the offer, is to be converted
20 in the merger into, or into the right to receive, or is to be
21 exchanged in the stock exchange for, or for the right to
22 receive, the same amount and kind of securities, eligible
23 interests, obligations, rights, cash, or other property to be
24 paid or exchanged in accordance with the offer for each share
25 of stock of that class or series of stock that is tendered in

1 response to the offer, except that stock of the corporation
2 that is owned by the corporation or that are described in
3 clause (ii) or (iii) of subsection (j) (6) need not be
4 converted into or exchanged for the consideration described in
5 this subsection (j) (8).

6 (k) As used in subsection (j):

7 (1) "offer" means the offer referred to in
8 subsection (j) (2);

9 (2) "offeror" means the person making the offer;

10 (3) "parent" of an entity means a person that owns,
11 directly or indirectly (through one or more wholly owned
12 subsidiaries), all of the outstanding stock of or eligible
13 interests in that entity;

14 (4) stock tendered in response to the offer shall be
15 deemed to have been "purchased" in accordance with the offer
16 at the earliest time as of which (i) the offeror has
17 irrevocably accepted that stock for payment and (ii) either
18 (A) in the case of stock represented by certificates, the
19 offeror, or the offeror's designated depository or other
20 agent, has physically received the certificates representing
21 that stock or (B) in the case of stock without certificates,
22 that stock has been transferred into the account of the
23 offeror or its designated depository or other agent, or an
24 agent's message relating to that stock has been received by
25 the offeror or its designated depository or other agent; and

1 (5) "wholly owned subsidiary" of a person means an
2 entity of or in which that person owns, directly or indirectly
3 (through one or more wholly owned subsidiaries), all of the
4 outstanding stock or eligible interests.

5 (1) Unless the certificate of incorporation
6 otherwise provides,

7 (1) approval of a plan of stock exchange by the
8 stockholders of a corporation is not required if the
9 corporation is the acquiring entity in the stock exchange; and

10 (2) stock not to be exchanged under the plan of
11 stock exchange is not entitled to vote on the plan.

12 §10A-2A-11.05. Merger between parent and subsidiary
13 or between subsidiaries.

14 (a) A domestic or foreign parent entity that owns
15 stock of a corporation which carries at least 90 percent of
16 the voting power of each class and series of the outstanding
17 stock of that subsidiary corporation that has voting power may
18 (i) merge that subsidiary corporation into itself (if it is a
19 corporation, foreign corporation, or eligible entity), (ii)
20 merge that subsidiary corporation into another corporation,
21 foreign corporation, or eligible entity in which the parent
22 entity owns at least 90 percent of the voting power of each
23 class and series of the outstanding stock or eligible
24 interests which have voting power, or (iii) merge itself (if
25 it is a corporation, foreign corporation, or eligible entity)

1 into that subsidiary corporation, in any case without the
2 approval of the board of directors or stockholders of that
3 subsidiary corporation, unless the certificate of
4 incorporation or organizational documents of the parent entity
5 or the certificate of incorporation of that subsidiary
6 corporation otherwise provide. The certificate of
7 incorporation, organizational documents, and the governing
8 statute of the parent entity and the other corporation,
9 foreign corporation or eligible entity into which the parent
10 entity intends to merge the subsidiary corporation under
11 clause (ii) of this subsection (a) shall determine the
12 necessary consent or approval required for the merger. Section
13 10A-2A-11.04(i) applies to a merger under this section. The
14 statement of merger relating to a merger under this section
15 does not need to be signed by the subsidiary corporation.

16 (b) A parent entity shall, within 10 days after the
17 effective date of a merger approved under subsection (a),
18 notify each of the subsidiary corporation's stockholders that
19 the merger has become effective.

20 (c) Except as provided in subsections (a) and (b), a
21 merger between a parent entity and a subsidiary corporation
22 shall, as to the subsidiary corporation and a parent entity
23 that is a corporation, be governed by the provisions of
24 Article 11 applicable to mergers generally, and as to a parent
25 entity that is not a corporation, be governed by the

1 organizational documents and governing statute of that parent
2 entity.

3 §10A-2A-11.06. Statement of merger or stock
4 exchange.

5 (a) After a plan of merger has been adopted and
6 approved as required by this article, then a statement of
7 merger shall be signed by each party to the merger except as
8 provided in Section 10A-2A-11.05(a). The statement of merger
9 must set forth:

10 (1) the name, type of organization, and mailing
11 address of the principal office of each constituent
12 organization, the jurisdiction of the governing statute of
13 each constituent organization, and the respective unique
14 identifying number or other designation as assigned by the
15 Secretary of State, if any, of each constituent organization;

16 (2) the name, type of organization, and mailing
17 address of the principal office of the surviving organization,
18 the unique identifying number or other designation as assigned
19 by the Secretary of State, if any, of the surviving
20 organization, the jurisdiction of the governing statute of the
21 surviving organization, and, if the surviving organization is
22 created pursuant to the merger, a statement to that effect;

23 (3) the date of the filing of the certificate of
24 formation, if any, and all prior amendments and the filing
25 office or offices, if any, and where the certificate of

1 formation is filed of each constituent organization which was
2 formed under the laws of this state;

3 (4) the date the merger is effective under the
4 governing statute of the surviving organization;

5 (5) if the surviving organization is to be created
6 pursuant to the merger:

7 (A) if it will be a corporation, the corporation's
8 certificate of incorporation; or

9 (B) if it will be an organization other than a
10 corporation, any organizational document that creates the
11 organization that is required to be in a public writing or in
12 the case of a limited liability partnership, its statement of
13 limited liability partnership;

14 (6) if the surviving organization exists before the
15 merger, any amendments provided for in the plan of merger for
16 the organizational document that created the organization that
17 are in a public writing;

18 (7) a statement as to each constituent organization
19 that the merger was approved as required by the organization's
20 governing statute;

21 (8) if the surviving organization is a foreign
22 organization not authorized to conduct activities and affairs
23 in this state, the street and mailing address of an office for
24 the purposes of Section 10A-2A-11.07(c);

1 (9) any additional information required by the
2 governing statute of any constituent organization;

3 (10) if the plan of merger required approval by the
4 stockholders of a corporation that is a constituent
5 organization, a statement that the plan was duly approved by
6 the stockholders and, if voting by any separate voting group
7 was required, by each separate voting group, in the manner
8 required by this chapter and the certificate of incorporation;

9 (11) if the plan of merger did not require approval
10 by the stockholders of a corporation that is a constituent
11 organization, a statement to that effect; and

12 (12) a statement that the plan of merger will be
13 furnished by the surviving organization, on request and
14 without cost, to any owner of any constituent organization
15 which is a party to the merger.

16 (b) After a plan of stock exchange in which the
17 acquired entity is a corporation has been adopted and approved
18 as required by this chapter, a statement of stock exchange
19 shall be signed by the acquired entity and the acquiring
20 entity. The statement of stock exchange shall set forth:

21 (1) the name and mailing address of the principal
22 office of the acquired entity, and the jurisdiction of its
23 governing statute, and its unique identifying number or other
24 designation as assigned by the Secretary of State, if any;

1 (2) the name, jurisdiction of formation, and type of
2 entity of the corporation or foreign corporation that is the
3 acquiring entity;

4 (3) a statement that the plan of stock exchange was
5 duly approved by the acquired entity by:

6 (i) the required vote or consent of each class or
7 series of stock included in the exchange; and

8 (ii) the required vote or consent of each other
9 class or series of stock entitled to vote on approval of the
10 exchange by the certificate of incorporation of the acquired
11 entity; and

12 (4) if the stock exchange did not require the
13 approval by the stockholders of a corporation that is a party
14 to the stock exchange, a statement to that effect.

15 (c) In addition to the requirements of subsection
16 (a) or subsection (b), statement of merger or stock exchange
17 may contain any other provision not prohibited by law.

18 (d) The statement of merger or stock exchange shall
19 be delivered to the Secretary of State for filing and, subject
20 to subsection (e), the merger or stock exchange shall take
21 effect at the effective date determined in accordance with
22 Article 4 of Chapter 1.

23 (e) With respect to a merger in which one or more
24 foreign organizations is a constituent organization or a
25 foreign organization created by the merger is the surviving

1 organization, the merger itself shall become effective at the
2 later of:

3 (1) when all documents required to be filed in
4 foreign jurisdictions to effect the merger have become
5 effective, or

6 (2) when the statement of merger takes effect.

7 (f) A statement of merger filed under this section
8 may be combined with any filing required under the governing
9 statute governing any domestic organization involved in the
10 transaction if the combined filing satisfies the requirements
11 of this section, the other governing statute, and Article 4 of
12 Chapter 1.

13 (g) After a merger becomes effective, if the
14 surviving organization is a corporation, then, except for
15 certified copies of the statement of merger permitted to be
16 delivered to the judge of probate for filing pursuant to
17 subsection (h), all filing instruments required to be filed
18 under this title regarding that surviving organization shall
19 be delivered for filing to the Secretary of State.

20 (h) A certified copy of the statement of merger
21 required to be filed under this section may be filed in the
22 real estate records in the office of the judge of probate in
23 any county in which any constituent organization owned real
24 property, without payment and without collection by the judge
25 of probate of any deed or other transfer tax or fee. The judge

1 of probate, however, shall be entitled to collect the filing
2 fee of five dollars (\$5). Any filing shall evidence chain of
3 title, but lack of filing shall not affect the surviving
4 organization's title to real property.

5 §10A-2A-11.07. Effect of merger or stock exchange.

6 (a) When a merger becomes effective:

7 (1) the surviving organization continues or, in the
8 case of a surviving organization created pursuant to the
9 merger, comes into existence;

10 (2) each constituent organization that merges into
11 the surviving organization ceases to exist as a separate
12 entity;

13 (3) except as provided in the plan of merger, all
14 property owned by, and every contract right possessed by, each
15 constituent organization that ceases to exist vests in the
16 surviving organization without transfer, reversion, or
17 impairment and the title to any property and contract rights
18 vested by deed or otherwise in the surviving organization
19 shall not revert, be in any way impaired, or be deemed to be a
20 transfer by reason of the merger;

21 (4) all debts, obligations and other liabilities of
22 each constituent organization, other than the surviving
23 organization, are debts, obligations and liabilities of the
24 surviving organization, and neither the rights of creditors,

1 nor any liens upon the property of any constituent
2 organization, shall be impaired by the merger;

3 (5) an action or proceeding pending by or against
4 any constituent organization continues as if the merger had
5 not occurred and the name of the surviving organization may,
6 but need not be, substituted in any pending proceeding for the
7 name of any constituent organization whose separate existence
8 ceased in the merger;

9 (6) except as prohibited by law other than this
10 chapter or as provided in the plan of merger, all the rights,
11 privileges, franchises, immunities, powers, and purposes of
12 each constituent organization, other than the surviving
13 organization, vest in the surviving organization;

14 (7) except as otherwise provided in the plan of
15 merger, the terms and conditions of the plan of merger take
16 effect;

17 (8) except as otherwise agreed, if a constituent
18 organization that is a corporation ceases to exist, the merger
19 does not dissolve the corporation;

20 (9) if the surviving organization is created
21 pursuant to the merger:

22 (A) if it is a corporation, the certificate of
23 incorporation and bylaws become effective; or

1 (B) if it is an organization other than a
2 corporation, the organizational documents that create the
3 organization becomes effective;

4 (10) if the surviving organization existed before
5 the merger, any amendments provided for in the statement of
6 merger for the organizational documents of that organization
7 become effective;

8 (11) the stock of each corporation or foreign
9 corporation that is a constituent organization to the merger,
10 and the eligible interests in an eligible entity that is a
11 constituent organization, that are to be converted in
12 accordance with the terms of the merger into stock or other
13 securities, eligible interests, obligations, rights to acquire
14 stock, other securities, or eligible interests, cash, other
15 property, or any combination of the foregoing, are converted,
16 and the former holders of stock or eligible interests are
17 entitled only to the rights provided to them by those terms or
18 to any rights they may have under Article 13 or the governing
19 statute governing the eligible entity or foreign corporation;

20 (12) if the surviving organization exists before the
21 merger:

22 (i) except as provided in the plan of merger, all
23 property and contract rights of the surviving organization
24 remain its property and contract rights without transfer,
25 reversion, or impairment;

1 (ii) the surviving organization remains subject to
2 all its debts, obligations, and other liabilities; and

3 (iii) except as provided by law other than this
4 chapter or the plan of merger, the surviving organization
5 continues to hold all of its rights, privileges, franchises,
6 immunities, powers and purposes.

7 (b) When a stock exchange becomes effective, the
8 stock in the acquired entity that is to be exchanged for stock
9 or other securities, obligations, rights to acquire stock,
10 other securities, cash, other property, or any combination of
11 the foregoing, are entitled only to the rights provided to
12 them in the plan of stock exchange or to any rights they may
13 have under Article 13 or under the governing statute governing
14 the acquired entity.

15 (c) A surviving organization that is a foreign
16 organization:

17 (1) consents to the jurisdiction of this state to
18 enforce any debt, obligation, or other liability owed by a
19 constituent organization, if before the merger the constituent
20 organization was subject to suit in this state on the debt,
21 obligation, or other liability;

22 (2) consents that if it fails to designate or
23 maintain a registered agent, or the designated registered
24 agent cannot with reasonable diligence be served, then the
25 service of process on that surviving organization for the

1 purposes of enforcing a debt, obligation, or other liability
2 under this subsection and for enforcing the rights of
3 stockholders of each corporation that is a constituent
4 organization who exercise appraisal rights may be made in the
5 same manner and has the same consequences as provided in
6 Section 10A-1-5.35; and

7 (3) agrees that it will promptly pay the amount, if
8 any, to which stockholders referred to in clause (2) of this
9 subsection (c) are entitled under Article 13.

10 §10A-2A-11.08. Abandonment of a merger or stock
11 exchange.

12 (a) After a plan of merger or stock exchange has
13 been adopted and approved as required by this Article 11, and
14 before the statement of merger or stock exchange has become
15 effective, the plan may be abandoned by a corporation that is
16 a party to the plan without action by its stockholders in
17 accordance with any procedures set forth in the plan of merger
18 or stock exchange or, if no procedures are set forth in the
19 plan, in the manner determined by the board of directors.

20 (b) If a merger or stock exchange is abandoned under
21 subsection (a) after the statement of merger or stock exchange
22 has been delivered to the Secretary of State for filing but
23 before the merger or stock exchange has become effective, a
24 statement of abandonment signed by all the parties that signed
25 the statement of merger or stock exchange shall be delivered

1 to the Secretary of State for filing before the statement of
2 merger or stock exchange becomes effective. The statement
3 shall take effect on filing and the merger or stock exchange
4 shall be deemed abandoned and shall not become effective. The
5 statement of abandonment must contain:

6 (1) the name of each party to the merger or the
7 names of the acquiring and acquired entities in a stock
8 exchange;

9 (2) the date on which the statement of merger or
10 stock exchange was filed by the Secretary of State; and

11 (3) a statement that the merger or stock exchange
12 has been abandoned in accordance with this section.

13 §10A-2A-11.09. Nonexclusive.

14 This article is not exclusive. This article does not
15 preclude a corporation from merging or exchanging its stock
16 under law other than this chapter.

17 Article 12. DISPOSITION OF ASSETS.

18 §10A-2A-12.01. Disposition of assets not requiring
19 stockholder approval.

20 No approval of the stockholders is required, unless
21 the certificate of incorporation otherwise provides:

22 (a) to sell, lease, exchange, or otherwise dispose
23 of any or all of the corporation's assets in the usual and
24 regular course of business;

1 (b) to mortgage, pledge, dedicate to the repayment
2 of indebtedness (whether with or without recourse), or
3 otherwise encumber any or all of the corporation's assets,
4 regardless of whether in the usual and regular course of
5 business;

6 (c) to transfer any or all of the corporation's
7 assets to one or more corporations, foreign corporations, or
8 other entities all of the stock or interests of which are
9 owned by the corporation; or

10 (d) to distribute assets pro rata to the holders of
11 one or more classes or series of the corporation's stock.

12 §10A-2A-12.02. Stockholder approval of certain
13 dispositions.

14 (a) A sale, lease, exchange, or other disposition of
15 assets, other than a disposition described in Section
16 10A-2A-12.01, requires approval of the corporation's
17 stockholders if the disposition would leave the corporation
18 without a significant continuing business activity. A
19 corporation will conclusively be deemed to have retained a
20 significant continuing business activity if it retains a
21 business activity that represented, for the corporation and
22 its subsidiaries on a consolidated basis, at least (i) 25
23 percent of total assets at the end of the most recently
24 completed fiscal year, and (ii) either 25 percent of either
25 income from continuing operations before taxes or 25 percent

1 of revenues from continuing operations, in each case for the
2 most recently completed fiscal year.

3 (b) To obtain the approval of the stockholders under
4 subsection (a) the board of directors shall first adopt a
5 resolution authorizing the disposition. The disposition shall
6 then be approved by the stockholders. In submitting the
7 disposition to the stockholders for approval, the board of
8 directors shall recommend that the stockholders approve the
9 disposition, unless (i) the board of directors makes a
10 determination that because of conflicts of interest or other
11 special circumstances it should not make a recommendation, or
12 (ii) Section 10A-2A-8.26 applies. If either (i) or (ii)
13 applies, the board of directors shall inform the stockholders
14 of the basis for its so proceeding.

15 (c) The board of directors may set conditions for
16 the approval by the stockholders of a disposition or the
17 effectiveness of the disposition.

18 (d) If a disposition is required to be approved by
19 the stockholders under subsection (a), and if the approval is
20 to be given at a meeting, the corporation shall notify each
21 stockholder, regardless of whether entitled to vote, of the
22 meeting of stockholders at which the disposition is to be
23 submitted for approval. The notice must state that the
24 purpose, or one of the purposes, of the meeting is to consider
25 the disposition and must contain a description of the

1 disposition, including the terms and conditions of the
2 disposition and the consideration to be received by the
3 corporation.

4 (e) Unless the certificate of incorporation or the
5 board of directors acting pursuant to subsection (c) requires
6 a greater vote or a greater quorum, the approval of a
7 disposition by the stockholders shall require the approval of
8 the stockholders at a meeting at which a quorum exists
9 consisting of a majority of the votes entitled to be cast on
10 the disposition.

11 (f) After a disposition has been approved by the
12 stockholders under this Article 12, and at any time before the
13 disposition has been consummated, it may be abandoned by the
14 corporation without action by the stockholders, subject to any
15 contractual rights of other parties to the disposition.

16 (g) A disposition of assets in the course of
17 dissolution under Article 14 is not governed by this section.

18 (h) For purposes of this section only, the property
19 and assets of the corporation include the property and assets
20 of any subsidiary of the corporation. As used in this
21 subsection, "subsidiary" means any entity wholly owned and
22 controlled, directly or indirectly, by the corporation and
23 includes, without limitation, corporations, partnerships,
24 limited partnerships, limited liability partnerships, limited
25 liability companies, and/or statutory trusts. Notwithstanding

1 subsection (a) of this section, except to the extent the
2 certificate of incorporation otherwise provides, no vote by
3 stockholders shall be required for a sale, lease or exchange
4 of property and assets of the corporation to a subsidiary.

5 ARTICLE 13. APPRAISAL RIGHTS.

6 Division A. RIGHT TO APPRAISAL AND PAYMENT
7 FOR STOCK.

8 §10A-2A-13.01. Definitions.

9 Notwithstanding Chapter 1, in this Article 13:

10 (1) "Affiliate" means a person that directly or
11 indirectly through one or more intermediaries controls, is
12 controlled by, or is under common control with another person
13 or is a senior executive of that person. For purposes of
14 Section 10A-2A-13.02(b)(4), a person is deemed to be an
15 affiliate of its senior executives.

16 (2) "Corporation" means the corporation that is the
17 issuer of the stock held by a stockholder demanding appraisal
18 and, for matters covered in Section 10A-2A-13.22 through
19 Section 10A-2A-13.31, includes the surviving organization of a
20 merger.

21 (3) "Fair value" means the value of the
22 corporation's stock determined:

23 (i) immediately before the effectiveness of the
24 corporate action to which the stockholder objects;

1 (ii) using customary and current valuation concepts
2 and techniques generally employed for similar businesses in
3 the context of the transaction requiring appraisal; and

4 (iii) without discounting for lack of marketability
5 or minority status.

6 (4) "Interest" means interest from the date the
7 corporate action becomes effective until the date of payment,
8 and shall be compounded quarterly and shall accrue at five
9 percent over the Federal Reserve discount rate (including any
10 surcharge) as established from time to time during the period
11 between the effective date of the corporate action and the
12 date of payment.

13 (5) "Interested transaction" means a corporate
14 action described in Section 10A-2A-13.02(a), other than a
15 merger pursuant to Section 10A-2A-11.05, involving an
16 interested person in which any of the stock or assets of the
17 corporation are being acquired or converted. As used in this
18 definition:

19 (i) "Interested person" means a person, or an
20 affiliate of a person, who at any time during the one-year
21 period immediately preceding approval by the board of
22 directors of the corporate action:

23 (A) was the beneficial owner of 20 percent or more
24 of the voting power of the corporation, other than as owner of
25 excluded stock;

1 (B) had the power, contractually or otherwise, other
2 than as owner of excluded stock, to cause the appointment or
3 election of 25 percent or more of the directors to the board
4 of directors of the corporation; or

5 (C) was a senior executive or director of the
6 corporation or a senior executive of any affiliate of the
7 corporation, and that senior executive or director will
8 receive, as a result of the corporate action, a financial
9 benefit not generally available to other stockholders as such,
10 other than:

11 (I) employment, consulting, retirement, or similar
12 benefits established separately and not as part of or in
13 contemplation of the corporate action;

14 (II) employment, consulting, retirement, or similar
15 benefits established in contemplation of, or as part of, the
16 corporate action that are not more favorable than those
17 existing before the corporate action or, if more favorable,
18 that have been approved on behalf of the corporation in the
19 same manner as is provided in Section 10A-2A-8.60; or

20 (III) in the case of a director of the corporation
21 who will, in the corporate action, become a director or
22 governing person of the acquiror or any of its affiliates,
23 rights and benefits as a director or governing person that are
24 provided on the same basis as those afforded by the acquiror

1 generally to other directors or governing persons of the
2 acquiror or its affiliate.

3 (ii) "Beneficial owner" means any person who,
4 directly or indirectly, through any contract, arrangement, or
5 understanding, other than a revocable proxy, has or shares the
6 power to vote, or to direct the voting of, stock; except that
7 a member of a national securities exchange is not deemed to be
8 a beneficial owner of securities held directly or indirectly
9 by it on behalf of another person if the member is precluded
10 by the rules of the exchange from voting without instruction
11 on contested matters or matters that may affect substantially
12 the rights or privileges of the holders of the securities to
13 be voted. When two or more persons agree to act together for
14 the purpose of voting their stock of the corporation, each
15 member of the group formed thereby is deemed to have acquired
16 beneficial ownership, as of the date of the agreement, of all
17 stock having voting power of the corporation beneficially
18 owned by any member of the group.

19 (iii) "Excluded stock" means stock acquired pursuant
20 to an offer for all stock having voting power if the offer was
21 made within one year before the corporate action for
22 consideration of the same kind and of a value equal to or less
23 than that paid in connection with the corporate action.

1 (6) "Preferred stock" means a class or series of
2 stock whose holders have preference over any other class or
3 series of stock with respect to distributions.

4 (7) "Senior executive" means the chief executive
5 officer, chief operating officer, chief financial officer, and
6 any individual in charge of a principal business unit or
7 function.

8 (8) "Stockholder" means a record stockholder, a
9 beneficial stockholder, and a voting trust beneficial owner.

10 §10A-2A-13.02. Right to appraisal.

11 (a) A stockholder is entitled to appraisal rights,
12 and to obtain payment of the fair value of that stockholder's
13 stock, in the event of any of the following corporate actions:

14 (1) consummation of a merger to which the
15 corporation is a party (i) if the corporation is a subsidiary
16 and the merger is governed by Section 10A-2A-11.05 or (ii) if
17 stockholder approval is required for the merger by Section
18 10A-2A-11.04, or would be required but for the provisions of
19 Section 10A-2A-11.04(j), except that appraisal rights shall
20 not be available to any stockholder of the corporation with
21 respect to stock of any class or series that remain
22 outstanding after consummation of the merger;

23 (2) consummation of a stock exchange to which the
24 corporation is a party the stock of which will be acquired,
25 except that appraisal rights shall not be available to any

1 stockholder of the corporation with respect to any class or
2 series of stock of the corporation that is not acquired in the
3 stock exchange;

4 (3) consummation of a disposition of assets pursuant
5 to Section 10A-2A-12.02 if the stockholder is entitled to vote
6 on the disposition, except that appraisal rights shall not be
7 available to any stockholder of the corporation with respect
8 to stock of any class or series if (i) under the terms of the
9 corporate action approved by the stockholders there is to be
10 distributed to stockholders in cash the corporation's net
11 assets, in excess of a reasonable amount reserved to meet
12 claims of the type described in Section 10A-2A-14.06 and
13 Section 10A-2A-14.07, (A) within one year after the
14 stockholders' approval of the action and (B) in accordance
15 with their respective interests determined at the time of
16 distribution, and (ii) the disposition of assets is not an
17 interested transaction;

18 (4) an amendment of the certificate of incorporation
19 with respect to a class or series of stock that reduces the
20 number of stock of a class or series owned by the stockholder
21 to a fraction of a stock if the corporation has the obligation
22 or right to repurchase the fractional stock so created;

23 (5) any other merger, stock exchange, disposition of
24 assets or amendment to the certificate of incorporation, in
25 each case to the extent provided by the certificate of

1 incorporation, bylaws or a resolution of the board of
2 directors;

3 (6) consummation of a conversion of a corporation to
4 a foreign corporation pursuant to Article 9 or Article 8 of
5 Chapter 1 if the stockholder does not receive stock in the
6 foreign corporation resulting from the conversion that has
7 terms as favorable to the stockholder in all material
8 respects, and represents at least the same percentage interest
9 of the total voting rights of the outstanding stock of the
10 foreign corporation, as the stock held by the stockholder
11 before the conversion;

12 (7) consummation of a conversion of a corporation to
13 a nonprofit corporation pursuant to Article 9 of this chapter
14 of Article 8 of Chapter 1; or

15 (8) consummation of a conversion of the corporation
16 to an unincorporated entity pursuant to Article 9 of this
17 chapter or Article 8 of Chapter 1.

18 (b) Notwithstanding subsection (a), the availability
19 of appraisal rights under subsections (a)(1), (2), (3), (4),
20 (6), and (8) shall be limited in accordance with the following
21 provisions:

22 (1) Appraisal rights shall not be available for the
23 holders of stock of any class or series of stock which is:

24 (i) a covered security under Section 18(b)(1)(A) or
25 (B) of the Securities Act of 1933;

1 (ii) has at least 2,000 record stockholders; or
2 (iii) issued by an open end management investment
3 company registered with the Securities and Exchange Commission
4 under the Investment Company Act of 1940 and which may be
5 redeemed at the option of the holder at net asset value.

6 (2) The applicability of subsection (b) (1) shall be
7 determined as of:

8 (i) the record date fixed to determine the
9 stockholders entitled to receive notice of the meeting of
10 stockholders to act upon the corporate action requiring
11 appraisal rights or, in the case of an offer made pursuant to
12 Section 10A-2A-11.04(j), the date of the offer; or

13 (ii) if there is no meeting of stockholders and no
14 offer made pursuant to Section 10A-2A-11.04(j), the day before
15 the consummation of the corporate action or effective date of
16 the amendment of the certificate of incorporation, as
17 applicable.

18 (3) Subsection (b) (1) shall not be applicable and
19 appraisal rights shall be available pursuant to subsection (a)
20 for the holders of any class or series of stock (i) who are
21 required by the terms of the corporate action requiring
22 appraisal rights to accept for their stock anything other than
23 cash or stock of any class or any series of stock of any
24 corporation, or any other proprietary interest of any other
25 entity, that satisfies the standards set forth in subsection

1 (b) (1) at the time the corporate action becomes effective, or
2 (ii) in the case of the consummation of a disposition of
3 assets pursuant to Section 10A-2A-12.02, unless the cash,
4 stock, or proprietary interests received in the disposition
5 are, under the terms of the corporate action approved by the
6 stockholders, to be distributed to the stockholders, as part
7 of a distribution to stockholders of the net assets of the
8 corporation in excess of a reasonable amount to meet claims of
9 the type described in Sections 10A-2A-14.06 and 10A-2A-14.07,
10 (A) within one year after the stockholders' approval of the
11 action, and (B) in accordance with their respective interests
12 determined at the time of the distribution.

13 (4) Subsection (b) (1) shall not be applicable and
14 appraisal rights shall be available pursuant to subsection (a)
15 for the holders of any class or series of stock where the
16 corporate action is an interested transaction.

17 (c) Notwithstanding any other provision of Section
18 10A-2A-13.02, the certificate of incorporation as originally
19 filed or any amendment to the certificate of incorporation may
20 limit or eliminate appraisal rights for any class or series of
21 preferred stock, except that (i) no limitation or elimination
22 shall be effective if the class or series does not have the
23 right to vote separately as a voting group (alone or as part
24 of a group) on the action or if the action is a conversion or
25 merger in which the converted organization or the surviving

1 organization is not a corporation or foreign corporation and
2 (ii) any limitation or elimination contained in an amendment
3 to the certificate of incorporation that limits or eliminates
4 appraisal rights for any stock that is outstanding immediately
5 before the effective date of the amendment or that the
6 corporation is or may be required to issue or sell thereafter
7 pursuant to any conversion, exchange or other right existing
8 immediately before the effective date of the amendment shall
9 not apply to any corporate action that becomes effective
10 within one year after the effective date of the amendment if
11 that action would otherwise afford appraisal rights.

12 §10A-2A-13.03. Assertion of rights by nominees and
13 beneficial stockholders.

14 (a) A record stockholder may assert appraisal rights
15 as to fewer than all the shares of stock registered in the
16 record stockholder's name but owned by a beneficial
17 stockholder or a voting trust beneficial owner only if the
18 record stockholder objects with respect to all shares of stock
19 of a class or series owned by the beneficial stockholder or
20 the voting trust beneficial owner and notifies the corporation
21 in writing of the name and address of each beneficial
22 stockholder or voting trust beneficial owner on whose behalf
23 appraisal rights are being asserted. The rights of a record
24 stockholder who asserts appraisal rights for only part of the
25 stock held of record in the record stockholder's name under

1 this subsection shall be determined as if the stock as to
2 which the record stockholder objects and the record
3 stockholder's other shares of stock were registered in the
4 names of different record stockholders.

5 (b) A beneficial stockholder and a voting trust
6 beneficial owner may assert appraisal rights as to stock of
7 any class or series held on behalf of the stockholder only if
8 the stockholder:

9 (1) submits to the corporation the record
10 stockholder's written consent to the assertion of appraisal
11 rights no later than the date referred to in Section
12 10A-2A-13.22(b) (2) (ii); and

13 (2) does so with respect to all stock of the class
14 or series that is beneficially owned by the beneficial
15 stockholder or the voting trust beneficial owner.

16 Division B. PROCEDURE FOR EXERCISE
17 OF APPRAISAL RIGHTS.

18 §10A-2A-13.20. Notice of appraisal rights.

19 (a) Where any corporate action specified in Section
20 10A-2A-13.02(a) is to be submitted to a vote at a
21 stockholders' meeting, the meeting notice (or where no
22 approval of the corporate action is required pursuant to
23 Section 10A-2A-11.04(j), the offer made pursuant to Section
24 10A-2A-11.04(j)), must state that the corporation has
25 concluded that appraisal rights are, are not or may be

1 available under this Article 13. If the corporation concludes
2 that appraisal rights are or may be available, a copy of this
3 Article 13 must accompany the meeting notice or offer sent to
4 those record stockholders entitled to exercise appraisal
5 rights.

6 (b) In a merger pursuant to Section 10A-2A-11.05,
7 the parent entity shall notify in writing all record
8 stockholders of the subsidiary who are entitled to assert
9 appraisal rights that the corporate action became effective.
10 The notice shall be sent within 10 days after the corporate
11 action became effective and include the materials described in
12 Section 10A-2A-13.22.

13 (c) Where any corporate action specified in Section
14 10A-2A-13.02(a) is to be approved by written consent of the
15 stockholders pursuant to Section 10A-2A-7.04:

16 (1) written notice that appraisal rights are, are
17 not or may be available shall be sent to each record
18 stockholder from whom a consent is solicited at the time
19 consent of each stockholder is first solicited and, if the
20 corporation has concluded that appraisal rights are or may be
21 available, the notice must be accompanied by a copy of this
22 Article 13; and

23 (2) written notice that appraisal rights are, are
24 not or may be available must be delivered together with the
25 notice to nonconsenting and nonvoting stockholders required by

1 Section 10A-2A-7.04(e) and (f), may include the materials
2 described in Section 10A-2A-13.22 and, if the corporation has
3 concluded that appraisal rights are or may be available, must
4 be accompanied by a copy of this Article 13.

5 (d) Where corporate action described in Section
6 10A-2A-13.02(a) is proposed, or a merger pursuant to Section
7 10A-2A-11.05 is effected, the notice referred to in subsection
8 (a) or (c), if the corporation concludes that appraisal rights
9 are or may be available, and in subsection (b) must be
10 accompanied by:

11 (1) financial statements of the corporation that
12 issued the stock that may be subject to appraisal, consisting
13 of a balance sheet as of the end of a fiscal year ending not
14 more than 16 months before the date of the notice, an income
15 statement for that year, and a cash flow statement for that
16 year; provided that, if the financial statements are not
17 reasonably available, the corporation shall provide reasonably
18 equivalent financial information; and

19 (2) the latest interim financial statements of the
20 corporation, if any.

21 (e) The right to receive the information described
22 in subsection (d) may be waived in writing by a stockholder
23 before or after the corporate action.

24 §10A-2A-13.21. Notice of intent to demand payment
25 and consequences of voting or consenting.

1 (a) If a corporate action specified in Section
2 10A-2A-13.02(a) is submitted to a vote at a stockholders'
3 meeting, a stockholder who wishes to assert appraisal rights
4 with respect to any class or series of stock:

5 (1) shall deliver to the corporation, before the
6 vote is taken, written notice of the stockholder's intent to
7 demand payment if the proposed action is effectuated; and

8 (2) shall not vote, or cause or permit to be voted,
9 any stock of the class or series in favor of the proposed
10 action.

11 (b) If a corporate action specified in Section
12 10A-2A-13.02(a) is to be approved by written consent, a
13 stockholder who wishes to assert appraisal rights with respect
14 to any class or series of stock shall not sign a consent in
15 favor of the proposed action with respect to that class or
16 series of stock.

17 (c) If a corporate action specified in Section
18 10A-2A-13.02(a) does not require stockholder approval pursuant
19 to Section 10A-2A-11.04(j), a stockholder who wishes to assert
20 appraisal rights with respect to any class or series of stock
21 (i) shall deliver to the corporation before the stock is
22 purchased pursuant to the offer written notice of the
23 stockholder's intent to demand payment if the proposed action
24 is effected; and (ii) shall not tender, or cause or permit to

1 be tendered, any stock of the class or series in response to
2 the offer.

3 (d) A stockholder who fails to satisfy the
4 requirements of subsection (a), (b), or (c) is not entitled to
5 payment under this Article 13.

6 §10A-2A-13.22. Appraisal notice and form.

7 (a) If a corporate action requiring appraisal rights
8 under Section 10A-2A-13.02(a) becomes effective, the
9 corporation shall deliver a written appraisal notice and form
10 required by subsection (b) to all stockholders who satisfy the
11 requirements of Section 10A-2A-13.21(a), (b), or (c). In the
12 case of a merger under Section 10A-2A-11.05, the parent shall
13 deliver an appraisal notice and form to all record
14 stockholders who may be entitled to assert appraisal rights.

15 (b) The appraisal notice shall be delivered no
16 earlier than the date the corporate action specified in
17 Section 10A-2A-13.02(a) became effective, and no later than 10
18 days after that date, and must:

19 (1) supply a form that (i) specifies the first date
20 of any announcement to stockholders made before the date the
21 corporate action became effective of the principal terms of
22 the proposed corporate action, (ii) if the announcement was
23 made, requires the stockholder asserting appraisal rights to
24 certify whether beneficial ownership of those shares of stock
25 for which appraisal rights are asserted was acquired before

1 that date, and (iii) requires the stockholder asserting
2 appraisal rights to certify that the stockholder did not vote
3 for or consent to the transaction as to the class or series of
4 stock for which appraisal is sought;

5 (2) state:

6 (i) where the form shall be sent and where
7 certificates for certificated stock shall be deposited and the
8 date by which those certificates must be deposited, which date
9 may not be earlier than the date by which the corporation must
10 receive the required form under subsection (b) (2) (ii);

11 (ii) a date by which the corporation shall receive
12 the form, which date may not be fewer than 40 nor more than 60
13 days after the date the subsection (a) appraisal notice is
14 sent, and state that the stockholder shall have waived the
15 right to demand appraisal with respect to the stock unless the
16 form is received by the corporation by the specified date;

17 (iii) the corporation's estimate of the fair value
18 of the stock;

19 (iv) that, if requested in writing, the corporation
20 will provide, to the stockholder so requesting, within 10 days
21 after the date specified in subsection (b) (2) (ii) the number
22 of stockholders who return the forms by the specified date and
23 the total number of shares of stock owned by them; and

24 (v) the date by which the notice to withdraw under
25 Section 10A-2A-13.23 shall be received, which date shall be

1 within 20 days after the date specified in subsection
2 (b) (2) (ii); and

3 (3) be accompanied by a copy of this Article 13.

4 §10A-2A-13.23. Perfection of rights;
5 right to withdraw.

6 (a) A stockholder who receives notice pursuant to
7 Section 10A-2A-13.22 and who wishes to exercise appraisal
8 rights shall sign and return the form sent by the corporation
9 and, in the case of certificated stock, deposit the
10 stockholder's certificates in accordance with the terms of the
11 notice by the date referred to in the notice pursuant to
12 Section 10A-2A-13.22 (b) (2) (ii). In addition, if applicable,
13 the stockholder shall certify on the form whether the
14 beneficial owner of the stock acquired beneficial ownership of
15 the stock before the date required to be set forth in the
16 notice pursuant to Section 10A-2A-13.22 (b) (1) (i). If a
17 stockholder fails to make this certification, the corporation
18 may elect to treat the stockholder's stock as after-acquired
19 stock under Section 10A-2A-13.25. Once a stockholder deposits
20 the certificates or, in the case of uncertificated stock,
21 returns the signed forms, that stockholder loses all rights as
22 a stockholder, unless the stockholder withdraws pursuant to
23 subsection (b).

24 (b) A stockholder who has complied with subsection
25 (a) may nevertheless decline to exercise appraisal rights and

1 withdraw from the appraisal process by so notifying the
2 corporation in writing by the date set forth in the appraisal
3 notice pursuant to Section 10A-2A-13.22(b)(2)(v). A
4 stockholder who fails to so withdraw from the appraisal
5 process may not thereafter withdraw without the corporation's
6 written consent.

7 (c) A stockholder who does not sign and return the
8 form and, in the case of certificated stock, deposit that
9 stockholder's stock certificates where required, each by the
10 date set forth in the notice described in Section
11 10A-2A-13.22(b), shall not be entitled to payment under this
12 Article 13.

13 §10A-2A-13.24. Payment.

14 (a) Except as provided in Section 10A-2A-13.25,
15 within 30 days after the form required by Section
16 10A-2A-13.22(b)(2)(ii) is due, the corporation shall pay in
17 cash to those stockholders who complied with Section
18 10A-2A-13.23(a) the amount the corporation estimates to be the
19 fair value of their stock, plus interest.

20 (b) The payment to each stockholder pursuant to
21 subsection (a) must be accompanied by:

22 (1)(i) financial statements of the corporation that
23 issued the stock to be appraised, consisting of a balance
24 sheet as of the end of a fiscal year ending not more than 16
25 months before the date of payment, an income statement for

1 that year, and a cash flow statement for that year; provided
2 that, if the annual financial statements are not reasonably
3 available, the corporation shall provide reasonably equivalent
4 financial information, and (ii) the latest interim financial
5 statements of the corporation, if any;

6 (2) a statement of the corporation's estimate of the
7 fair value of the stock, which estimate shall equal or exceed
8 the corporation's estimate given pursuant to Section
9 10A-2A-13.22(b) (2) (iii); and

10 (3) a statement that stockholders described in
11 subsection (a) have the right to demand further payment under
12 Section 10A-2A-13.26 and that if any stockholder does not do
13 so within the time period specified in Section
14 10A-2A-13.26(b), the stockholder shall be deemed to have
15 accepted the payment under subsection (a) in full satisfaction
16 of the corporation's obligations under this Article 13.

17 §10A-2A-13.25. After-acquired stock.

18 (a) A corporation may elect to withhold payment
19 required by Section 10A-2A-13.24 from any stockholder who was
20 required to, but did not certify that beneficial ownership of
21 all of the stockholder's stock for which appraisal rights are
22 asserted was acquired before the date set forth in the
23 appraisal notice sent pursuant to Section 10A-2A-13.22(b) (1).

24 (b) If the corporation elects to withhold payment
25 under subsection (a), it shall, within 30 days after the form

1 required by Section 10A-2A-13.22(b)(2)(ii) is due, notify all
2 stockholders who are described in subsection (a):

3 (1) of the information required by Section
4 10A-2A-13.24(b)(1);

5 (2) of the corporation's estimate of fair value
6 pursuant to Section 10A-2A-13.24(b)(2);

7 (3) that they may accept the corporation's estimate
8 of fair value, plus interest, in full satisfaction of their
9 demands or demand appraisal under Section 10A-2A-13.26;

10 (4) that those stockholders who wish to accept the
11 offer shall so notify the corporation of their acceptance of
12 the corporation's offer within 30 days after receiving the
13 offer; and

14 (5) that those stockholders who do not satisfy the
15 requirements for demanding appraisal under Section
16 10A-2A-13.26 shall be deemed to have accepted the
17 corporation's offer.

18 (c) Within 10 days after receiving the stockholder's
19 acceptance pursuant to subsection (b)(4), the corporation
20 shall pay in cash the amount it offered under subsection
21 (b)(2) plus interest to each stockholder who agreed to accept
22 the corporation's offer in full satisfaction of the
23 stockholder's demand.

24 (d) Within 40 days after delivering the notice
25 described in subsection (b), the corporation shall pay in cash

1 the amount it offered to pay under subsection (b) (2) plus
2 interest to each stockholder described in subsection (b) (5).

3 §10A-2A-13.26. Procedure if stockholder dissatisfied
4 with payment or offer.

5 (a) A stockholder paid pursuant to Section
6 10A-2A-13.24 who is dissatisfied with the amount of the
7 payment shall notify the corporation in writing of that
8 stockholder's estimate of the fair value of the stock and
9 demand payment of that estimate (less any payment under
10 Section 10A-2A-13.24) plus interest. A stockholder offered
11 payment under Section 10A-2A-13.25 who is dissatisfied with
12 that offer shall reject the offer and demand payment of the
13 stockholder's stated estimate of the fair value of the stock
14 plus interest.

15 (b) A stockholder who fails to notify the
16 corporation in writing of that stockholder's demand to be paid
17 the stockholder's stated estimate of the fair value plus
18 interest under subsection (a) within 30 days after receiving
19 the corporation's payment or offer of payment under Section
20 10A-2A-13.24 or Section 10A-2A-13.25, respectively, waives the
21 right to demand payment under this section and shall be
22 entitled only to the payment made or offered pursuant to those
23 respective sections.

24 Division C. JUDICIAL APPRAISAL OF STOCK.

25 §10A-2A-13.30. Court action.

1 (a) If a stockholder makes demand for payment under
2 Section 10A-2A-13.26 which remains unsettled, the corporation
3 shall commence a proceeding within 60 days after receiving the
4 payment demand and petition the court to determine the fair
5 value of the stock and accrued interest. If the corporation
6 does not commence the proceeding within the 60-day period, it
7 shall pay in cash to each stockholder the amount the
8 stockholder demanded pursuant to Section 10A-2A-13.26 plus
9 interest.

10 (b) The corporation shall commence the proceeding in
11 the circuit court of the county where the corporation's
12 principal office, or, if none in this state, its registered
13 office, is located.

14 (c) The corporation shall make all stockholders
15 (regardless of whether they are residents of this state) whose
16 demands remain unsettled parties to the proceeding as in an
17 action against their stock, and all parties shall be served
18 with a copy of the petition. Nonresidents may be served by
19 registered or certified mail or by publication as provided by
20 law.

21 (d) The jurisdiction of the court in which the
22 proceeding is commenced under subsection (b) is plenary and
23 exclusive. The court may appoint one or more persons as
24 appraisers to receive evidence and recommend a decision on the
25 question of fair value. The appraisers shall have the powers

1 described in the order appointing them, or in any amendment to
2 it. The stockholders demanding appraisal rights are entitled
3 to the same discovery rights as parties in other civil
4 proceedings. There shall be no right to a jury trial.

5 (e) Each stockholder made a party to the proceeding
6 is entitled to judgment (i) for the amount, if any, by which
7 the court finds the fair value of the stockholder's stock
8 exceeds the amount paid by the corporation to the stockholder
9 for the stock, plus interest, or (ii) for the fair value, plus
10 interest, of the stockholder's stock for which the corporation
11 elected to withhold payment under Section 10A-2A-13.25.

12 §10A-2A-13.31. Court costs and expenses.

13 (a) The court in an appraisal proceeding commenced
14 under Section 10A-2A-13.30 shall determine all court costs of
15 the proceeding, including the reasonable compensation and
16 expenses of appraisers appointed by the court. The court shall
17 assess the court costs against the corporation, except that
18 the court may assess court costs against all or some of the
19 stockholders demanding appraisal, in amounts which the court
20 finds equitable, to the extent the court finds the
21 stockholders acted arbitrarily, vexatiously, or not in good
22 faith with respect to the rights provided by this Article 13.

23 (b) The court in an appraisal proceeding may also
24 assess the expenses of the respective parties in amounts the
25 court finds equitable:

1 (1) against the corporation and in favor of any or
2 all stockholders demanding appraisal if the court finds the
3 corporation did not substantially comply with the requirements
4 of Section 10A-2A-13.20, Section 10A-2A-13.22, Section
5 10A-2A-13.24, or Section 10A-2A-13.25; or

6 (2) against either the corporation or a stockholder
7 demanding appraisal, in favor of any other party, if the court
8 finds the party against whom expenses are assessed acted
9 arbitrarily, vexatiously, or not in good faith with respect to
10 the rights provided by this Article 13.

11 (c) If the court in an appraisal proceeding finds
12 that the expenses incurred by any stockholder were of
13 substantial benefit to other stockholders similarly situated
14 and that the expenses should not be assessed against the
15 corporation, the court may direct that the expenses be paid
16 out of the amounts awarded the stockholders who were
17 benefited.

18 (d) To the extent the corporation fails to make a
19 required payment pursuant to Section 10A-2A-13.24, Section
20 10A-2A-13.25, or Section 10A-2A-13.26, the stockholder may sue
21 directly for the amount owed, and to the extent successful,
22 shall be entitled to recover from the corporation all expenses
23 of the suit.

24 Division D. OTHER REMEDIES.

25 §10A-2A-13.40. Other remedies limited.

1 (a) The legality of a proposed or completed
2 corporate action described in Section 10A-2A-13.02(a) may not
3 be contested, nor may the corporate action be enjoined, set
4 aside or rescinded, in a legal or equitable proceeding by a
5 stockholder after the stockholders have approved the corporate
6 action.

7 (b) Subsection (a) does not apply to a corporate
8 action that:

9 (1) was not authorized and approved in accordance
10 with the applicable provisions of:

11 (i) Article 9, 10, 11, or 12 of this chapter or
12 Article 8 of Chapter 1;

13 (ii) the certificate of incorporation or bylaws; or

14 (iii) the resolution of the board of directors
15 authorizing the corporate action;

16 (2) was procured as a result of fraud, a material
17 misrepresentation, or an omission of a material fact necessary
18 to make statements made, in light of the circumstances in
19 which they were made, not misleading;

20 (3) is an interested transaction, unless it has been
21 recommended by the board of directors in the same manner as is
22 provided in Section 10A-2A-8.60 and has been approved by the
23 stockholders in the same manner as is provided in Section
24 10A-2A-8.60 as if the interested transaction were a director's
25 conflicting interest transaction; or

1 (4) is approved by less than unanimous consent of
2 the voting stockholders pursuant to Section 10A-2A-7.04 if:

3 (i) the challenge to the corporate action is brought
4 by a stockholder who did not consent and as to whom notice of
5 the approval of the corporate action was not effective at
6 least 10 days before the corporate action was effected; and

7 (ii) the proceeding challenging the corporate action
8 is commenced within 10 days after notice of the approval of
9 the corporate action is effective as to the stockholder
10 bringing the proceeding.

11 ARTICLE 14. DISSOLUTION.

12 Division A. VOLUNTARY DISSOLUTION.

13 §10A-2A-14.01. Dissolution by incorporators or
14 initial directors.

15 A majority of the incorporators or initial directors
16 of a corporation that has not issued stock or has not
17 commenced business may dissolve the corporation by delivering
18 to the Secretary of State for filing a certificate of
19 dissolution that sets forth:

20 (a) the name of the corporation;

21 (b) the date of its incorporation;

22 (c) either (i) that none of the corporation's stock
23 has been issued or (ii) that the corporation has not commenced
24 business;

25 (d) that no debt of the corporation remains unpaid;

1 (e) that the net assets of the corporation remaining
2 after winding up have been distributed to the stockholders, if
3 stock was issued; and

4 (f) that a majority of the incorporators or initial
5 directors authorized the dissolution.

6 §10A-2A-14.02. Dissolution by board of directors and
7 stockholders.

8 (a) The board of directors may propose dissolution
9 for submission to the stockholders by first adopting a
10 resolution authorizing the dissolution.

11 (b) For a proposal to dissolve to be adopted, it
12 shall then be approved by the stockholders. In submitting the
13 proposal to dissolve to the stockholders for approval, the
14 board of directors shall recommend that the stockholders
15 approve the dissolution, unless (i) the board of directors
16 determines that because of conflict of interest or other
17 special circumstances it should make no recommendation or (ii)
18 Section 10A-2A-8.26 applies. If either (i) or (ii) applies,
19 the board of directors shall inform the stockholders of the
20 basis for its so proceeding.

21 (c) The board of directors may set conditions for
22 the approval of the proposal for dissolution by stockholders
23 or the effectiveness of the dissolution.

24 (d) If the approval of the stockholders is to be
25 given at a meeting, the corporation shall notify each

1 stockholder, regardless of whether entitled to vote, of the
2 meeting of stockholders at which the dissolution is to be
3 submitted for approval. The notice must state that the
4 purpose, or one of the purposes, of the meeting is to consider
5 dissolving the corporation.

6 (e) Unless the certificate of incorporation or the
7 board of directors acting pursuant to subsection (c) requires
8 a greater vote, a greater quorum, or a vote by voting groups,
9 adoption of the proposal to dissolve shall require the
10 approval of the stockholders at a meeting at which a quorum
11 exists consisting of a majority of the votes entitled to be
12 cast on the proposal to dissolve.

13 (f) Dissolution of a corporation may also be
14 authorized without action of the directors if all the
15 stockholders entitled to vote thereon shall consent in writing
16 and a certificate of dissolution shall be delivered to the
17 Secretary of State for filing pursuant to Section
18 10A-2A-14.03.

19 §10A-2A-14.03. Certificate of dissolution.

20 (a) At any time after dissolution is authorized, the
21 corporation may dissolve by delivering to the Secretary of
22 State for filing a certificate of dissolution setting forth:

23 (1) the name of the corporation;

24 (2) the date that dissolution was authorized; and

1 (3) if dissolution was approved by the stockholders,
2 a statement that the proposal to dissolve was duly approved by
3 the stockholders in the manner required by this chapter and by
4 the certificate of incorporation.

5 (b) The certificate of dissolution shall take effect
6 at the effective date determined in accordance with Article 4
7 of Chapter 1. A corporation is dissolved upon the effective
8 date of its certificate of dissolution.

9 (c) For purposes of this Division A of this Article
10 14, "dissolved corporation" means a corporation whose
11 certificate of dissolution has become effective and includes a
12 successor entity to which the remaining assets of the
13 corporation are transferred subject to its liabilities for
14 purposes of liquidation.

15 §10A-2A-14.04. Revocation of dissolution;
16 reinstatement.

17 (a) A corporation may revoke its dissolution within
18 120 days after its effective date and be reinstated.

19 (b) Revocation of dissolution and reinstatement
20 shall be authorized in the same manner as the dissolution was
21 authorized unless that authorization permitted revocation and
22 reinstatement by action of the board of directors alone, in
23 which event the board of directors may revoke the dissolution
24 and effect the reinstatement without stockholder action.

1 (c) After the revocation of dissolution and
2 reinstatement is authorized, the corporation may revoke the
3 dissolution and effect the reinstatement by delivering to the
4 Secretary of State for filing a certificate of revocation of
5 dissolution and reinstatement, together with a copy of its
6 certificate of dissolution, that sets forth:

7 (1) the name of the corporation;

8 (2) the effective date of the dissolution that was
9 revoked;

10 (3) the date that the revocation of dissolution and
11 reinstatement was authorized;

12 (4) if the corporation's board of directors (or
13 incorporators) revoked the dissolution and effected the
14 reinstatement, a statement to that effect;

15 (5) if the corporation's board of directors revoked
16 a dissolution and effected the reinstatement as authorized by
17 the stockholders, a statement that revocation and
18 reinstatement was permitted by action by the board of
19 directors alone pursuant to that authorization; and

20 (6) if stockholder action was required to revoke the
21 dissolution and effect the reinstatement, a statement that the
22 revocation and reinstatement was duly approved by the
23 stockholders in the manner required by this chapter and by the
24 certificate of incorporation.

1 (d) The certificate of revocation of dissolution and
2 reinstatement shall take effect at the effective date
3 determined in accordance with Article 4 of Chapter 1.
4 Revocation of dissolution and reinstatement is effective upon
5 the effective date of the certificate of revocation of
6 dissolution and reinstatement.

7 (e) (1) Subject to subsection (2), upon revocation
8 and reinstatement, the corporation shall be deemed for all
9 purposes to have continued its business as if dissolution had
10 never occurred; and each right inuring to, and each debt,
11 obligation, and liability incurred by, the corporation after
12 the dissolution shall be determined as if the dissolution had
13 never occurred.

14 (2) The rights of persons acting in reliance on the
15 dissolution before those persons had notice of the revocation
16 and reinstatement shall not be adversely affected by the
17 revocation and reinstatement.

18 (f) If the corporation is listed in the Secretary of
19 State's records as a corporation that has been dissolved, then
20 the name of the corporation following revocation and
21 reinstatement shall be that corporation name at the time of
22 revocation and reinstatement if that corporation name complies
23 with Article 5 of Chapter 1 at the time of revocation and
24 reinstatement. If that corporation name does not comply with
25 Article 5 of Chapter 1, the name of the corporation following

1 revocation and reinstatement shall be that corporation name
2 followed by the word "reinstated."

3 §10A-2A-14.05. Effect of dissolution.

4 (a) A dissolved corporation continues its existence
5 as a corporation but may not carry on any business except as
6 is appropriate to wind up and liquidate its business and
7 affairs, including:

8 (1) collecting its assets;

9 (2) disposing of its properties that will not be
10 distributed in kind to stockholders;

11 (3) discharging or making provisions for discharging
12 its liabilities;

13 (4) distributing its remaining property among its
14 stockholders according to their interests; and

15 (5) doing every other act necessary to wind up and
16 liquidate its business and affairs.

17 (b) In winding up its business and affairs, a
18 corporation may:

19 (1) preserve the corporation's business and affairs
20 and property as a going concern for a reasonable time;

21 (2) prosecute, defend, or settle actions or
22 proceedings whether civil, criminal, or administrative;

23 (3) transfer the corporation's assets;

24 (4) resolve disputes by mediation or arbitration;

1 (5) merge or convert in accordance with Article 9 or
2 11 of this chapter or Article 8 of Chapter 1; and

3 (6) enter into a stock exchange in accordance with
4 Article 11 of this chapter.

5 (c) Dissolution of a corporation does not:

6 (1) transfer title to the corporation's property;

7 (2) prevent transfer of its stock or securities;

8 (3) subject its directors or officers to standards
9 of conduct different from those prescribed in Article 8;

10 (4) change (i) quorum or voting requirements for its
11 board of directors or stockholders;

12 (ii) provisions for selection, resignation, or
13 removal of its directors or officers or both; or

14 (iii) provisions for amending its bylaws;

15 (5) prevent commencement of a proceeding by or
16 against the corporation in its corporate name;

17 (6) abate or suspend a proceeding pending by or
18 against the corporation on the effective date of dissolution;
19 or

20 (7) terminate the authority of the registered agent
21 of the corporation.

22 (d) A distribution in liquidation under this section
23 may only be made by a dissolved corporation. For purposes of
24 determining the stockholders entitled to receive a
25 distribution in liquidation, the board of directors may fix a

1 record date for determining stockholders entitled to a
2 distribution in liquidation, which date may not be
3 retroactive. If the board of directors does not fix a record
4 date for determining stockholders entitled to a distribution
5 in liquidation, the record date is the date the board of
6 directors authorizes the distribution in liquidation.

7 §10A-2A-14.06. Known claims against dissolved
8 corporation.

9 (a) A dissolved corporation may dispose of any known
10 claims against it by following the procedures described in
11 subsection (b) at any time after the effective date of the
12 dissolution of the corporation.

13 (b) A dissolved corporation may give written notice
14 of the dissolution to the holder of any known claim. The
15 notice must:

- 16 (1) identify the dissolved corporation;
- 17 (2) describe the information required to be included
18 in a claim;
- 19 (3) provide a mailing address to which the claim is
20 to be sent;
- 21 (4) state the deadline, which may not be fewer than
22 120 days from the effective date of the notice, by which the
23 dissolved corporation must receive the claim; and
- 24 (5) state that if not sooner barred, the claim will
25 be barred if not received by the deadline.

1 (c) Unless sooner barred by any other statute
2 limiting actions, a claim against a dissolved corporation is
3 barred:

4 (1) if a claimant who was given notice under
5 subsection (b) does not deliver the claim to the dissolved
6 corporation by the deadline; or

7 (2) if a claimant whose claim was rejected by the
8 dissolved corporation does not commence a proceeding to
9 enforce the claim within 90 days from the effective date of
10 the rejection notice.

11 (d) For purposes of this section, "known claim" or
12 "claim" includes unliquidated claims, but does not include a
13 contingent liability that has not matured so that there is no
14 immediate right to bring suit or a claim based on an event
15 occurring after the effective date of dissolution.

16 (e) Nothing in this section shall be deemed to
17 extend any otherwise applicable statute of limitations.

18 §10A-2A-14.07. Other claims against dissolved
19 corporation.

20 (a) A dissolved corporation may publish notice of
21 its dissolution and request that persons with claims against
22 the dissolved corporation present them in accordance with the
23 notice.

24 (b) The notice authorized by subsection (a) must:

1 (1) be published at least one time in a newspaper of
2 general circulation in the county in which the dissolved
3 corporation's principal office is located or, if it has none
4 in this state, in the county in which the corporation's
5 registered office is or was last located;

6 (2) describe the information that must be included
7 in a claim and provide a mailing address to which the claim is
8 to be sent; and

9 (3) state that if not sooner barred, a claim against
10 the dissolved corporation will be barred unless a proceeding
11 to enforce the claim is commenced within two years after the
12 publication of the notice.

13 (c) If a dissolved corporation publishes a newspaper
14 notice in accordance with subsection (b), unless sooner barred
15 by any other statute limiting actions, the claim of each of
16 the following claimants is barred unless the claimant
17 commences a proceeding to enforce the claim against the
18 dissolved corporation within two years after the publication
19 date of the newspaper notice:

20 (1) a claimant who was not given notice under
21 Section 10A-2A-14.06;

22 (2) a claimant whose claim was timely sent to the
23 dissolved corporation but not acted on by the dissolved
24 corporation; and

1 (3) a claimant whose claim is contingent at the
2 effective date of the dissolution of the corporation, or is
3 based on an event occurring after the effective date of the
4 dissolution of the corporation.

5 (d) A claim that is not barred under this section,
6 any other statute limiting actions, or Section 10A-2A-14.06
7 may be enforced:

8 (1) against a dissolved corporation, to the extent
9 of its undistributed assets; and

10 (2) except as provided in subsection (h), if the
11 assets of a dissolved corporation have been distributed after
12 dissolution, against each stockholder to the extent of the
13 stockholder's proportionate share of the claim or of the
14 assets distributed to that stockholder after dissolution,
15 whichever is less, but a stockholder's total liability for all
16 claims under subsection (d) may not exceed the total amount of
17 assets distributed to that stockholder after dissolution of
18 the corporation.

19 (e) A dissolved corporation that published a notice
20 under this section may file an application with the circuit
21 court in the county in which the dissolved corporation's
22 principal place of business is located and if the corporation
23 does not have a principal place of business within this state,
24 in the county in which the dissolved corporation's most recent
25 registered office is located, for a determination of the

1 amount and form of security to be provided for payment of
2 claims that are contingent or have not been made known to the
3 dissolved corporation or that are based on an event occurring
4 after the effective date of the dissolution of the corporation
5 but that, based on the facts known to the dissolved
6 corporation, are reasonably estimated to arise after the
7 effective date of the dissolution of the corporation.
8 Provision need not be made for any claim that is or is
9 reasonably anticipated to be barred under subsection (c).

10 (f) Within 10 days after the filing of the
11 application provided for in subsection (e), notice of the
12 proceeding shall be given by the dissolved corporation to each
13 potential claimant as described in subsection (e).

14 (g) The circuit court under subsection (e) may
15 appoint a guardian ad litem to represent all claimants whose
16 identities are unknown in any proceeding brought under this
17 section. The reasonable fees and expenses of the guardian,
18 including all reasonable expert witness fees, shall be paid by
19 the dissolved corporation.

20 (h) Provision by the dissolved corporation for
21 security in the amount and the form ordered by the circuit
22 court under subsection (e) shall satisfy the dissolved
23 corporation's obligation with respect to claims that are
24 contingent, have not been made known to the dissolved
25 corporation, or are based on an event occurring after the

1 effective date of the dissolution of the corporation, and
2 those claims may not be enforced against a stockholder to whom
3 assets have been distributed by the dissolved corporation
4 after the effective date of the dissolution of the
5 corporation.

6 (i) Nothing in this section shall be deemed to
7 extend any otherwise applicable statute of limitations.

8 (j) If a claim has been satisfied, disposed of, or
9 barred under Section 10A-2A-14.06, this section, or other law,
10 the person or persons designated to wind up the affairs of a
11 corporation, and the stockholders receiving assets from the
12 dissolved corporation, shall not be liable for that claim.

13 §10A-2A-14.08. Director duties.

14 (a) Directors shall cause the dissolved corporation
15 to discharge or make reasonable provision for the payment of
16 claims and make distributions in liquidation of assets to
17 stockholders after payment or provision for claims.

18 (b) Directors of a dissolved corporation which has
19 disposed of claims under Section 10A-2A-14.06 or Section
20 10A-2A-14.07 shall not be liable for breach of Section
21 10A-2A-14.08(a) with respect to claims against the dissolved
22 corporation that are barred or satisfied under Section
23 10A-2A-14.06 or Section 10A-2A-14.07.

24 Division B. JUDICIAL DISSOLUTION.

25 §10A-2A-14.10. Grounds for judicial dissolution.

1 (a) The circuit court of the county where the
2 corporation's principal office, or if none in this state, its
3 registered office, is located may dissolve a corporation:

4 (1) in a proceeding by the Attorney General if it is
5 established that:

6 (i) the corporation obtained its certificate of
7 incorporation through fraud; or

8 (ii) the corporation has continued to exceed or
9 abuse the authority conferred upon it by law;

10 (2) in a proceeding by a stockholder if it is
11 established that:

12 (i) the directors are deadlocked in the management
13 of the corporate affairs, the stockholders are unable to break
14 the deadlock, and irreparable injury to the corporation is
15 threatened or being suffered, or the business and affairs of
16 the corporation can no longer be conducted to the advantage of
17 the stockholders generally, because of the deadlock;

18 (ii) the directors or those in control of the
19 corporation have acted, are acting, or will act in a manner
20 that is illegal, oppressive, or fraudulent;

21 (iii) the stockholders are deadlocked in voting
22 power and have failed, for a period that includes at least two
23 consecutive annual meeting dates, to elect successors to
24 directors whose terms have expired; or

1 (iv) the corporate assets are being misapplied or
2 wasted;

3 (3) in a proceeding by a creditor if it is
4 established that:

5 (i) the creditor's claim has been reduced to
6 judgment, the execution on the judgment returned unsatisfied,
7 and the corporation is insolvent; or

8 (ii) the corporation has admitted in writing that
9 the creditor's claim is due and owing and the corporation is
10 insolvent;

11 (4) in a proceeding by the corporation to have its
12 voluntary dissolution continued under court supervision; or

13 (5) in a proceeding by a stockholder if the
14 corporation has abandoned its business and has failed within a
15 reasonable time to liquidate and distribute its assets and
16 dissolve.

17 (b) Subsection (a)(2) shall not apply in the case of
18 a corporation that, on the date of the filing of the
19 proceeding, has a class or series of stock which is:

20 (1) a covered security under Section 18(b)(1)(A) or
21 (B) of the Securities Act of 1933; or

22 (2) not a covered security, but is held by at least
23 2,000 stockholders.

24 (c) In subsection (a), "stockholder" means a record
25 stockholder, a beneficial stockholder, and an unrestricted

1 voting trust beneficial owner, and in subsection (b),
2 "stockholder" means a record stockholder, a beneficial
3 stockholder, and a voting trust beneficial owner.

4 §10A-2A-14.11. Procedure for judicial dissolution.

5 (a) Venue for a proceeding by the attorney general
6 to dissolve a corporation lies in circuit court of the county
7 where the corporation's principal office, or if none in this
8 state, its registered office, is located. Venue for a
9 proceeding brought by any other party named in Section
10 10A-2A-14.10(a) lies in circuit court of the county where the
11 corporation's principal office, or if none in this state, its
12 registered office, is located.

13 (b) It is not necessary to make stockholders parties
14 to a proceeding to dissolve a corporation unless relief is
15 sought against them individually.

16 (c) A court in a proceeding brought to dissolve a
17 corporation may issue injunctions, appoint a receiver or
18 custodian during the proceeding with all powers and duties the
19 court directs, take other action required to preserve the
20 corporate assets wherever located, and carry on the business
21 of the corporation until a full hearing can be held.

22 (d) Within 10 days of the commencement of a
23 proceeding to dissolve a corporation under Section
24 10A-2A-14.10(a) (2), the corporation shall deliver to all
25 stockholders, other than the petitioner, a notice stating that

1 the stockholders are entitled to avoid the dissolution of the
2 corporation by electing to purchase the petitioner's stock
3 under Section 10A-2A-14.14 and accompanied by a copy of
4 Section 10A-2A-14.14.

5 §10A-2A-14.12. Receivership or custodianship.

6 (a) Unless an election to purchase has been filed
7 under Section 10A-2A-14.14, a court in a judicial proceeding
8 brought to dissolve a corporation may appoint one or more
9 receivers to wind up and liquidate, or one or more custodians
10 to manage, the business and affairs of the corporation. The
11 court shall hold a hearing, after notifying all parties to the
12 proceeding and any interested persons designated by the court,
13 before appointing a receiver or custodian. The court
14 appointing a receiver or custodian has jurisdiction over the
15 corporation and all of its property wherever located.

16 (b) The court may appoint an individual,
17 corporation, foreign corporation, or eligible entity as a
18 receiver or custodian, which, if a foreign corporation or
19 foreign eligible entity, must be registered to do business in
20 this state. The court may require the receiver or custodian to
21 post bond, with or without sureties, in an amount the court
22 directs.

23 (c) The court shall describe the powers and duties
24 of the receiver or custodian in its appointing order, which
25 may be amended from time to time. Among other powers:

1 (1) the receiver (i) may dispose of all or any part
2 of the assets of the corporation wherever located, at a public
3 or private sale; and (ii) may sue and defend in the receiver's
4 own name as receiver of the corporation in all courts of this
5 state;

6 (2) the custodian may exercise all of the powers of
7 the corporation, through or in place of its board of
8 directors, to the extent necessary to manage the affairs of
9 the corporation in the best interests of its stockholders and
10 creditors. The receiver or custodian shall have such other
11 powers and duties as the court may provide in the appointing
12 order, which may be amended from time to time.

13 (d) The court during a receivership may redesignate
14 the receiver a custodian and during a custodianship may
15 redesignate the custodian a receiver.

16 (e) The court from time to time during the
17 receivership or custodianship may order compensation paid and
18 expenses paid or reimbursed to the receiver or custodian from
19 the assets of the corporation or proceeds from the sale of the
20 assets.

21 §10A-2A-14.13. Decree of dissolution.

22 (a) If after a hearing the court determines that one
23 or more grounds for judicial dissolution described in Section
24 10A-2A-14.10 exist, it may enter a decree dissolving the
25 corporation and specifying the effective date of the

1 dissolution, and the clerk of the court shall deliver a
2 certified copy of the decree to the Secretary of State for
3 filing.

4 (b) After entering the decree of dissolution, the
5 court shall direct the winding-up and liquidation of the
6 corporation's business and affairs in accordance with Section
7 10A-2A-14.05 and the notification of claimants in accordance
8 with Sections 10A-2A-14.06 and 10A-2A-14.07.

9 §10A-2A-14.14. Election to purchase in lieu of
10 dissolution.

11 (a) In a proceeding under Section 10A-2A-14.10(a)(2)
12 to dissolve a corporation, the corporation may elect or, if it
13 fails to elect, one or more stockholders may elect to purchase
14 all stock owned by the petitioning stockholder at the fair
15 value of the stock. An election pursuant to this section shall
16 be irrevocable unless the court determines that it is
17 equitable to set aside or modify the election.

18 (b) An election to purchase pursuant to this section
19 may be filed with the court at any time within 90 days after
20 the filing of the petition under Section 10A-2A-14.10(a)(2) or
21 at a later time as the court in its discretion may allow. If
22 the election to purchase is filed by one or more stockholders,
23 the corporation shall, within 10 days thereafter, give written
24 notice to all stockholders, other than the petitioner. The
25 notice must state the name and number of shares of stock owned

1 by the petitioner and the name and number of shares of stock
2 owned by each electing stockholder and must advise the
3 recipients of their right to join in the election to purchase
4 stock in accordance with this section. Stockholders who wish
5 to participate shall file notice of their intention to join in
6 the purchase no later than 30 days after the effectiveness of
7 the notice to them. All stockholders who have filed an
8 election or notice of their intention to participate in the
9 election to purchase thereby become parties to the proceeding
10 and shall participate in the purchase in proportion to their
11 ownership of stock as of the date the first election was
12 filed, unless they otherwise agree or the court otherwise
13 directs. After an election has been filed by the corporation
14 or one or more stockholders, the proceeding under Section
15 10A-2A-14.10(a)(2) may not be discontinued or settled, nor may
16 the petitioning stockholder sell or otherwise dispose of his
17 or her stock, unless the court determines that it would be
18 equitable to the corporation and the stockholders, other than
19 the petitioner, to permit the discontinuance, settlement,
20 sale, or other disposition.

21 (c) If, within 60 days of the filing of the first
22 election, the parties reach agreement as to the fair value and
23 terms of purchase of the petitioner's stock, the court shall
24 enter an order directing the purchase of the petitioner's
25 stock upon the terms and conditions agreed to by the parties.

1 (d) If the parties are unable to reach an agreement
2 as provided for in subsection (c), the court, upon application
3 of any party, shall stay the proceedings under Section
4 10A-2A-14.10(a)(2) and determine the fair value of the
5 petitioner's stock as of the day before the date on which the
6 petition under Section 10A-2A-14.10(a)(2) was filed or as of
7 any other date as the court deems appropriate under the
8 circumstances.

9 (e) Upon determining the fair value of the stock,
10 the court shall enter an order directing the purchase upon
11 terms and conditions as the court deems appropriate, which may
12 include payment of the purchase price in installments, where
13 necessary in the interests of equity, provision for security
14 to assure payment of the purchase price and any additional
15 expenses as may have been awarded, and, if the stock is to be
16 purchased by stockholders, the allocation of stock among them.
17 In allocating the petitioner's stock among holders of
18 different classes or series of stock, the court should attempt
19 to preserve the existing distribution of voting rights among
20 holders of different classes or series insofar as practicable
21 and may direct that holders of a specific class or classes or
22 series shall not participate in the purchase. Interest may be
23 allowed at the rate and from the date determined by the court
24 to be equitable, but if the court finds that the refusal of
25 the petitioning stockholder to accept an offer of payment was

1 arbitrary or otherwise not in good faith, no interest shall be
2 allowed. If the court finds that the petitioning stockholder
3 had probable grounds for relief under Section
4 10A-2A-14.10(a)(2)(ii) or (iv), it may award expenses to the
5 petitioning stockholder.

6 (f) Upon entry of an order under subsection (c) or
7 (e), the court shall dismiss the petition to dissolve the
8 corporation under Section 10A-2A-14.10(a)(2), and the
9 petitioning stockholder shall no longer have any rights or
10 status as a stockholder of the corporation, except the right
11 to receive the amounts awarded by the order of the court which
12 shall be enforceable in the same manner as any other judgment.

13 (g) The purchase ordered pursuant to subsection (e)
14 shall be made within 10 days after the date the order becomes
15 final.

16 (h) Any payment by the corporation pursuant to an
17 order under subsections (c) or (e), other than an award of
18 expenses pursuant to subsection (e), is subject to the
19 provisions of Section 10A-2A-6.40.

20 Division C. MISCELLANEOUS.

21 §10A-2A-14.20. Deposit with State Treasurer.

22 Assets of a dissolved corporation that should be
23 transferred to a creditor, claimant, or stockholder of the
24 corporation who cannot be found or who is not competent to
25 receive them shall be reduced to cash and deposited with the

1 State Treasurer or other appropriate state official for
2 safekeeping. When the creditor, claimant, or stockholder
3 furnishes satisfactory proof of entitlement to the amount
4 deposited, the State Treasurer or other appropriate state
5 official shall pay that person or his or her representative
6 that amount.

7 ARTICLE 15.

8 Division A. GOVERNING LAW.

9 §10A-2A-15.01. Governing law.

10 (a) The law of the jurisdiction of formation of a
11 foreign corporation governs:

12 (1) the incorporation and internal affairs of the
13 foreign corporation;

14 (2) the liability of its stockholders as
15 stockholders for the debts, obligations, or other liabilities
16 of the foreign corporation; and

17 (3) the authority of the directors and officers of
18 the foreign corporation.

19 (b) A foreign corporation is not precluded from
20 registering to do business in this state because of any
21 difference between the law of the foreign corporation's
22 jurisdiction of formation and the law of this state.

23 Division B. ACTING IN A FIDUCIARY CAPACITY.

24 §10A-2A-15.10. Definitions.

1 The term "foreign corporation," as used in this
2 division, shall mean:

3 (1) Any bank or other corporation now or hereafter
4 organized or existing under the laws of any state of the
5 United States other than this state; and

6 (2) Any national banking association or other
7 corporation organized under the laws of the United States
8 having its principal place of business in any state of the
9 United States other than this state.

10 §10A-2-15.11. Authority of foreign corporation to
11 act as fiduciary.

12 (a) Any foreign corporation may act in this state as
13 trustee, personal representative, executor, administrator of
14 any kind, guardian, conservator, or in any other like or
15 similar fiduciary capacity, whether the appointment is by law,
16 will, deed, inter vivos trust, mortgage, deed of trust, court
17 order or otherwise, without the necessity of complying with
18 any law of this state relating to the qualification of foreign
19 corporations to do business in this state or the licensing of
20 foreign corporations to do business in this state and
21 notwithstanding any prohibition, limitation, or restriction
22 contained in any law of this state subject to the following
23 conditions:

24 (1) The foreign corporation is authorized to act in
25 a fiduciary capacity, or capacities, in the state in which it

1 is incorporated or, if the foreign corporation is a national
2 banking association or other corporation organized under the
3 laws of the United States, in the state in which it has its
4 principal place of business.

5 (2) Any bank or other corporation organized under
6 the laws of this state or a national banking association or
7 other corporation organized under the laws of the United
8 States having its principal place of business in this state
9 which is authorized to act in a fiduciary capacity in this
10 state is authorized to act in a like fiduciary capacity in the
11 other state without the necessity of complying with any law of
12 the other state relating to the qualification of a foreign
13 corporation to do business in the other state.

14 (b) Nothing contained in this division shall be
15 construed to prohibit or make unlawful any activity in this
16 state by a bank or other corporation which is not incorporated
17 under the laws of this state, or, if a national bank or other
18 corporation organized under the laws of the United States,
19 which does not have its principal place of business in this
20 state which would be lawful in the absence of this division.

21 §10A-2A-15.12. Filing of verified statement with
22 Commissioner of Revenue by foreign corporation prior to acting
23 as fiduciary.

24 Prior to the time when any foreign corporation acts
25 pursuant to the authority of this article in any fiduciary

1 capacity or capacities in this state, the foreign corporation
2 shall file with the Commissioner of Revenue of this state a
3 verified statement which shall state:

4 (1) The correct corporate name of the foreign
5 corporation;

6 (2) The name of the state under the laws of which it
7 is incorporated or if the foreign corporation is a national
8 banking association or other corporation organized under the
9 laws of the United States shall state that fact;

10 (3) The address of its principal business office;

11 (4) In what fiduciary capacity, or capacities, it
12 desires to act in the State of Alabama;

13 (5) That it is authorized to act in a similar
14 fiduciary capacity or capacities in the state in which it is
15 incorporated or, if it is a national banking association or
16 other corporation organized under the laws of the United
17 States, in which it has its principal place of business; and

18 (6) The statement shall irrevocably appoint the
19 Commissioner of Revenue of Alabama as its true and lawful
20 attorney to receive service of process in any action or
21 proceeding against it relating to or growing out of any trust,
22 estate or matter in respect of which the foreign corporation
23 may act in this state in any fiduciary capacity. The statement
24 shall be verified by an officer of the foreign corporation,
25 and there shall be filed with it the certificates of public

1 officials and copies of documents certified by public
2 officials as may be necessary to show that the foreign
3 corporation is authorized to act in a fiduciary capacity or
4 capacities similar to those in which it desires to act in this
5 state, in the state in which it is incorporated, or, if it is
6 a national banking association or other corporation organized
7 under the laws of the United States, in which it has its
8 principal place of business.

9 §10A-2-15.13. Foreign corporation acting as
10 fiduciary not deemed doing business in this state.

11 A foreign corporation, insofar as it acts in a
12 fiduciary capacity in this state pursuant to the provisions of
13 this division, shall not be deemed to be transacting business
14 in this state, but no foreign corporation acting in a
15 fiduciary capacity in this state pursuant to the provisions of
16 this division without registering to transact business in this
17 state pursuant to this title or other applicable provisions of
18 law shall establish or maintain in this state a place of
19 business, branch office, or agency for the conduct of business
20 as a fiduciary. Nothing contained in this division shall
21 diminish the authority of out-of-state banks and trust
22 companies to establish or acquire and maintain trust offices
23 or representative trust offices, or both, under the provisions
24 of Chapter 11A of Title 5.

1 §10A-2-15.14. Foreign corporation previously acting
2 in fiduciary capacity in state.

3 The provisions of this division shall not prohibit
4 any foreign corporation authorized to act in a fiduciary
5 capacity or capacities in the state in which it is
6 incorporated or any national banking association or other
7 corporation organized under the laws of the United States
8 authorized to act in a fiduciary capacity or capacities in its
9 principal place of business which, prior to April 14, 1956, or
10 in the case of a corporation other than a national banking
11 association, prior to January 1, 1995, was acting or appointed
12 to act in this state in a particular fiduciary capacity or
13 capacities, from continuing in the performance of the
14 fiduciary activity or activities without complying with the
15 provisions of this division.

16 §10A-2-15.15. Service of process on foreign
17 corporation acting in fiduciary capacity.

18 Every foreign corporation acting in a fiduciary
19 capacity in this state pursuant to the terms of this division
20 shall be deemed to consent to service of all legal process in
21 any action or proceeding against it and to service of any
22 notice or demand permitted or required by law relating to or
23 growing out of any trust, estate or matter in respect of which
24 the foreign corporation shall have acted in this state in any
25 fiduciary capacity pursuant to any means of service of process

1 provided in Section 10A-1-5.31, Section 10A-1-5.35, or Section
2 10A-1-5.36.

3 ARTICLE 16. RECORDS AND REPORTS.

4 Division A. RECORDS.

5 §10A-2A-16.01. Corporate records.

6 (a) A corporation shall maintain the following
7 records:

8 (1) its certificate of incorporation as currently in
9 effect;

10 (2) any notices to stockholders referred to in
11 Section 10A-2A-1.20(c) (5) specifying facts on which a filed
12 document is dependent if those facts are not included in the
13 certificate of incorporation or otherwise available as
14 specified in Section 10A-2A-1.20(c) (5);

15 (3) its bylaws as currently in effect;

16 (4) all written communications within the past three
17 years to stockholders generally;

18 (5) minutes of all meetings of, and records of all
19 actions taken without a meeting by, its stockholders, its
20 board of directors, and board committees established under
21 Section 10A-2A-8.25;

22 (6) a list of the names and business addresses of
23 its current directors and officers; and

24 (7) its most recent annual report delivered to the
25 Secretary of State under Section 10A-2A-16.11.

1 (b) A corporation shall maintain all annual
2 financial statements prepared for the corporation for its last
3 three fiscal years (or any shorter period of existence) and
4 any audit or other reports with respect to those financial
5 statements.

6 (c) A corporation shall maintain accounting records
7 in a form that permits preparation of its financial
8 statements.

9 (d) A corporation shall maintain a record of its
10 current stockholders in alphabetical order by class or series
11 of stock showing the address of, and the number and class or
12 series of stock held by, each stockholder. Nothing contained
13 in this subsection shall require the corporation to include in
14 that record the electronic mail address or other electronic
15 contact information of a stockholder.

16 (e) A corporation shall maintain the records
17 specified in this section in a manner so that they may be made
18 available for inspection within a reasonable time.

19 §10A-2A-16.02. Inspection rights of stockholders.

20 (a) A stockholder of a corporation is entitled to
21 inspect and copy, during regular business hours at the
22 corporation's principal office, any of the records of the
23 corporation described in Section 10A-2A-16.01(a), excluding
24 minutes of meetings of, and records of actions taken without a
25 meeting by, the corporation's board of directors and board

1 committees established under Section 10A-2A-8.25, if the
2 stockholder gives the corporation a signed written notice of
3 the stockholder's demand at least five business days before
4 the date on which the stockholder wishes to inspect and copy.

5 (b) A stockholder of a corporation is entitled to
6 inspect and copy, during regular business hours at a
7 reasonable location specified by the corporation, any of the
8 following records of the corporation if the stockholder meets
9 the requirements of subsection (c) and gives the corporation a
10 signed written notice of the stockholder's demand at least
11 five business days before the date on which the stockholder
12 wishes to inspect and copy:

13 (1) the financial statements of the corporation
14 maintained in accordance with Section 10A-2A-16.01(b);

15 (2) accounting records of the corporation;

16 (3) excerpts from minutes of any meeting of, or
17 records of any actions taken without a meeting by, the
18 corporation's board of directors and board committees
19 maintained in accordance with Section 10A-2A-16.01(a); and

20 (4) the record of stockholders maintained in
21 accordance with Section 10A-2A-16.01(d).

22 (c) A stockholder may inspect and copy the records
23 described in subsection (b) only if:

24 (1) the stockholder's demand is made in good faith
25 and for a proper purpose;

1 (2) the stockholder's demand describes with
2 reasonable particularity the stockholder's purpose and the
3 records the stockholder desires to inspect; and

4 (3) the records are directly connected with the
5 stockholder's purpose.

6 (d) (1) The corporation may impose reasonable
7 restrictions and conditions on access to and use of the
8 records to be inspected and copied under subsections (a) and
9 (b), including designating information confidential and
10 imposing nondisclosure and safeguarding, and may further keep
11 confidential from its stockholders and other persons, for a
12 period of time as the corporation deems reasonable any
13 information that the corporation reasonably believes to be in
14 the nature of a trade secret or other information the
15 disclosure of which the corporation in good faith believes is
16 not in the best interest of the corporation or could damage
17 the corporation or its business or affairs, or that the
18 corporation is required by law or by agreement with a third
19 party to keep confidential. In any dispute concerning the
20 reasonableness of a restriction under this subsection, the
21 corporation has the burden of proving reasonableness.

22 (2) If a stockholder is entitled to inspect and copy
23 the records described in subsection (a) or having met the
24 requirements of subsection (c) is entitled to inspect and copy
25 the records described in subsection (b), and an officer of the

1 corporation with the authority to bind the corporation who, or
2 a corporation which, without reasonable cause, refuses to
3 allow that stockholder to inspect and copy those records shall
4 be liable to that stockholder for a penalty of an amount not
5 to exceed 10 percent of the value of the shares of stock owned
6 by that stockholder, in addition to any other damages or
7 remedy afforded that stockholder by law. It shall be a defense
8 to an action brought to collect the penalty specified in this
9 section that the stockholder suing therefor has previously
10 sold or offered for sale any list of stockholders of the
11 corporation, or any other corporation or knowingly has aided
12 or abetted any person in procuring any list of stockholders,
13 or improperly has used any information secured through any
14 prior inspection of those records of the corporation, or was
15 not acting in good faith or for a proper purpose in making
16 this demand.

17 (e) For any meeting of stockholders for which the
18 record date for determining stockholders entitled to vote at
19 the meeting is different than the record date for notice of
20 the meeting, any person who becomes a stockholder subsequent
21 to the record date for notice of the meeting and is entitled
22 to vote at the meeting is entitled to obtain from the
23 corporation upon request the notice and any other information
24 provided by the corporation to stockholders in connection with
25 the meeting, unless the corporation has made that information

1 generally available to stockholders by posting it on its
2 website or by other generally recognized means. Failure of a
3 corporation to provide that information does not affect the
4 validity of action taken at the meeting.

5 (f) The right of inspection granted by this section
6 may not be abolished or limited by a corporation's certificate
7 of incorporation or bylaws, but the right of inspection
8 granted by this section may be limited to the extent permitted
9 under Section 10A-2A-7.32.

10 (g) This section does not affect:

11 (1) the right of a stockholder to inspect records
12 under Section 10A-2A-7.20 or, if the stockholder is in
13 litigation with the corporation, to the same extent as any
14 other litigant; or

15 (2) the power of a court, independently of this
16 chapter, to compel the production of corporate records for
17 examination and to impose reasonable restrictions as provided
18 in Section 10A-2A-16.04(c), provided that, in the case of
19 production of records described in subsection (b) of this
20 section at the request of a stockholder, the stockholder has
21 met the requirements of subsection (c).

22 (h) For purposes of this section, "stockholder"
23 means a record stockholder, a beneficial stockholder, and an
24 unrestricted voting trust beneficial owner.

25 §10A-2A-16.03. Scope of inspection right.

1 (a) A stockholder may appoint an agent or attorney
2 to exercise the stockholder's inspection and copying rights
3 under Section 10A-2A-16.02.

4 (b) The corporation may, if reasonable, satisfy the
5 right of a stockholder to copy records under Section
6 10A-2A-16.02 by furnishing to the stockholder copies by
7 photocopy or other means chosen by the corporation, including
8 furnishing copies through an electronic transmission.

9 (c) The corporation may comply at its expense with a
10 stockholder's demand to inspect the record of stockholders
11 under Section 10A-2A-16.02(b) (4) by providing the stockholder
12 with a list of stockholders that was compiled no earlier than
13 the date of the stockholder's demand.

14 (d) The corporation may impose a reasonable charge
15 to cover the costs of providing copies of documents to the
16 stockholder, which may be based on an estimate of those costs.

17 §10A-2A-16.04. Court-ordered inspection.

18 (a) If a corporation does not allow a stockholder
19 who complies with Section 10A-2A-16.02(a) to inspect and copy
20 any records required by that section to be available for
21 inspection, the circuit court of the county where the
22 corporation's principal office, or, if none in this state, its
23 registered office, is located may summarily order inspection
24 and copying of the records demanded at the corporation's
25 expense upon application of the stockholder.

1 (b) If a corporation does not within a reasonable
2 time allow a stockholder who complies with Section
3 10A-2A-16.02(b) to inspect and copy the records required by
4 that section, the stockholder who complies with Section
5 10A-2A-16.02(c) may apply to the circuit court of the county
6 where the corporation's principal office, or, if none in this
7 state, its registered office, is located for an order to
8 permit inspection and copying of the records demanded. The
9 court shall dispose of an application under this subsection on
10 an expedited basis.

11 (c) If the court orders inspection and copying of
12 the records demanded under Section 10A-2A-16.02(b), it may
13 impose reasonable restrictions on their confidentiality, use
14 or distribution by the demanding stockholder and it shall also
15 order the corporation to pay the stockholder's expenses
16 incurred to obtain the order unless the corporation
17 establishes that it refused inspection in good faith because
18 the corporation had:

19 (1) a reasonable basis for doubt about the right of
20 the stockholder to inspect the records demanded; or

21 (2) required reasonable restrictions on the
22 confidentiality, use or distribution of the records demanded
23 to which the demanding stockholder had been unwilling to
24 agree.

25 §10A-2A-16.05. Inspection rights of directors.

1 (a) A director of a corporation is entitled to
2 inspect and copy the books, records and documents of the
3 corporation at any reasonable time to the extent reasonably
4 related to the performance of the director's duties as a
5 director, including duties as a member of a board committee,
6 but not for any other purpose or in any manner that would
7 violate any duty to the corporation.

8 (b) The circuit court of the county where the
9 corporation's principal office, or, if none in this state, its
10 registered office, is located may order inspection and copying
11 of the books, records and documents at the corporation's
12 expense, upon application of a director who has been refused
13 inspection rights, unless the corporation establishes that the
14 director is not entitled to inspection rights. The court shall
15 dispose of an application under this subsection on an
16 expedited basis.

17 (c) If an order is issued, the court may include
18 provisions protecting the corporation from undue burden or
19 expense, and prohibiting the director from using information
20 obtained upon exercise of the inspection rights in a manner
21 that would violate a duty to the corporation, and may also
22 order the corporation to reimburse the director for the
23 director's expenses incurred in connection with the
24 application.

25 Division B. REPORTS.

1 §10A-2A-16.10. Financial statements for
2 stockholders.

3 (a) Upon the written request of a stockholder, a
4 corporation shall deliver or make available to the requesting
5 stockholder by posting on its website or by other generally
6 recognized means annual financial statements for the most
7 recent fiscal year of the corporation for which annual
8 financial statements have been prepared for the corporation.
9 If financial statements have been prepared for the corporation
10 on the basis of generally accepted accounting principles for
11 that specified period, the corporation shall deliver or make
12 available those financial statements to the requesting
13 stockholder. If the annual financial statements to be
14 delivered or made available to the requesting stockholder are
15 audited or otherwise reported upon by a public accountant, the
16 report shall also be delivered or made available to the
17 requesting stockholder.

18 (b) A corporation shall deliver, or make available
19 and provide written notice of availability of, the financial
20 statements required under subsection (a) to the requesting
21 stockholder within five business days of delivery of the
22 written request to the corporation.

23 (c) A corporation may fulfill its responsibilities
24 under this section by delivering the specified financial
25 statements, or otherwise making them available, in any manner

1 permitted by the applicable rules and regulations of the
2 United States Securities and Exchange Commission.

3 (d) Notwithstanding the provisions of subsections
4 (a), (b), and (c) of this section:

5 (1) as a condition to delivering or making available
6 financial statements to a requesting stockholder, the
7 corporation may require the requesting stockholder to agree to
8 reasonable restrictions on the confidentiality, use and
9 distribution of the financial statements; and

10 (2) the corporation may, if it reasonably determines
11 that the stockholder's request is not made in good faith or
12 for a proper purpose, decline to deliver or make available the
13 financial statements to that stockholder.

14 (e) If a corporation does not respond to a
15 stockholder's request for annual financial statements pursuant
16 to this section in accordance with subsection (b) within five
17 business days of delivery of the request to the corporation:

18 (1) The requesting stockholder may apply to the
19 circuit court of the county where the corporation's principal
20 office, or, if none in this state, its registered office, is
21 located for an order requiring delivery of or access to the
22 requested financial statements. The court shall dispose of an
23 application under this subsection on an expedited basis.

1 (2) If the court orders delivery or access to the
2 requested financial statements, it may impose reasonable
3 restrictions on their confidentiality, use or distribution.

4 (3) In the proceeding, if the corporation has
5 declined to deliver or make available the financial statements
6 because the stockholder had been unwilling to agree to
7 restrictions proposed by the corporation on the
8 confidentiality, use and distribution of the financial
9 statements, the corporation shall have the burden of
10 demonstrating that the restrictions proposed by the
11 corporation were reasonable.

12 (4) In the proceeding, if the corporation has
13 declined to deliver or make available the financial statements
14 pursuant to Section 10A-2A-16.10(d)(2), the corporation shall
15 have the burden of demonstrating that it had reasonably
16 determined that the stockholder's request was not made in good
17 faith or for a proper purpose.

18 (5) If the court orders delivery or access to the
19 requested financial statements it shall order the corporation
20 to pay the stockholder's expenses incurred to obtain the order
21 unless the corporation establishes that it had refused
22 delivery or access to the requested financial statements
23 because the stockholder had refused to agree to reasonable
24 restrictions on the confidentiality, use or distribution of
25 the financial statements or that the corporation had

1 reasonably determined that the stockholder's request was not
2 made in good faith or for a proper purpose.

3 §10A-2A-16.11. Annual report for Secretary of State.

4 (a) Each corporation, and each foreign corporation
5 authorized to transact business in this state, shall deliver
6 to the Secretary of State for filing an annual report that
7 sets forth:

8 (1) The name of the corporation and the state or
9 other jurisdiction under whose law it is incorporated;

10 (2) The address of its registered office and the
11 name of its registered agent at that office in this state;

12 (3) The address of its principal office including,
13 in the case of a foreign corporation, the address of its
14 principal office in the state or other jurisdiction under
15 whose law it is incorporated;

16 (4) The names and respective addresses of its
17 president and secretary; and

18 (5) A brief statement of the character of business
19 in which it is actually engaged in this state.

20 (b) Information in the annual report must be current
21 as of the date the annual report is executed on behalf of the
22 corporation.

23 (c) The first annual report must be delivered to the
24 Secretary of State between January 1 and March 15 of the year
25 following the calendar year in which a domestic corporation

1 was incorporated or a foreign corporation was authorized to
2 transact business. Subsequent annual reports must be delivered
3 to the Secretary of State between January 1 and March 15 of
4 the following calendar years.

5 (d) If an annual report does not contain the
6 information required by this section, the Secretary of State
7 shall promptly notify the reporting domestic or foreign
8 corporation in writing and return the report to it for
9 correction. If the report is corrected to contain the
10 information required by this section and delivered to the
11 Secretary of State within 30 days after the effective date of
12 notice, it is deemed to be timely filed.

13 (e) The public record information filed with the
14 Department of Revenue, pursuant to Chapter 14A of Title 40,
15 shall constitute and be accepted in lieu of the annual report
16 required pursuant to this section, provided that a ten dollar
17 (\$10) fee for the State of Alabama accompany the public record
18 information filed by the corporation annually with the
19 Department of Revenue. The fee for the annual report shall be
20 deposited in the State Treasury to the credit of the Secretary
21 of State Entity Fund as prescribed by Section 10A-1-4.31.

22 ARTICLE 17. TRANSITION PROVISIONS.

23 §10A-2A-17.01. Application to existing corporations.

24 (a) Before January 1, 2021, this chapter governs
25 only:

1 (1) a corporation incorporated on or after January
2 1, 2020; and

3 (2) a corporation incorporated before January 1,
4 2020, which elects, by amending or restating that
5 corporation's certificate of incorporation, to be governed by
6 this chapter.

7 (b) On and after January 1, 2021, this chapter
8 governs all existing corporations incorporated under:

9 (1) any general or special law of this state
10 providing for the incorporation of corporations for a purpose
11 or purposes for which a corporation might be incorporated
12 under this chapter, where the power has been reserved to
13 amend, repeal, or modify the law under which the corporation
14 was incorporated; and

15 (2) any predecessor statute hereto.

16 (c) For purposes of applying this chapter to a
17 corporation incorporated before January 1, 2020:

18 (1) the corporation's incorporation document,
19 whether a certificate of incorporation, certificate of
20 formation, charter, or articles of incorporation is deemed to
21 be the corporation's certificate of incorporation;

22 (2) the corporation's bylaws are deemed to be the
23 corporation's bylaws;

1 (3) any amendment or restatement of a corporation's
2 certificate of incorporation or bylaws on or after January 1,
3 2020, shall conform with this chapter; and

4 (4) all filing instruments to be delivered for
5 filing by or on behalf of a corporation on or after January 1,
6 2020, shall conform with this chapter and shall be delivered
7 for filing to the filing officer in accordance with Article 4
8 of Chapter 1.

9 (d) No corporation may be incorporated after
10 December 31, 2019, pursuant to Sections 10A-2-1.01 to
11 10A-2-17.02, inclusive, of the Code of Alabama 1975.

12 §10A-2A-17.02. Application to existing foreign
13 corporations.

14 A foreign corporation registered or authorized to
15 transact business in this state on the effective date of this
16 chapter is subject to this chapter and is deemed to be
17 registered to transact business in this state, and is not
18 required to renew its registration to transact business under
19 Article 7 of Chapter 1, except as Article 7 of Chapter 1
20 requires.

21 §10A-2A-17.03. Saving provisions.

22 (a) Except as provided in subsection (b), the repeal
23 of a statute by this chapter does not affect:

24 (1) the operation of the statute or any action taken
25 under it before its repeal;

1 (2) any ratification, right, remedy, privilege,
2 obligation, or liability acquired, accrued, or incurred under
3 the statute before its repeal;

4 (3) any violation of the statute, or any penalty,
5 forfeiture, or punishment incurred because of the violation,
6 before its repeal; or

7 (4) any proceeding, reorganization, or dissolution
8 commenced under the statute before its repeal, and the
9 proceeding, reorganization, or dissolution may be completed in
10 accordance with the statute as if it had not been repealed.

11 (b) If a penalty or punishment imposed for violation
12 of a statute repealed by this chapter is reduced by this
13 chapter, the penalty or punishment if not already imposed
14 shall be imposed in accordance with this chapter.

15 §10A-2A-17.04. Severability.

16 If any provision of this chapter or its application
17 to any person or circumstance is held invalid by a court of
18 competent jurisdiction, the invalidity does not affect other
19 provisions or applications of this chapter that can be given
20 effect without the invalid provision or application, and to
21 this end the provisions of this chapter are severable.

22 §10A-2A-17.05. Relation to Electronic Signatures in
23 Global and National Commerce Act.

24 This chapter modifies, limits, and supersedes the
25 federal Electronic Signatures in Global and National Commerce

1 Act, 15 U.S.C. Section 7001 et seq., but does not modify,
 2 limit, or supersede Section 101(c) of that act, 15 U.S.C.
 3 Section 7001(c), or authorize electronic delivery of any of
 4 the notices described in Section 103(b) of that act, 15 U.S.C.
 5 Section 7003(b).

6 §10A-2A-17.06. Interstate application.

7 A corporation formed and existing under this chapter
 8 may conduct its business and affairs, carry on its operations,
 9 and have and exercise the powers granted by this chapter in
 10 any state, foreign country, or other jurisdiction.

11 Section 2. Sections 10A-1-1.02, 10A-1-1.03,
 12 10A-1-1.08, 10A-1-1.12, 10A-1-3.05, 10A-1-3.06, 10A-1-3.32,
 13 10A-1-3.42, 10A-1-4.01, and 10A-1-4.02, Code of Alabama 1975,
 14 as amended by Act 2018-125; Sections 10A-1-4.04, 10A-1-4.06,
 15 10A-1-4.11, 10A-1-4.13, 10A-1-4.15, 10A-1-4.21, 10A-1-4.23,
 16 and 10A-1-4.24, Code of Alabama 1975; Section 10A-1-4.25, Code
 17 of Alabama 1975, as amended by Act 2018-125; Section
 18 10A-1-4.26, Code of Alabama 1975; Sections 10A-1-4.31,
 19 10A-1-5.01, and 10A-1-5.08, Code of Alabama 1975, as amended
 20 by Act 2018-125; Section 10A-1-6.01, Code of Alabama 1975;
 21 Sections 10A-1-6.02, 10A-1-7.01, 10A-1-7.04, and 10A-1-7.11,
 22 Code of Alabama 1975, as amended by Act 2018-125; Section
 23 10A-1-7.21, Code of Alabama 1975; Sections 10A-1-7.31,
 24 10A-1-8.01, and 10A-1-8.02, Code of Alabama 1975, as amended
 25 by Act 2018-125; Sections 10A-1-8.04, 10A-1-9.01, 10A-4-2.02,

1 10A-4-4.01, 10A-4-4.02, 10A-4-5.01, 10A-4-5.04, 10A-5A-10.01,
2 10A-5A-10.03, 10A-5A-10.04, 10A-5A-10.05, and 10A-5A-10.07,
3 Code of Alabama 1975; Section 10A-5A-10.08, Code of Alabama
4 1975, as amended by Act 2018-125; Sections 10A-8A-9.02,
5 10A-8A-9.04, 10A-8A-9.05, 10A-8A-9.06, 10A-8A-9.08, and
6 10A-8A-9.09, as added to the Code of Alabama 1975 by Act
7 2018-125; Sections 10A-9A-10.02, 10A-9A-10.04, 10A-9A-10.05,
8 10A-9A-10.06, and 10A-9A-10.08, Code of Alabama 1975; Section
9 10A-9A-10.09, Code of Alabama 1975, as amended by Act
10 2018-125; and Sections 10A-10-1.09, 10A-10-1.12, 10A-10-1.15,
11 10A-10-1.16, 10A-11-1.01, 10A-11-1.03, 10A-11-1.04,
12 10A-11-1.06, 10A-11-1.12, 10A-30-2.01, 10A-30-2.03,
13 10A-30-2.04, 10A-30-2.05, 10A-30-2.06, 10A-30-2.09,
14 10A-30-2.12, and 10A-30-2.13, Code of Alabama 1975; are
15 amended to read as follows:

16 "§10A-1-1.02.

17 "(a) All provisions of this chapter shall apply to
18 all entities formed ~~under~~ pursuant to or governed by Chapters
19 2 to 11, inclusive, including Chapter 2A, except to the
20 extent, if any, that any provision of this chapter is
21 inconsistent with or as otherwise provided by the provisions
22 of this title or other statutory or constitutional provisions
23 specifically applicable to the entity.

24 "(b) The provisions of this chapter shall apply to
25 entities formed ~~under~~ pursuant to or governed by Chapter 16,

1 Chapter 17, Chapter 20, and Chapter 30 only as provided
2 therein or expressly provided in this chapter.

3 "(c) If a provision of this chapter conflicts with a
4 provision in another chapter of this title, the provision of
5 the other chapter, to the extent of the conflict, supersedes
6 the provision of this chapter.

7 "§10A-1-1.03.

8 "As used in this title, unless the context otherwise
9 requires, the following terms mean:

10 "(1) AFFILIATE. A person who controls, is controlled
11 by, or is under common control with another person. An
12 affiliate of an individual includes the spouse, or a parent or
13 sibling thereof, of the individual, or a child, grandchild,
14 sibling, parent, or spouse of any thereof, of the individual,
15 or an individual having the same home as the individual, or a
16 trust or estate of which an individual specified in this
17 sentence is a substantial beneficiary; a trust, estate,
18 incompetent, conservatee, protected person, or minor of which
19 the individual is a fiduciary; or an entity of which the
20 individual is director, general partner, agent, employee or
21 the governing authority or member of the governing authority.

22 "(2) ASSOCIATE. When used to indicate a relationship
23 with:

24 "(A) a domestic or foreign entity or organization
25 for which the person is:

1 "(i) an officer or governing person; or

2 "(ii) a beneficial owner of 10 percent or more of a
3 class of voting ownership interests or similar securities of
4 the entity or organization;

5 "(B) a trust or estate in which the person has a
6 substantial beneficial interest or for which the person serves
7 as trustee or in a similar fiduciary capacity;

8 "(C) the person's spouse or a relative of the person
9 related by consanguinity or affinity within the fifth degree
10 who resides with the person; or

11 "(D) a governing person or an affiliate or officer
12 of the person.

13 "(3) ASSOCIATION. Includes, but is not limited to,
14 an unincorporated nonprofit association as defined in Chapter
15 17 and an unincorporated professional association as defined
16 in Article 1 of Chapter 30.

17 "(4) BUSINESS CORPORATION. A corporation or foreign
18 corporation as defined in Chapter 2 or Chapter 2A, as
19 applicable.

20 "(5) BUSINESS TRUST. A business trust as defined in
21 Chapter 16.

22 "(6) CERTIFICATE OF DISSOLUTION. Any document such
23 as a certificate of dissolution, statement of dissolution, or
24 articles of dissolution, required or permitted to be filed
25 publicly with respect to an entity's dissolution and winding

1 up of its business, activity, activities, not for profit
2 activity, or affairs.

3 "(7) CERTIFICATE OF FORMATION.

4 "(A) the document required to be filed publicly
5 under Article 3, Chapter 2A, Chapter 5A or Chapter 9A to form
6 a filing entity; and

7 "(B) if appropriate, a restated certificate of
8 formation and all amendments of an original or restated
9 certificate of formation.

10 "(8) CERTIFICATE OF OWNERSHIP. An instrument
11 evidencing an ownership interest or membership interest in an
12 entity.

13 "(9) CERTIFICATED OWNERSHIP INTEREST. An ownership
14 interest of a domestic entity represented by a certificate.

15 "(10) CERTIFICATION. Duly authenticated by the
16 proper officer or filing officer of the jurisdiction the laws
17 of which govern the internal affairs of an entity.

18 "(11) CONTRIBUTION. A tangible or intangible benefit
19 that a person transfers to an entity in consideration for an
20 ownership interest in the entity or otherwise in the person's
21 capacity as an owner or a member. A benefit that may
22 constitute a contribution transferred in exchange for an
23 ownership interest or transferred in the transferor's capacity
24 as an owner or member may include cash, property, services
25 rendered, a contract for services to be performed, a

1 promissory note or other obligation of a person to pay cash or
2 transfer property to the entity, or securities or other
3 interests in or obligations of an entity. In either case, the
4 benefit does not include cash or property received by the
5 entity:

6 "(A) with respect to a promissory note or other
7 obligation to the extent that the agreed value of the note or
8 obligation has previously been included as a contribution; or

9 "(B) that the person intends to be a loan to the
10 entity.

11 "(12) CONVERSION.

12 "(A) the continuance of a domestic entity as a
13 foreign entity of any type;

14 "(B) the continuance of a foreign entity as a
15 domestic entity of any type; or

16 "(C) the continuance of a domestic entity of one
17 type as a domestic entity of another type.

18 "(13) CONVERTED ENTITY. An entity resulting from a
19 conversion.

20 "(14) CONVERTING ENTITY. An entity as the entity
21 existed before the entity's conversion.

22 "(15) COOPERATIVE. Includes an employee cooperative
23 as defined in Chapter 11.

24 "(16) CORPORATION. Includes a domestic or foreign
25 business corporation as defined in Chapter 2 or Chapter 2A, as

1 applicable, a domestic or foreign nonprofit corporation as
2 defined in Chapter 3, a domestic or foreign professional
3 corporation as defined in Chapter 4, and those entities
4 specified in Chapter 20 as corporate.

5 "(17) COURT. Every court and judge having
6 jurisdiction in a case.

7 "(18) DAY. When used in the computation of time
8 excludes the first day and includes the last day of the period
9 so computed, unless the last day is a Saturday, Sunday, or
10 legal holiday, in which event the period runs until the end of
11 the next day that is not a Saturday, a Sunday, or a legal
12 holiday. When the period of time to be computed is less than 7
13 days, intermediate Saturdays, Sundays, and legal holidays
14 shall be excluded.

15 "(19) DEBTOR IN BANKRUPTCY. A person who is the
16 subject of:

17 "(A) an order for relief under the United States
18 bankruptcy laws, Title 11, United States Code, or comparable
19 order under a successor statute of general application; or

20 "(B) a comparable order under federal, state, or
21 foreign law governing insolvency.

22 "(20) DIRECTOR. An individual who serves on the
23 board of directors, by whatever name known, of a foreign or
24 domestic corporation.

1 "(21) DISTRIBUTION. A transfer of property,
2 including cash, from an entity to an owner or member of the
3 entity in the owner's or member's capacity as an owner or
4 member. The term includes a dividend, a redemption or purchase
5 of an ownership interest, or a liquidating distribution.

6 "(22) DOMESTIC. With respect to an entity, that the
7 entity is formed and exists pursuant to this title.

8 "(23) DOMESTIC ENTITY. An organization formed and
9 existing ~~under~~ pursuant to this title.

10 "(24) EFFECTIVE DATE OF THIS TITLE. January 1, 2011.

11 "(25) ELECTRONIC. Relating to technology having
12 electrical, digital, magnetic, wireless, optical,
13 electromagnetic, or similar capabilities.

14 "(26) ELECTRONIC SIGNATURE. An electronic signature
15 as that term is defined in the Alabama Electronic Transactions
16 Act, Chapter 1A of Title 8, or any successor statute.

17 "(27) ELECTRONIC TRANSMISSION or ELECTRONICALLY
18 TRANSMITTED. Any form or process of communication not directly
19 involving the physical transfer of paper or another tangible
20 medium, which (i) is suitable for the retention, retrieval,
21 and reproduction of information by the recipient, and (ii) is
22 retrievable in paper form by the recipient through an
23 automated process used in conventional commercial practice.

24 "(28) ELECTRONIC WRITING. Information that is stored
25 in an electronic or other nontangible medium and is

1 retrievable in paper form through an automated process used in
2 conventional commercial practice.

3 "(29) ENTITY. A domestic entity or foreign entity.

4 "(30) FILING ENTITY. A domestic entity that is a
5 corporation, limited partnership, ~~including a~~ limited
6 liability limited partnership, limited liability company,
7 professional association, employee cooperative corporation, or
8 real estate investment trust.

9 "(31) FILING INSTRUMENT. An instrument, document, or
10 statement that is required or ~~authorized~~ permitted by this
11 title to be ~~filed~~ delivered for filing by or for an entity
12 ~~with the~~ to a filing officer ~~in accordance with Article 4.~~

13 "(32) FILING OFFICER. The officer with whom a filing
14 instrument is required or permitted to be ~~filed under Article~~
15 ~~4 or under any other provision of~~ delivered for filing
16 pursuant to this title.

17 "(33) FOREIGN. With respect to an entity, that the
18 entity is formed and existing under the laws of a jurisdiction
19 other than this state.

20 "(34) FOREIGN ENTITY. An organization formed and
21 existing under the laws of a jurisdiction other than this
22 state.

23 "(35) FOREIGN FILING ENTITY. A foreign entity that
24 registers or is required to register as a foreign entity under
25 Article 7.

1 "(36) FOREIGN GOVERNMENTAL AUTHORITY. A governmental
2 official, agency, or instrumentality of a jurisdiction other
3 than this state.

4 "(37) FOREIGN LIMITED LIABILITY LIMITED PARTNERSHIP.
5 A foreign limited liability limited partnership as defined in
6 Chapter 9A.

7 "(38) FOREIGN LIMITED LIABILITY PARTNERSHIP. A
8 foreign limited liability partnership as defined in Chapter
9 8A.

10 "(39) FOREIGN LIMITED PARTNERSHIP. A foreign limited
11 partnership as defined in Chapter 9A.

12 "(40) FOREIGN NONFILING ENTITY. A foreign entity
13 that is not a foreign filing entity.

14 "(41) FUNDAMENTAL BUSINESS TRANSACTION. A merger,
15 interest exchange, conversion, or sale of all or substantially
16 all of an entity's assets.

17 "(42) GENERAL PARTNER.

18 "(A) each partner in a general partnership; or

19 "(B) a person who is admitted to a limited
20 partnership as a general partner in accordance with the
21 governing documents of the limited partnership.

22 "(43) GENERAL PARTNERSHIP. A partnership as defined
23 in Chapter 8A. The term includes a ~~registered~~ limited
24 liability partnership as defined in Chapter 8A.

1 "(44) GOVERNING AUTHORITY. A person or group of
2 persons who are entitled to manage and direct the affairs of
3 an entity ~~under~~ pursuant to this title and the governing
4 documents of the entity, except that if the governing
5 documents of the entity or this title divide the authority to
6 manage and direct the affairs of the entity among different
7 persons or groups of persons according to different matters,
8 governing authority means the person or group of persons
9 entitled to manage and direct the affairs of the entity with
10 respect to a matter under the governing documents of the
11 entity or this title. The term includes the board of directors
12 of a corporation, by whatever name known, or other persons
13 authorized to perform the functions of the board of directors
14 of a corporation, the general partners of a general
15 partnership or limited partnership, the persons who have
16 direction and oversight of a limited liability company, and
17 the trust managers of a real estate investment trust. The term
18 does not include an officer who is acting in the capacity of
19 an officer.

20 "(45) GOVERNING DOCUMENTS.

21 "(A) in the case of a domestic entity:

22 "(i) the certificate of formation for a domestic
23 filing entity or the document or agreement under which a
24 domestic nonfiling entity is formed; and

1 "(ii) the other documents or agreements, including
2 bylaws, partnership agreements of partnerships, limited
3 liability company agreements of limited liability companies,
4 or similar documents, adopted by the entity ~~under~~ pursuant to
5 this title to govern the formation or the internal affairs of
6 the entity; or

7 "(B) in the case of a foreign entity, the
8 instruments, documents, or agreements adopted under the law of
9 its jurisdiction of formation to govern the formation or the
10 internal affairs of the entity.

11 "(46) GOVERNING PERSON. A person serving as part of
12 the governing authority of an entity.

13 "(47) INDIVIDUAL. A natural person and the estate of
14 an incompetent or deceased natural person.

15 "(48) INSOLVENCY. The inability of a person to pay
16 the person's debts as they become due in the usual course of
17 business or affairs.

18 "(49) INSOLVENT. A person who is unable to pay the
19 person's debts as they become due in the usual course of
20 business or affairs.

21 "(50) JUDGE OF PROBATE. The judge of probate of the
22 county in which a domestic ~~entity's certificate of formation~~
23 ~~is filed, or, with respect to a statement of authority under~~
24 ~~Chapter 8A, which is to be filed in the real property records~~
25 ~~of a particular county, the judge of probate of the county in~~

1 ~~which that statement is filed~~ entity is required or permitted
2 to deliver a filing instrument for filing pursuant to this
3 title.

4 "(51) JURISDICTION OF FORMATION.

5 "(A) in the case of a domestic filing entity, this
6 state;

7 "(B) in the case of a foreign entity, the
8 jurisdiction in which the entity's certificate of formation or
9 similar organizational instrument is filed, or if no
10 certificate of formation or similar organizational instrument
11 is filed, then the laws of the jurisdiction which govern the
12 internal affairs of the foreign entity;

13 "(C) in the case of a general partnership which has
14 filed a statement of partnership, a statement of not for
15 profit partnership, or a statement of limited liability
16 partnership in accordance with Chapter 8A, in this state;

17 "(D) in the case of a foreign limited liability
18 partnership, the laws of the jurisdiction which govern the
19 filing of the foreign limited liability partnership's
20 statement of limited liability partnership or such filing in
21 that jurisdiction; and

22 "(E) in the case of a foreign or domestic nonfiling
23 entity other than those entities described in subsection (C)
24 or (D):

1 "(i) the jurisdiction the laws of which are chosen
2 in the entity's governing documents to govern its internal
3 affairs if that jurisdiction bears a reasonable relation to
4 the owners or members or to the domestic or foreign nonfiling
5 entity's business and affairs under the principles of this
6 state that otherwise would apply to a contract among the
7 owners or members; or

8 "(ii) if subparagraph (i) does not apply, the
9 jurisdiction in which the entity has its principal place of
10 business.

11 "(52) LAW. Unless the context requires otherwise,
12 both statutory and common law.

13 "(53) LICENSE. A license, certificate of
14 registration, or other legal authorization.

15 "(54) LICENSING AUTHORITY. The state court, state
16 regulatory licensing board, or other like agency which has the
17 power to issue a license or other legal authorization to
18 render professional services.

19 "(55) LIMITED LIABILITY COMPANY. A limited liability
20 company as defined in Chapter 5A.

21 "(56) LIMITED LIABILITY LIMITED PARTNERSHIP. A
22 limited liability limited partnership as defined in Chapter
23 9A.

24 "(57) LIMITED LIABILITY PARTNERSHIP. A limited
25 liability partnership as defined in Chapter 8A.

1 "(58) LIMITED PARTNER. A person who has been
2 admitted to a limited partnership as a limited partner as
3 provided by:

4 "(A) in the case of a domestic limited partnership,
5 Chapter 9A; or

6 "(B) in the case of a foreign limited partnership,
7 the laws of its jurisdiction of formation.

8 "(59) LIMITED PARTNERSHIP. A limited partnership as
9 defined in Chapter 9A. The term includes a limited liability
10 limited partnership as defined in Chapter 9A.

11 "(60) MANAGERIAL OFFICIAL. An officer or a governing
12 person.

13 "(61) MEMBER.

14 "(A) a person defined as a member under Chapter 5A;

15 "(B) in the case of a nonprofit corporation formed
16 pursuant to or governed by Chapter 3, a person having
17 membership rights in ~~a~~ the nonprofit corporation in accordance
18 with its governing documents as provided in Chapter 3;

19 "(C) in the case of an employee cooperative
20 corporation formed pursuant to or governed by Chapter 11, a
21 natural person who, as provided in Chapter 11, has been
22 accepted for membership in and owns a membership share in an
23 employee cooperative;

24 "(D) in the case of a nonprofit association, a
25 person who, as provided in Chapter 17, may participate in the

1 selection of persons authorized to manage the affairs of the
2 nonprofit association or in the development of its policy.

3 "(62) MERGER. The combination of one or more
4 domestic entities with one or more domestic entities or
5 non-code organizations resulting in:

6 "(A) one or more surviving domestic entities or
7 non-code organizations;

8 "(B) the creation of one or more new domestic
9 entities or non-code organizations, or one or more surviving
10 domestic entities or non-code organizations; or

11 "(C) one or more surviving domestic entities or
12 non-code organizations and the creation of one or more new
13 domestic entities or non-code organizations.

14 "(63) NON-CODE ORGANIZATION. An organization other
15 than a domestic entity.

16 "(64) NONFILING ENTITY. A domestic entity that is
17 not a filing entity. The term includes a domestic general
18 partnership, a limited liability partnership, and a nonprofit
19 association.

20 "(65) NONPROFIT ASSOCIATION. An unincorporated
21 nonprofit association as defined in Chapter 17. The term does
22 not include a general partnership which has filed a statement
23 of not for profit partnership in accordance with Chapter 8A, a
24 limited partnership which is carrying on a not for profit

1 purpose, or a limited liability company which is carrying on a
2 not for profit purpose.

3 "(66) NONPROFIT CORPORATION. A domestic or foreign
4 nonprofit corporation as defined in Chapter 3.

5 "(67) NONPROFIT ENTITY. An entity that is a
6 nonprofit corporation, nonprofit association, or other entity
7 that is organized solely for one or more nonprofit purposes.

8 "(68) OFFICER. An individual elected, appointed, or
9 designated as an officer of an entity by the entity's
10 governing authority or under the entity's governing documents.

11 "(69) ORGANIZATION. A corporation, limited
12 partnership, general partnership, limited liability company,
13 business trust, real estate investment trust, joint venture,
14 joint stock company, cooperative, association, bank, insurance
15 company, credit union, savings and loan association, or other
16 organization, regardless of whether the organization is for
17 profit, not for profit, nonprofit, domestic, or foreign.

18 "(70) ORGANIZER. A person, who need not be an owner
19 or member of the entity, who, having the capacity to contract,
20 is authorized to execute documents in connection with the
21 formation of the entity. The term includes an incorporator.

22 "(71) OWNER.

23 "(A) with respect to a foreign or domestic business
24 corporation or real estate investment trust, a stockholder or
25 a shareholder;

1 "(B) with respect to a foreign or domestic
2 partnership, a partner;

3 "(C) with respect to a foreign or domestic limited
4 liability company or association, a member; and

5 "(D) with respect to another foreign or domestic
6 entity, an owner of an equity interest in that entity.

7 "(72) OWNERSHIP INTEREST. An owner's interest in an
8 entity. The term includes the owner's share of profits and
9 losses or similar items and the right to receive
10 distributions. The term does not include an owner's right to
11 participate in management or participate in the direction or
12 oversight of the entity. An ownership interest is personal
13 property.

14 "(73) PARENT ENTITY or PARENT ORGANIZATION. An
15 entity or organization that:

16 "(A) owns at least 50 percent of the ownership or
17 membership interest of a subsidiary; or

18 "(B) possesses at least 50 percent of the voting
19 power of the owners or members of a subsidiary.

20 "(74) PARTNER. A limited partner or general partner.

21 "(75) PARTNERSHIP. Includes a general partnership, a
22 limited liability partnership, a foreign limited liability
23 partnership, a limited partnership, a foreign limited
24 partnership, a limited liability limited partnership, and a
25 foreign limited liability limited partnership.

1 "(76) PARTNERSHIP AGREEMENT. Any agreement (whether
2 referred to as a partnership agreement or otherwise), written,
3 oral or implied, of the partners as to the activities and
4 affairs of a general partnership or a limited partnership. The
5 partnership agreement includes any amendments to the
6 partnership agreement. In the case of limited partnerships
7 formed prior to October 1, 1998, partnership agreement
8 includes the certificate of partnership.

9 "(77) PARTY TO THE MERGER. A domestic entity or
10 non-code organization that under a plan of merger is combined
11 by a merger. The term does not include a domestic entity or
12 non-code organization that is not to be combined into or with
13 one or more domestic entities or non-code organizations,
14 regardless of whether ownership interests of the entity are to
15 be issued under the plan of merger.

16 "(78) PERSON. An individual, including the estate of
17 an incompetent or deceased individual, or an organization,
18 whether created by the laws of this state or another state or
19 foreign country, including, without limitation, a general
20 partnership, limited liability partnership, limited
21 partnership, limited liability limited partnership, limited
22 liability company, corporation, professional corporation,
23 nonprofit corporation, professional association, trustee,
24 personal representative, fiduciary, as defined in Section
25 19-3-150 or person performing in any similar capacity,

1 business trust, estate, trust, association, joint venture,
2 government, governmental subdivision, agency, or
3 instrumentality, or any other legal or commercial entity.

4 "(79) PRESIDENT.

5 "(A) the individual designated as president of an
6 entity under the entity's governing documents; or

7 "(B) the officer or committee of persons authorized
8 to perform the functions of the principal executive officer of
9 an entity without regard to the designated name of the officer
10 or committee.

11 "(80) PROFESSIONAL ASSOCIATION. A professional
12 association as defined in Chapter 30.

13 "(81) PROFESSIONAL CORPORATION. A domestic or
14 foreign professional corporation as defined in Chapter 4.

15 "(82) PROFESSIONAL ENTITY. A professional
16 association and a professional corporation.

17 "(83) PROFESSIONAL SERVICE. Any type of service that
18 may lawfully be performed only pursuant to a license issued by
19 a state court, state regulatory licensing board, or other like
20 agency pursuant to state laws.

21 "(84) PROPERTY. Includes all property, whether real,
22 personal, or mixed, or tangible or intangible, or any right or
23 interest therein.

1 "(85) REAL ESTATE INVESTMENT TRUST. An
2 unincorporated trust, association, or other entity as defined
3 in Chapter 10.

4 "(86) SECRETARY.

5 "(A) the individual designated as secretary of an
6 entity under the entity's governing documents; or

7 "(B) the officer or committee of persons authorized
8 to perform the functions of secretary of an entity without
9 regard to the designated name of the officer or committee.

10 "(87) SECRETARY OF STATE. The Secretary of State of
11 the State of Alabama.

12 "(88) SIGN or SIGNATURE. With the present intent to
13 authenticate or adopt a writing:

14 "(A) to execute or adopt a tangible symbol to a
15 writing, and includes any manual, facsimile, or conformed
16 signature; or

17 "(B) to attach to or logically associate with an
18 electronic transmission an electronic sound, symbol, or
19 process, and includes an electronic signature in an electronic
20 transmission.

21 "(89) STATE. Includes, when referring to a part of
22 the United States, a state or commonwealth, and its agencies
23 and governmental subdivisions, and a territory or possession,
24 and its agencies and governmental subdivisions, of the United
25 States.

1 "(90) SUBSCRIBER. A person who agrees with or makes
2 an offer to an entity to purchase by subscription an ownership
3 interest in the entity.

4 "(91) SUBSCRIPTION. An agreement between a
5 subscriber and an entity, or a written offer made by a
6 subscriber to an entity before or after the entity's
7 formation, in which the subscriber agrees or offers to
8 purchase a specified ownership interest in the entity.

9 "(92) SUBSIDIARY. An entity or organization at least
10 50 percent of:

11 "(A) the ownership or membership interest of which
12 is owned by a parent entity or parent organization; or

13 "(B) the voting power of which is possessed by a
14 parent entity or parent organization.

15 "(93) TREASURER.

16 "(A) the individual designated as treasurer of an
17 entity under the entity's governing documents; or

18 "(B) the officer or committee of persons authorized
19 to perform the functions of treasurer of an entity without
20 regard to the designated name of the officer or committee.

21 "(94) TRUSTEE. A person who serves as a trustee of a
22 trust, including a real estate investment trust.

23 "(95) UNCERTIFICATED OWNERSHIP INTEREST. An
24 ownership interest in a domestic entity that is not
25 represented by a certificate.

1 "(96) VICE PRESIDENT.

2 "(A) the individual designated as vice president of
3 an entity under the governing documents of the entity; or

4 "(B) the officer or committee of persons authorized
5 to perform the functions of the president of the entity on the
6 death, absence, or resignation of the president or on the
7 inability of the president to perform the functions of office
8 without regard to the designated name of the officer or
9 committee.

10 "(97) WRITING or WRITTEN. Information that is
11 inscribed on a tangible medium or that is stored in an
12 electronic or other medium and is retrievable in perceivable
13 form.

14 "§10A-1-1.08.

15 "(a) The provisions of this title as described by
16 this section may be cited as provided by this section.

17 "(b) Chapter 2 or Chapter 2A, as applicable, and the
18 provisions of Chapter 1 to the extent applicable to business
19 corporations may be cited as the Alabama Business Corporation
20 Law.

21 "(c) Chapter 3 and the provisions of Chapter 1 to
22 the extent applicable to nonprofit corporations may be cited
23 as the Alabama Nonprofit Corporation Law.

1 "(d) Chapter 4 and the provisions of Chapter 1 to
2 the extent applicable to professional corporations may be
3 cited as the Alabama Professional Corporation Law.

4 "(e) Chapter 5A and the provisions of Chapter 1 to
5 the extent applicable to limited liability companies may be
6 cited as the Alabama Limited Liability Company Law.

7 "(f) Chapter 8A and the provisions of Chapter 1 to
8 the extent applicable to general partnerships may be cited as
9 the Alabama Partnership Law.

10 "(g) Chapter 9A and the provisions of Chapter 1 to
11 the extent applicable to limited partnerships may be cited as
12 the Alabama Limited Partnership Law.

13 "(h) Chapter 10 and the provisions of Chapter 1 to
14 the extent applicable to real estate investment trusts may be
15 cited as the Alabama Real Estate Investment Trust Law.

16 "(i) Chapter 11 and the provisions of (A) Chapter 1
17 and (B) Chapter 2 or Chapter 2A, as applicable, to the extent
18 applicable to employee cooperative corporations may be cited
19 as the Alabama Employee Cooperative Corporations Law.

20 "(j) Chapter 17 may be cited as the Alabama
21 Unincorporated Nonprofit Association Law.

22 "§10A-1-1.12.

23 "For entities other than general partnerships, if
24 the formation of an entity does not occur when a certificate
25 of formation or similar instrument filed with the ~~Secretary of~~

1 ~~State or the judge of probate, as the case may be~~ filing
2 officer, or with a foreign governmental authority takes
3 effect, the law governing the entity's formation and internal
4 affairs is the law of the entity's jurisdiction of formation.

5 "§10A-1-3.05.

6 "Unless provided otherwise in a chapter of this
7 title governing a filing entity:

8 "(a) The certificate of formation must state:

9 "(1) the name of the filing entity being formed;

10 "(2) the type of filing entity being formed;

11 "(3) for filing entities other than limited
12 partnerships, the purpose or purposes for which the filing
13 entity is formed, which may be stated to be or include any
14 lawful purpose for that type of entity;

15 "(4) the period of duration, if the entity is not
16 formed to exist perpetually;

17 "(5) the street address and, if different, the
18 mailing address of the initial registered office of the filing
19 entity and the name of the initial registered agent of the
20 filing entity at the office;

21 "(6) the name and address of each:

22 "(A) organizer for the filing entity, unless the
23 entity is formed ~~under a plan~~ pursuant to a statement of
24 conversion or merger; or

1 "(B) general partner, if the filing entity is a
2 limited partnership;

3 "(7) if the filing entity is formed ~~under a plan of~~
4 pursuant to a conversion or merger, a statement to that effect
5 and, if formed ~~under a plan of~~ pursuant to a conversion, the
6 name, mailing address of the principal office, date of
7 formation, prior form of ~~organization~~ entity, and jurisdiction
8 of formation of the converting entity; and

9 "(8) any other information required by this title
10 including, without limitation, any information required by the
11 specific chapter of this title governing the filing entity or
12 by Article 8 to be included in the certificate of formation
13 for the filing entity.

14 "(b) The certificate of formation may contain other
15 provisions not inconsistent with law relating to the
16 organization, ownership, governance, business, or affairs of
17 the filing entity.

18 "(c) Except as provided by Section 10A-1-3.04,
19 Article 4 governs the signing and filing of a certificate of
20 formation for a domestic entity.

21 "§10A-1-3.06.

22 "~~The~~ Unless provided otherwise in a chapter of this
23 title governing an entity, the formation and existence of a
24 domestic entity that is a converted entity in a conversion or
25 that is to be created ~~under~~ pursuant to a plan of merger takes

1 effect and commences on the effectiveness of the conversion or
2 merger, as appropriate.

3 "§10A-1-3.32.

4 "(a) This section applies to entities other than (i)
5 corporations formed ~~under~~ pursuant to or governed by Chapter
6 2, ~~professional corporations formed under~~ Chapter 2A, or
7 Chapter 4, and real estate investment trusts formed pursuant
8 to or governed by Chapter 10, each of which is governed by the
9 separate recordkeeping requirements and record inspections
10 provisions of Chapter 2 or Chapter 2A, as applicable, and (ii)
11 nonprofit corporations formed pursuant to or governed by
12 Chapter 3, limited liability companies formed ~~under~~ pursuant
13 to or governed by Chapter 5A, general partnerships formed
14 pursuant to or governed by Chapter 8A, and limited
15 partnerships formed ~~under~~ pursuant to or governed by Chapter
16 9A, each of which are governed by the separate recordkeeping
17 requirements and record inspection provisions set forth in
18 each entity's respective chapter governing that entity.

19 "(b) With respect to an entity covered by this
20 section, the books and records maintained under the chapter of
21 this title applicable to the entity and any other books and
22 records of the entity, wherever situated, are subject to
23 inspection and copying at the reasonable request, and at the
24 expense of, any owner or member or the owner's or member's
25 agent or attorney during regular business hours. The right of

1 access extends to the legal representative of a deceased owner
2 or member or owner or member under legal disability. The
3 entity shall also provide former owners and members with
4 access to its books and records pertaining to the period
5 during which they were owners or members.

6 "(c) The governing documents of the entity may not
7 unreasonably restrict an owner's or member's right to
8 information or access to books and records.

9 "(d) Any agent or governing person of an entity who,
10 without reasonable cause, refuses to allow any owner or member
11 or the owner's or member's agent or legal counsel to inspect
12 any books or records of the entity shall be personally liable
13 to the agent or member for a penalty in an amount not to
14 exceed 10 percent of the fair market value of the ownership
15 interest of the owner or member, in addition to any other
16 damages or remedy.

17 "§10A-1-3.42.

18 "(a) A certificated ownership interest in a domestic
19 entity may contain an impression of the seal of the entity, if
20 any. A facsimile of the entity's seal may be printed or
21 lithographed on the certificate.

22 "(b) If a domestic entity is authorized to issue
23 ownership interests of more than one class or series, each
24 certificate representing ownership interests that is issued by

1 the entity must conspicuously state on the front or back of
2 the certificate:

3 "(1) the designations, preferences, limitations, and
4 relative rights of the ownership interests of each class or
5 series to the extent they have been determined and the
6 authority of the governing authority to make those
7 determinations as to subsequent classes or series; or

8 "(2) that the information required by subsection (1)
9 is stated in the domestic entity's governing documents and
10 that the domestic entity, on written request to the entity's
11 principal place of business or registered office, will provide
12 a free copy of that information to the record holder of the
13 certificate.

14 "(c) A certificate representing ownership interests
15 must state on the front of the certificate:

16 "(1) that the domestic entity is organized under the
17 laws of this state;

18 "(2) the name of the person to whom the certificate
19 is issued;

20 "(3) the number and class of ownership interests and
21 the designation of the series, if any, represented by the
22 certificate; and

23 "(4) if the ownership interests are shares, the par
24 value of each share represented by the certificate, or a
25 statement that the shares are without par value.

1 "(d) A certificate representing ownership interests
 2 that is subject to a restriction, placed by or agreed to by
 3 the domestic entity ~~under~~ pursuant to this title on the
 4 transfer or registration of the transfer of the ownership
 5 interests must conspicuously note the existence of the
 6 restriction on the front or back of the certificate. Even if
 7 not so noted, a restriction is enforceable against a person
 8 with actual knowledge of the restriction.

9 "(e) Abbreviations may be used in the inscribing of
 10 certificates representing ownership interests. Without limit-
 11 ing the use of other abbreviations, however, the following or
 12 substantially similar abbreviations may be used in the in-
 13 scribing of such certificates, and shall be construed as
 14 though they were written out in full and shall be accorded the
 15 meaning ascribed herein.

"Abbreviation:	Meaning:
"TEN COM	As tenants in common.
"JTWROS	As joint tenants with rights of survivorship and no tenants in common.
"JT TEN	As joint tenants with rights of survivorship and no tenants in common.
"CUSTODIAN FOR, UTMA	As custodian for _____ (name of minor) under the Un- Transfers to Minor Act.

1 "§10A-1-4.01.

2 "(a) A filing instrument must be:

3 "(1) signed by the person or persons required by
4 this title or the applicable chapter to execute, and to
5 verify, if required by the applicable chapter, the filing
6 instrument; and

7 "(2) delivered, together with one exact or conformed
8 copy and the additional exact or conformed copies as required
9 by Section 10A-1-4.02 (b) or (e) or other provision of this
10 title, to the ~~judge of probate or Secretary of State, as the~~
11 ~~case may be~~ filing officer under the provisions of Section
12 10A-1-4.02, in person or by mail or courier, or, if permitted
13 by the respective filing officer, by facsimile or electronic
14 transmission or any other comparable form of delivery.

15 "(b) A person authorized by this title to sign a
16 filing instrument for an entity is not required to show
17 evidence of the person's authority as a requirement for
18 filing.

19 "(c) The execution of a filing instrument
20 constitutes an affirmation by each person executing the
21 instrument that the facts therein are true, under penalties
22 for perjury prescribed by Section 13A-10-103 or its successor.

23 "(d) If a person required by this title to execute
24 any filing instrument fails or refuses to do so, any person

1 who is adversely affected by the failure or refusal may
2 petition the circuit court for the judicial circuit in which
3 the county is located where ~~under,~~ pursuant to this title the
4 filing instrument would be filed, or if it would be filed with
5 the Secretary of State, in the circuit court in the county in
6 which the registered agent is located, and if no registered
7 agent is required, in the circuit court in the county in which
8 the entity has its principal place of business in this state,
9 and if the entity does not have a place of business in this
10 state, in the Circuit Court of Montgomery County, to direct
11 the execution of the filing instrument. If the court finds
12 that it is proper for the filing instrument to be executed and
13 that any person so designated has failed or refused to execute
14 the filing instrument, it shall order the ~~judge of probate of~~
15 ~~the county or the Secretary of State, as the case may be,~~
16 filing officer to record an appropriate filing instrument.

17 "§10A-1-4.02.

18 "(a) The following filing instruments shall be
19 delivered to the judge of probate for filing, except as the
20 chapter applicable to an entity or other provision of this
21 title provides for filing by the Secretary of State or another
22 filing officer:

23 "(1) certificates of formation or any amendments or
24 restatements thereof;

1 "(2) certificates of dissolution, other than a
2 statement of dissolution of a general partnership or a
3 statement of cancellation by a limited liability partnership;

4 "(3) certificates of revocation;

5 "(4) certificates of correction to any filing
6 instrument required to be delivered to the office of the judge
7 of probate for filing; and

8 "(5) any other filing instrument required or
9 permitted ~~under~~ pursuant to this title to be delivered to the
10 judge of probate for filing.

11 "(b) Any of the ~~following~~ filing instruments
12 delivered to the office of the judge of probate for filing in
13 accordance with subsections (a) (1) through (a) (4) shall be
14 accompanied by an additional exact or conformed copy to permit
15 the judge of probate to transmit to the Secretary of State a
16 certified copy thereof as required by subsection ~~(g)~~: (e).

17 ~~"(1) certificates of formation;~~

18 ~~"(2) amendments to certificates of formation that
19 alter the name of any entity;~~

20 ~~"(3) restated certificates of formation;~~

21 ~~"(4) certificates of dissolution;~~

22 ~~"(5) certificates of revocation; and~~

23 ~~"(6) certificates of correction correcting any of
24 the foregoing filing instruments.~~

1 "(c) The following filing instruments shall be
2 delivered to the Secretary of State for filing:

3 "(1) certificates, articles, or statements of
4 merger, ~~statements of conversion, and articles of share~~
5 exchange;

6 "(2) statements or registrations of a foreign entity
7 for authority to transact business in this state and any
8 statements, notices, or certificates of withdrawal or
9 termination or statements, notices, or certificates evidencing
10 the same or required or authorized under Article 7 of this
11 chapter;

12 "(3) the annual report of a business corporation,
13 which may be made as provided in ~~Section 10A-2-16.22~~ Article
14 16 of Chapter 2, or Article 16 of Chapter 2A, as applicable,
15 by filing with the Department of Revenue the public record
16 information required by Chapter 14A of Title 40, together with
17 the prescribed fee for the annual report;

18 "(4) for (i) corporations created by an act of the
19 Legislature prior to the adoption of the Constitution of
20 Alabama of 1901, ~~or for~~ and (ii) entities or organizations
21 which have resulted from are the converted or surviving
22 entities or organizations of a merger, share exchange, or
23 conversion, all filing instruments required by this title to
24 be delivered to the judge of probate for filing shall be
25 delivered to the Secretary of State for filing, except for (i)

1 certified copies of statements of authority, denial, or
2 cancellation thereof permitted to be delivered to the judge of
3 probate for filing pursuant to Chapter 8A, (ii) any documents
4 permitted to be delivered to the judge of probate for filing
5 pursuant to Chapter 17, and (iii) certified copies of
6 statements of merger or conversion permitted to be delivered
7 to the judge of probate for filing pursuant to Chapter 1,
8 Chapter 2A, Chapter 5A, Chapter 8A or Chapter 9A;

9 "~~(5)~~ all filing instruments and any other filing
10 instrument document required or permitted ~~under this title~~ to
11 be delivered to the Secretary of State for filing pursuant to
12 Chapter 2 or Chapter 2A;

13 "~~(7)~~ (6) statements and any other document required
14 or permitted to be delivered to the Secretary of State for
15 filing ~~under~~ pursuant to Chapter 8A; ~~and~~

16 "(7) any other filing instruments or document
17 required or permitted to be delivered to the Secretary of
18 State for filing pursuant to this title;

19 "~~(6)~~ (8) articles of correction of any filing
20 instrument required or permitted to be delivered to the
21 Secretary of State for filing; and

22 "~~(8)~~ (9) any other filing instrument or document
23 required or permitted to be filed ~~under~~ pursuant to this title
24 and not expressly required or permitted to be delivered to the

1 Secretary of State or judge of probate or other designated
2 filing office for filing.

3 ~~"(d) Certificates, articles, or statements of merger~~
4 ~~or articles of share exchange, and statements of conversion~~
5 ~~delivered to the Secretary of State for filing shall be~~
6 ~~accompanied by the additional number of exact or conformed~~
7 ~~copies of articles as may be required for purposes of~~
8 ~~subsection (f) hereof.~~

9 ~~"(e)(d)~~ If the ~~judge of probate or Secretary of~~
10 ~~State, as the case may be,~~ filing officer finds that a filing
11 instrument delivered under this section and Section 10A-1-4.01
12 substantially conforms to the provisions of this title that
13 apply to the entity and that all required fees have been paid,
14 and if, in the case of a certificate of formation or an
15 amendment to a certificate of formation that would change the
16 name of the entity, the ~~judge of probate~~ filing officer finds
17 that the name of the entity has been reserved under Article 5
18 of this chapter, the ~~judge of probate or Secretary of State,~~
19 ~~as the case may be,~~ filing officer shall file it immediately
20 upon delivery by:

21 "(1) endorsing "filed," together with his or her
22 name and official title and the date and time of receipt on
23 the instrument and all copies required hereunder and on the
24 receipt for the filing fee;

1 "(2) accepting it into the filing system adopted by
2 the ~~judge of probate or Secretary of State~~ filing officer and
3 assigning the instrument a date of filing; and

4 "(3) delivering a copy thereof, endorsed as provided
5 in subdivision (1), with the filing fee receipt, or
6 acknowledgment of receipt of the instrument if no filing fee
7 is required, to the entity or its representative.

8 "~~(f)~~(e) In the case of any of the filing instruments
9 described in subsection (b), the judge of probate shall within
10 days transmit a certified copy of the filing instrument to
11 the Secretary of State. ~~In the case of certificates, articles,
12 or statements of merger, statements of conversion, or articles
13 of share exchange, the Secretary of State shall promptly
14 transmit a certified copy thereof to the office of the judge
15 of probate of the county in which each domestic entity's
16 certificate of formation, if any, is filed.~~

17 "~~(g)~~(f) If the ~~judge of probate or Secretary of~~
18 ~~State, as the case may be,~~ filing officer refuses to file a
19 filing instrument, ~~he or she~~ the filing officer shall return
20 it to the domestic or foreign entity or its representative
21 within seven days after the filing instrument was delivered,
22 together with a brief, written explanation of the reason for
23 ~~his or her~~ the refusal.

24 "~~(h)~~(g) The ~~judge of probate's or Secretary of~~
25 ~~State's~~ duty of the filing officer to file filing instruments

1 ~~under~~ pursuant to this title is ministerial. ~~His or her filing~~
2 Filing or refusing to file a filing instrument by the filing
3 officer does not:

4 "(1) affect the validity or invalidity of the filing
5 instrument in whole or in part;

6 "(2) relate to the correctness or incorrectness of
7 information contained in the filing instrument; or

8 "(3) create a presumption that the filing instrument
9 is valid or invalid or that information contained in the
10 filing instrument is correct or incorrect.

11 "~~(i)~~(h) The Secretary of State shall keep (1) an
12 alphabetical list of all domestic entities and registered
13 foreign entities, the certificates of formation, the
14 statements under Chapter 8A, or statements or registrations
15 for authority to transact business in this state, for which
16 are filed in his or her office, together with (2) with respect
17 to those domestic entities and registered foreign entities,
18 all filing instruments and any other document required or
19 permitted to be delivered to the Secretary of State for filing
20 pursuant to this title, and (3) the data contained in the
21 those filing instruments.

22 "§10A-1-4.04.

23 "(a) A court, public office, or official body shall
24 accept a certificate issued as provided by this title by the
25 ~~judge of probate or Secretary of State~~ filing officer or a

1 copy of a filing instrument accepted by the ~~judge of probate~~
2 ~~or Secretary of State~~ filing officer for filing as provided by
3 this title that is certified by the ~~judge of probate or~~
4 ~~Secretary of State~~ filing officer as prima facie evidence of
5 the facts stated in the certificate or instrument.

6 "(b) A court, public office, or official body may
7 record a certificate or certified copy described by subsection
8 (a).

9 "(c) A court, public office, or official body shall
10 accept a certificate issued under an official seal by the
11 ~~judge of probate or Secretary of State~~ filing officer as to
12 the existence or nonexistence of facts that relate to an
13 entity that would not appear from a certified copy of a filing
14 instrument as prima facie evidence of the existence or
15 nonexistence of the facts stated in the certificate.

16 "§10A-1-4.06.

17 "Each ~~judge of probate and the Secretary of State~~
18 filing officer shall have the powers reasonably necessary to
19 perform the duties required of him or her by this title.

20 "§10A-1-4.11.

21 "A filing instrument submitted to the ~~Secretary of~~
22 ~~State or judge of probate, as the case may be,~~ filing officer
23 takes effect on filing, except as permitted by Section
24 10A-1-4.12 or as provided by the provisions of this title
25 which apply to the entity making the filing or other law.

1 "§10A-1-4.13.

2 "(a) The parties to a filing instrument may abandon
3 the filing instrument if the instrument has not taken effect.

4 "(b) To abandon a filing instrument the parties to
5 the instrument must file with the filing officer a certificate
6 of abandonment.

7 "(c) A certificate of abandonment must:

8 "(1) be signed on behalf of each entity that is a
9 party to the action or transaction by the person authorized by
10 this title to act on behalf of the entity;

11 "(2) state the nature of the filing instrument to be
12 abandoned, the date of the instrument, and the parties to the
13 instrument; and

14 "(3) state that the filing instrument has been
15 abandoned in accordance with the agreement of the parties.

16 "(d) On the filing of the certificate of
17 abandonment, the action or transaction evidenced by the
18 original filing instrument is abandoned and may not take
19 effect.

20 "(e) If in the interim before a certificate of
21 abandonment is filed, the name of an entity that is a party to
22 the action or transaction becomes indistinguishable on the
23 records of the Secretary of State from the name of another
24 entity already on file or reserved or registered ~~under~~
25 pursuant to this title, the filing officer may not file the

1 certificate of abandonment unless the entity by or for whom
2 the certificate is filed changes its name in the manner
3 provided by this title for that entity.

4 "§10A-1-4.15.

5 "An acknowledgment of filing issued or other action
6 taken by the ~~Secretary of State or judge of probate, as the~~
7 ~~case may be, filing officer~~ affirming the filing of a filing
8 instrument that has a specific delayed effective date must
9 state the date and time at which the instrument takes effect.

10 "§10A-1-4.21.

11 "(a) A filing instrument that has been filed with
12 the ~~Secretary of State or judge of probate, as the case may~~
13 ~~be, filing officer~~ that is an inaccurate record of the event
14 or transaction evidenced in the instrument, that contains an
15 inaccurate or erroneous statement, or that was defectively or
16 erroneously signed, sealed, acknowledged, or verified may be
17 corrected by filing a certificate of correction.

18 "(b) A certificate of correction must be signed by
19 the person authorized by this title to act on behalf of the
20 entity.

21 "§10A-1-4.23.

22 "The certificate of correction must:

23 "(1) state the name of the entity;

1 "(2) identify the filing instrument to be corrected
2 by description and date of filing with the ~~Secretary of State~~
3 ~~or judge of probate, as the case may be~~ filing officer;

4 "(3) identify the inaccuracy, error, or defect to be
5 corrected; and

6 "(4) state in corrected form the portion of the
7 filing instrument to be corrected.

8 "§10A-1-4.24.

9 "The certificate of correction shall be filed with
10 and acted on by the ~~Secretary of State or judge of probate, as~~
11 ~~the case may be,~~ filing officer as provided in Section
12 10A-1-4.02.

13 "§10A-1-4.25.

14 "(a) After the ~~Secretary of State or the judge of~~
15 ~~probate, as the case may be,~~ filing officer files the
16 certificate of correction, the filing instrument is considered
17 to have been corrected on the date the filing instrument was
18 originally filed, except as otherwise provided by subsection
19 (b).

20 "(b) As to a person who acted in reliance on the
21 filing instrument prior to its correction and who is adversely
22 affected by that correction, the filing instrument is
23 considered to have been corrected on the date the certificate
24 of correction is filed.

1 "(c) An acknowledgment of filing or a similar
2 instrument issued by the ~~Secretary of State or judge of~~
3 ~~probate, as the case may be,~~ filing officer before a filing
4 instrument is corrected, with respect to the effect of filing
5 the original filing instrument, applies to the corrected
6 filing instrument as of the date the corrected filing
7 instrument is considered to have been filed under this
8 section.

9 "§10A-1-4.26.

10 "A filing instrument that an entity files with the
11 ~~Secretary of State or the judge of probate, as the case may~~
12 ~~be,~~ filing officer may be amended or supplemented in
13 accordance with the provisions of the chapter that apply to
14 that entity or in accordance with that entity's governing
15 documents. If neither the chapter that applies to that entity
16 nor the governing documents of that entity provides or
17 prohibits a process for the approval and filing of an
18 amendment or supplement to that filing instrument for that
19 entity, then that filing instrument may be amended or
20 supplemented and filed utilizing the same process for approval
21 and filing as was used to approve and file that filing
22 instrument.

23 "§10A-1-4.31.

24 "(a) The ~~judge of probate or the Secretary of State,~~
25 ~~as the case may be,~~ filing officer shall collect the following

1 fees when the filing instruments described in this title are
 2 delivered to him or her for filing:

	FEE FOR STATE OF	FEE FOR THE JUDGE
	ALABAMA	OF PROBATE

3	"FILING INSTRUMENT		
4	"(1) Certificate of for-		
5	mation and restated cer-		
6	tificate of formation		
7	<u>(Except for filings pur-</u>		
8	<u>suant to Chapter 2 or</u>		
9	<u>Chapter 2A)</u>	\$100	\$50
10	"(2) Amendment <u>Amend-</u>		
11	<u>ments</u> to certificate of		
12	formation <u>(Except for</u>		
13	<u>filings pursuant to</u>		
14	<u>Chapter 2 or Chapter 2A)</u>	\$50	\$25
15	"(3) Name reservations		
16	<u>and notice of transfer</u>		
17	<u>of name reservation</u>	\$25	<u>No fee</u>
18	"A. less than 24 hours	\$25	No fee
19	"B. 24 hours or more	\$10	No fee
20	"(4) Certificate, <u>arti-</u>		
21	<u>cles, or statements</u> of		
22	dissolution (other than	\$100	\$50

1	a statement of dissolution		
2	tion or cancellation		
3	under <u>(Except for fil-</u>		
4	<u>ings pursuant to Chapter</u>		
5	<u>2 or Chapter 2A or Chap-</u>		
6	<u>ter 8A)</u>		
7	"(5) Certificate, arti-		
8	cles, or statement of		
9	merger; statement of		
10	conversion, articles of		
11	consolidation or share		
12	exchange	\$100	\$50
13	"(6) <u>(5)</u> Foreign entity		
14	registration including a		
15	statement of foreign		
16	limited liability part-		
17	nership	\$150	No fee
18	"(7) <u>(6)</u> Certificate of		
19	existence	\$25	<u>No fee</u>
20	"A. Less than 24 hours	\$25	No fee
21	"B. 24 hours or more	\$10	No fee
22	<u>"(7) Certificates, arti-</u>		
23	<u>cles, or statements, and</u>		
24	<u>any document required or</u>	\$100	<u>No fee</u>

1	<u>permitted to be filed</u>		
2	<u>with the Secretary of</u>		
3	<u>State pursuant to Chap-</u>		
4	<u>ter 2 or Chapter 2A</u>		
5	"(8) Statements and any		
6	document required or		
7	permitted to be filed		
8	with the Secretary of		
9	State under <u>pursuant to</u>		
10	Chapter 8A	\$100	No fee
11	"(9) Certified <u>copy of</u>		
12	statements and any of		
13	<u>authority, denial, and</u>		
14	<u>cancellation thereof,</u>		
15	document required or		
16	permitted to be filed		
17	with the judge of pro-		
18	bate under <u>pursuant to</u>		
19	Chapter 8A	<u>No fee</u>	\$100
20	"(10) <u>Certificates, ar-</u>		
21	<u>ticles, or statements of</u>		
22	<u>merger, conversion, and</u>		
23	<u>share exchange (Except</u>		
24	<u>for filings pursuant to</u>		
25	<u>Chapter 1, Chapter 2,</u>	<u>\$100</u>	<u>\$50</u>

1	<u>Chapter 2A, Chapter 5A,</u>		
2	<u>Chapter 8A, and Chapter</u>		
3	<u>9A)</u>		
4	<u>"(11) Certificates, ar-</u>		
5	<u>ticles, or statements of</u>		
6	<u>merger, conversion, and</u>		
7	<u>share exchange filed</u>		
8	<u>pursuant to Chapter 1,</u>		
9	<u>Chapter 2, Chapter 2A,</u>		
10	<u>Chapter 5A, Chapter 8A,</u>		
11	<u>and Chapter 9A</u>	<u>\$100</u>	<u>No fee</u>
12	<u>"(12) Certified copy of</u>		
13	<u>certificates, articles,</u>		
14	<u>or statements of merger</u>		
15	<u>and conversion filed</u>		
16	<u>pursuant to Chapter 1,</u>		
17	<u>Chapter 2A, Chapter 5A,</u>		
18	<u>Chapter 8A, or Chapter</u>		
19	<u>9A</u>	<u>No fee</u>	<u>\$5</u>
20	"(10) <u>(13)</u> Any other fil-		
21	ing instrument required		
22	or permitted to be filed		
23	under <u>pursuant to this</u>		
24	title	\$25	\$25

1 " (b) ~~When appropriate, two checks shall accompany a~~
2 ~~filing instrument delivered to the judge of probate or a~~
3 ~~filing instrument is to be delivered for filing only to the~~
4 ~~Secretary of State, that filing instrument shall be~~
5 ~~accompanied by a check payable to the State of Alabama. When a~~
6 ~~filing instrument is only to be delivered for filing to the~~
7 ~~judge of probate, that filing instrument shall be accompanied~~
8 ~~by a check payable to the judge of probate. When a filing~~
9 ~~instrument is to be delivered for filing to the judge of~~
10 ~~probate, and a copy is to be forwarded to the Secretary of~~
11 ~~State for filing, two checks shall accompany that filing~~
12 ~~instrument and copy, one payable to the judge of probate for~~
13 ~~covering all charges for the judge of probate, and one payable~~
14 ~~to the State of Alabama covering all charges for the Secretary~~
15 ~~of State. In the case of any filing instrument delivered for~~
16 ~~filing to the judge of probate accompanied by a check for the~~
17 ~~charges for the Secretary of State, the check for the~~
18 ~~Secretary of State; and the check payable to the State of~~
19 ~~Alabama shall be forwarded by the judge of probate to the~~
20 ~~Secretary of State. In the case of any filing instrument~~
21 ~~delivered for filing to the Secretary of State accompanied by~~
22 ~~a check for the judge of probate, the check for the judge of~~
23 ~~probate shall be forwarded by the Secretary of State to the~~
24 ~~judge of probate.~~

1 "(c) There is hereby established in the State
2 Treasury a fund to be known and designated as the Secretary of
3 State Entity Fund. All funds, fees, charges, costs, and
4 collections accruing to or collected by the Secretary of State
5 under the foregoing provisions of this section or any other
6 fees collected by the Secretary of State relating to entities
7 shall be deposited into the State Treasury to the credit of
8 the Secretary of State Entity Fund except as so provided in
9 subsection (e).

10 "(d) All funds now or hereafter deposited in the
11 State Treasury to the credit of the Secretary of State Entity
12 Fund shall not be expended for any purpose whatsoever unless
13 the same shall have been allotted and budgeted in accordance
14 with the provisions of Article 4 of Chapter 4 of Title 41, and
15 only in the amounts and for the purposes provided by the
16 Legislature in the general appropriation bill or this section.

17 "(e) Seventy percent of funds collected by the
18 Secretary of State in relation to entities during the fiscal
19 year shall be deposited to the credit of the State General
20 Fund.

21 "(f) The fees herein imposed for the office of the
22 judge of probate shall be charged and paid into the
23 appropriate county treasury or to the judge of probate as may
24 be authorized or required by law.

1 "(g) The Secretary of State shall collect the
2 following fees for copying and certifying the copy of any
3 filing instrument relating to a domestic or foreign entity:

4 "(1) Two dollars (\$2) a page for copying; and

5 "(2) Ten dollars (\$10) for the certificate.

6 "(h) The judge of probate shall collect the
7 following fees for copying and certifying the copy of any
8 filing instrument relating to an entity:

9 "(1) Two dollars (\$2) a page for copying; and

10 "(2) Ten dollars (\$10) for the certificate.

11 "(i) For requests of immediate expedition of
12 ~~documents to be obtained in less than 24 hours, other than~~
13 ~~name reservations and certificates of existence, by the~~
14 ~~Secretary of State regarding document filings, certifications,~~
15 and certificates to be obtained in less than 24 hours from the
16 Secretary of State, other than documents which may be
17 delivered to, or obtained from, the Secretary of State
18 electronically, in addition to required fees, a one hundred
19 dollar (\$100) surcharge shall be imposed.

20 "§10A-1-5.01.

21 "The filing of a certificate of formation by a
22 filing entity ~~under~~ pursuant to this title, an application for
23 registration or statement of foreign limited liability
24 partnership by a foreign filing entity ~~under~~ pursuant to this
25 title, or an application for reservation or registration of a

1 name ~~under~~ pursuant to this article does not authorize the use
2 of a name in this state in violation of a right of another
3 under:

4 "(1) ~~the~~ The Trademark Act of 1946, as amended, 15
5 U.S.C. Section 1051 et seq.; or

6 "(2) Chapter 12 of Title 8; or

7 "(3) Common law.

8 "§10A-1-5.08.

9 "The name of a domestic professional corporation or
10 of a foreign professional corporation registered to transact
11 business in this state must contain the words "professional
12 corporation" or the abbreviation "P.C." or "PC" and shall
13 otherwise conform to any rule promulgated by a licensing
14 authority having jurisdiction of a professional service
15 described in the certificate of formation of the professional
16 corporation.

17 "§10A-1-6.01.

18 "In this division:

19 "(1) "Delegate" means a person who is serving or who
20 has served as a representative of an enterprise at the request
21 of that enterprise at another enterprise. A person is a
22 delegate to an employee benefit plan if the performance of the
23 person's official duties to the enterprise also imposes duties
24 on or otherwise involves service by the person to the plan or
25 participants in or beneficiaries of the plan.

1 "(2) "Enterprise" means a domestic entity or an
 2 organization subject to this article, including a predecessor
 3 domestic entity or organization.

4 "(3) "Expenses" includes court costs and attorney's
 5 fees. The term does not include a judgment, a penalty, a
 6 settlement, a fine, or an excise or similar tax or an excise
 7 tax assessed against the person regarding an employee benefit
 8 plan.

9 "(4) "Former governing person" means a person who
 10 was a governing person of an enterprise.

11 "(5) "Official capacity" means:

12 "(A) with respect to a governing person, the office
 13 of the governing person in the enterprise or the exercise of
 14 authority by or on behalf of the governing person ~~under~~
 15 pursuant to this title or the governing documents of the
 16 enterprise; and

17 "(B) with respect to a person other than a governing
 18 person, the elective or appointive office, if any, in the
 19 enterprise held by the person or the relationship undertaken
 20 by the person on behalf of the enterprise.

21 "(6) "Predecessor enterprise" means a sole
 22 proprietorship or organization that is a predecessor to an
 23 enterprise in:

24 "(A) a merger, conversion, consolidation, or other
 25 transaction in which the liabilities of the predecessor

1 enterprise are transferred or allocated to the enterprise by
2 operation of law; or

3 "(B) any other transaction in which the enterprise
4 assumes the liabilities of the predecessor enterprise and the
5 liabilities that are the subject matter of this chapter are
6 not specifically excluded.

7 "(7) "Proceeding" means:

8 "(A) a threatened, pending, or completed action or
9 other proceeding, whether civil, criminal, administrative,
10 arbitrative, or investigative and whether formal or informal;

11 "(B) an appeal of an action or proceeding described
12 by paragraph (A); and

13 "(C) an inquiry or investigation that could lead to
14 an action or proceeding described by paragraph (A).

15 "(8) "Representative" means a person serving as a
16 partner, director, officer, venturer, proprietor, trustee,
17 employee, or agent of an enterprise or serving a similar
18 function for an enterprise.

19 "(9) "Respondent" means a person named as a
20 respondent or defendant in a proceeding.

21 "§10A-1-6.02.

22 ~~"(a) Except as provided by subsection (b), this~~ This
23 article does not apply to ~~a:~~ general partnerships, limited
24 liability partnerships, limited liability companies, limited

1 partnerships, limited liability limited partnerships,
2 nonprofit corporations, and business corporations.

3 ~~"(1) general partnership;~~

4 ~~"(2) limited liability company;~~

5 ~~"(3) limited partnership;~~

6 ~~"(4) nonprofit corporation; and~~

7 ~~"(5) business corporation.~~

8 ~~"(b) The governing documents of a general~~
9 ~~partnership, limited liability company, limited partnership,~~
10 ~~nonprofit corporation, or business corporation may adopt~~
11 ~~provisions of this article or may contain enforceable~~
12 ~~provisions relating to:~~

13 ~~"(1) indemnification;~~

14 ~~"(2) advancement or reimbursement of expenses;~~

15 ~~"(3) insurance; or~~

16 ~~"(4) other arrangements.~~

17 ~~"§10A-1-7.01.~~

18 "(a) (1) For purposes of this Article 7, the terms
19 register, registering, and registered include (i) a foreign
20 entity other than a foreign limited liability partnership
21 delivering to the Secretary of State for filing an application
22 for registration and the Secretary of State filing the
23 application for registration, and (ii) a foreign limited
24 liability partnership delivering to the Secretary of State for
25 filing a statement of foreign limited liability partnership

1 and the Secretary of State filing the statement of foreign
2 limited liability partnership.

3 "(2) For purposes of this Article 7, the term
4 registration includes (i) a filed application for registration
5 and (ii) a filed statement of foreign limited liability
6 partnership.

7 "(b) For purposes of this Article 7, the terms
8 transact business and transacting business shall include
9 conducting a business, activity, not for profit activity, and
10 any other activity, whether or not for profit.

11 "(c) To transact business in this state, a foreign
12 entity must register under this chapter if the foreign entity:

13 "(1) is a foreign entity, the formation of which, if
14 formed in this state, would require the filing under Article 3
15 of a certificate of formation;

16 "(2) is a foreign limited liability partnership; or

17 "(3) affords limited liability under the law of its
18 jurisdiction of formation for any owner or member.

19 "(d) A foreign entity described by subsection (b)
20 must maintain the foreign entity's registration while
21 transacting business in this state.

22 "§10A-1-7.04.

23 "(a) (1) A foreign entity described in Section
24 10A-1-7.01(c), other than a foreign limited liability
25 partnership, registers by delivering to the Secretary of State

1 for filing an application for registration in accordance with
2 the procedures in Article 4.

3 "(2) A foreign limited liability partnership
4 registers by delivering to the Secretary of State for filing a
5 statement of foreign limited liability partnership in
6 accordance with the procedures in Article 4.

7 "(b) The application for registration of a foreign
8 entity described in Section 10A-1-7.01(c) other than a foreign
9 limited liability partnership must state:

10 "(1) the foreign entity's name or, if that name is
11 not available for use in this state or otherwise would not
12 comply with Article 5, a name that satisfies the requirements
13 of Section 10A-1-7.07 under which the foreign entity will
14 transact business in this state;

15 "(2) the foreign entity's type;

16 "(3) the foreign entity's jurisdiction of formation;

17 "(4) the date of the foreign entity's formation;

18 "(5) that the foreign entity exists as a valid
19 foreign entity of the stated type under the laws of the
20 foreign entity's jurisdiction of formation;

21 "(6) the date the foreign entity began or will begin
22 to transact business in this state;

23 "(7) the street address and mailing address, if
24 different, of the principal office of the foreign entity and;

1 "(8) the street address and mailing address, if
2 different, of the initial registered office and the name of
3 the initial registered agent for service of process which
4 Article 5 requires to be maintained at that office.

5 "(c) The statement of foreign limited liability
6 partnership must state:

7 "(1) the foreign limited partnership's name or, if
8 that name is not available for use in this state or otherwise
9 would not comply with Article 5, a name that satisfies the
10 requirements of Section 10A-1-7.07 under which the foreign
11 entity will transact business in this state;

12 "(2) the jurisdiction which governs the foreign
13 limited liability partnership's partnership agreement and
14 under which it is a limited liability partnership;

15 "(3) the date of the foreign limited liability
16 partnership's formation;

17 "(4) that the foreign limited liability partnership
18 exists as a valid foreign limited liability partnership under
19 the laws of the jurisdiction which governs the foreign limited
20 liability partnership's partnership agreement and under which
21 it is a limited liability partnership;

22 "(5) the date the foreign limited liability
23 partnership will begin to transact business in this state;

1 "(6) the street address and mailing address, if
2 different, of the principal office of the foreign limited
3 liability partnership;

4 "(7) the street address and mailing address, if
5 different, of the initial registered office and the name of
6 the initial registered agent for service of process which
7 Article 5 requires to be maintained at that office;

8 "(d) The application for registration of a foreign
9 entity described in Section 10A-1-7.01(c) other than a foreign
10 limited liability partnership shall be executed by one or more
11 persons authorized to execute an application for registration.
12 The statement of foreign limited liability partnership shall
13 be executed by one or more partners authorized to execute a
14 statement of foreign limited liability partnership.

15 "(e) The status of the foreign entity after
16 registration and the liability of its owners, managers,
17 members, or managerial officials shall not be adversely
18 affected by error or subsequent changes in the information
19 stated in the application for registration or statement of
20 foreign limited liability partnership, as applicable.

21 "(f) The fact that an application for registration
22 or a statement of foreign limited liability partnership, as
23 applicable, is on file with the Secretary of State is notice
24 that the foreign entity is authorized to transact business in
25 this state and as notice of all facts required to be set forth

1 in the application for registration or the statement of
2 foreign limited liability partnership, as applicable.

3 "(g) A foreign entity may register regardless of any
4 differences between the law of the foreign entity's
5 jurisdiction and of this state applicable to the governing of
6 the internal affairs or to the liability of an owner, member,
7 or managerial official. Notwithstanding the foregoing, no
8 foreign entity may carry on in this state any business of a
9 character that may not lawfully be carried on by a domestic
10 entity of the same type.

11 "(h) A statement of foreign limited liability
12 partnership is a filing instrument.

13 "§10A-1-7.11.

14 "(a) A foreign entity registered in this state may
15 withdraw the foreign entity's registration at any time by
16 filing a certificate of withdrawal as provided in Article 4.

17 "(b) A certificate of withdrawal for a foreign
18 entity described must state:

19 "(1) the name of the foreign entity as set forth on
20 its registration;

21 "(2) the type of foreign entity and the foreign
22 entity's jurisdiction of formation and, in the case of a
23 foreign limited liability partnership, the jurisdiction which
24 laws govern the foreign limited liability partnership and its
25 partnership agreement;

1 "(3) the street address and mailing address, if
2 different, of the principal office of the foreign entity;

3 "(4) that the foreign entity no longer is
4 transacting business in this state;

5 "(5) that the foreign entity:

6 "(A) revokes the authority of the foreign entity's
7 registered agent in this state to accept service of process;
8 and

9 "(B) consents that service of process in any action,
10 suit, or proceeding stating a cause of action arising in this
11 state during the time the foreign entity was authorized to
12 transact business in this state may be made on the foreign
13 entity in accordance with the Alabama Rules of Civil Procedure
14 and any other notice or demand required or permitted by law to
15 be served on the foreign entity may be served in a manner
16 similar to the procedure provided for the service of process
17 by the Alabama Rules of Civil Procedure;

18 "(6) (A) a mailing address to which process may be
19 mailed pursuant to the applicable service of process
20 procedures of the Alabama Rules of Civil Procedure and to
21 which any notice or demand required or permitted by law to be
22 served on the foreign entity may be mailed; and

23 "(B) a commitment by the foreign entity that if the
24 mailing address stated in the certificate of withdrawal under

1 paragraph (A) changes, the foreign entity will promptly amend
2 the certificate of withdrawal to update the address; and

3 "(7) that any money due or accrued to the state has
4 been paid or describes the provisions that have been made for
5 the payment of that money.

6 "(c) A certificate from the Alabama Department of
7 Revenue that all applicable taxes and fees have been paid must
8 be filed with the certificate of withdrawal.

9 "(d) If the existence or separate existence of a
10 foreign entity registered in this state terminates, a
11 certificate by an authorized governmental official of the
12 entity's jurisdiction of formation that evidences the
13 termination shall be filed with the Secretary of State.

14 "(e) The registration of the foreign entity
15 terminates when a certificate of withdrawal under this section
16 or a certificate evidencing termination under subsection (d)
17 is filed.

18 "§10A-1-7.21.

19 "(a) A foreign entity transacting business in this
20 state, except a corporation or other organization formed ~~under~~
21 pursuant to federal law, may not maintain any action, suit, or
22 proceeding in any court of this state until it has registered
23 in this state.

24 "(b) The failure of a foreign entity to register in
25 this state does not impair the validity of any contract or act

1 of the foreign entity or prevent the foreign entity from
2 defending any action, suit, or proceeding in any court of this
3 state.

4 "(c) A foreign entity, by transacting business in
5 this state without registration, shall be deemed to consent to
6 service of process with respect to causes of action arising
7 out of business transacted in this state, or to service of any
8 notice or demand required or permitted by law, by registered
9 mail addressed to the foreign entity at the office required to
10 be maintained in the state or other jurisdiction where it is
11 organized, or, if not so required, at the principal office of
12 the entity, or by serving the entity by any method permitted
13 under Sections 10A-1-5.35 and 10A-1-5.36.

14 "(d) The liability of an owner or owners of a
15 foreign entity is governed by the laws of the state or other
16 jurisdictions where it is organized, and any limitations on
17 that liability are not waived solely by reason of having
18 transacted business in Alabama without registration.

19 "(e) This division applies to a foreign entity
20 transacting business in this state without registering with
21 the Secretary of State.

22 "§10A-1-7.31.

23 "A foreign entity may not conduct in this state a
24 business, activity, not for profit activity, or any other
25 activity, whether or not for profit, that is not permitted by

1 this title to be transacted by the domestic entity to which it
2 most closely corresponds, unless other law of this state
3 authorizes the foreign entity to conduct the business,
4 activity, not for profit activity, or any other activity,
5 whether or not for profit.

6 "§10A-1-8.01.

7 "(a) A conversion of an entity may be accomplished
8 as provided in this section:

9 "(1) CORPORATIONS.

10 "a. The terms and conditions of a plan of conversion
11 of a corporation, other than a nonprofit corporation, must be
12 approved: (i) for corporations governed by Chapter 2, by all
13 of the corporation's ~~shareholders~~ stockholders or as otherwise
14 provided in the corporation's governing documents, ~~(but in no~~
15 case may the vote required for ~~shareholder~~ stockholder
16 approval be set at less than a majority of the votes entitled
17 to be cast by each voting group entitled by law to vote
18 separately on the conversion); or (ii) for corporations
19 governed by Chapter 2A, in accordance with the procedures and
20 by the stockholder vote required by Article 9 of Chapter 2A.

21 If the governing documents provide for approval of a
22 conversion by less than all of a corporation's ~~shareholders~~
23 stockholders, approval of the conversion shall constitute
24 corporate action subject to dissenter's rights pursuant to
25 Article 13 of Chapter 2 or appraisal rights pursuant to

1 Article 13 of Chapter 2A, as applicable, of the Alabama
2 Business Corporation Law. No conversion of a corporation to a
3 general or limited partnership may be effected without the
4 consent in writing of each ~~shareholder~~ stockholder who will
5 have personal liability with respect to the converted entity,
6 notwithstanding any provision in the governing documents of
7 the converting corporation providing for less than unanimous
8 ~~shareholder~~ stockholder approval for the conversion.

9 "b. The terms and conditions of a plan of conversion
10 of a nonprofit corporation must be approved by all the
11 nonprofit corporation's members entitled to vote thereon, if
12 it is a nonprofit corporation with members with voting rights,
13 or as otherwise provided in the nonprofit corporation's
14 governing documents; but in no case may the governing
15 documents provide for approval by less than a majority of the
16 members entitled to vote thereon. If the converting nonprofit
17 corporation has no members, or no members entitled to vote
18 thereon, the terms and conditions of the plan of conversion
19 must be approved by a unanimous vote of the board of directors
20 of the converting nonprofit corporation, or as otherwise
21 provided in the governing documents; but in no case may the
22 governing documents provide for approval by less than a
23 majority of the board of directors.

24 "(2) LIMITED PARTNERSHIPS, INCLUDING LIMITED
25 LIABILITY LIMITED PARTNERSHIPS. The terms and conditions of a

1 plan of conversion of a limited partnership must be approved
2 by all of the partners or as otherwise provided in the
3 partnership agreement. No conversion of a limited partnership
4 to a general partnership may be effected without the consent
5 in writing of each limited partner who will have personal
6 liability with respect to the converted entity,
7 notwithstanding any provision in the limited partnership
8 agreement of the converting limited partnership providing for
9 approval of the conversion by less than all partners.

10 "(3) LIMITED LIABILITY COMPANIES. The terms and
11 conditions of a plan of conversion of a limited liability
12 company must be approved by all of the limited liability
13 company's members or as otherwise provided in the limited
14 liability company's governing documents. No conversion of a
15 limited liability company to a general or limited partnership
16 may be effected without the consent in writing of each member
17 who will have personal liability with respect to the converted
18 entity, notwithstanding any provision in the governing
19 documents of the converting limited liability company
20 providing for less than unanimous member approval for the
21 conversion.

22 "(4) GENERAL PARTNERSHIPS, INCLUDING LIMITED
23 LIABILITY PARTNERSHIPS. The terms and conditions of a plan of
24 conversion of a general partnership must be approved by all of
25 the partners or as otherwise provided in the partnership

1 agreement. No conversion of a limited liability partnership to
2 a general or limited partnership may be effected without the
3 consent in writing of each partner who will have personal
4 liability with respect to the converted entity,
5 notwithstanding any provision in the partnership agreement of
6 the converting limited liability partnership providing for
7 less than unanimous partner approval for the conversion. If a
8 general partnership is the converting organization and that
9 general partnership does not have an effective statement of
10 partnership, statement of not for profit partnership, or
11 statement of limited liability partnership on file with the
12 Secretary of State, then that general partnership must, before
13 proceeding with a conversion deliver to the Secretary of State
14 for filing, a statement of partnership, statement of not for
15 profit partnership, or statement of limited liability
16 partnership simultaneously with the delivery to the Secretary
17 of State for filing, of a statement of conversion.

18 "(5) REAL ESTATE INVESTMENT TRUST. The terms and
19 conditions of a plan of conversion of a real estate investment
20 trust must be approved by all of the trust's shareholders or
21 as otherwise provided in the trust's declaration of trust; but
22 in no case may the vote required for shareholder approval be
23 set at less than a majority of all the votes entitled to be
24 cast. No conversion of a real estate investment trust to a
25 general or limited partnership may be effected without the

1 consent in writing of each shareholder who will have personal
2 liability with respect to the converted entity,
3 notwithstanding any provision in the declaration of trust of
4 the converting real estate investment trust providing for less
5 than unanimous shareholder approval for the conversion.

6 "(6) OTHER ENTITY. The terms and conditions of a
7 plan of conversion of any entity not specified above must be
8 approved by all owners of the converting entity. No conversion
9 of any entity shall be effected without the consent in writing
10 of any owner of the converting entity who has limited
11 liability and who shall become an owner without limited
12 liability protection of the converted entity.

13 "(7) ENTITY WITHOUT OWNERS. If the converting entity
14 does not have owners, the terms and conditions of the plan of
15 conversion must be unanimously approved by the governing
16 authority of the converting entity.

17 "(b) The plan of conversion must be in writing, and:

18 "(1) must include the following:

19 "a. the name, type of entity, and mailing address of
20 the principal office of the converting entity, and its unique
21 identifying number or other designation as assigned by the
22 Secretary of State, if any, before conversion;

23 "b. the name, type of entity, and mailing address of
24 the principal office of the converted entity after conversion;

1 "c. the terms and conditions of the conversion,
2 including the manner and basis for converting interests in the
3 converting entity into any combination of money, interests in
4 the converted entity, and other consideration allowed in
5 subsection (c); and

6 "d. the organizational documents of the converted
7 entity; and

8 "(2) may include other provisions relating to the
9 conversion not prohibited by law.

10 "(c) In connection with a conversion, rights or
11 securities of or interests in a converting entity may be
12 exchanged for or converted into cash, property, or rights or
13 securities of or interests in the converted entity, or, in
14 addition to or in lieu thereof, may be exchanged for or
15 converted into cash, property, or rights or securities of or
16 interests in another entity or may be cancelled.

17 "(d) After a plan of conversion is approved and
18 before the conversion takes effect, the plan may be amended or
19 abandoned as provided in the plan, or if the plan does not
20 provide for amendment or abandonment, in the same manner as
21 required for the approval of the plan of conversion
22 originally.

23 ~~"(b)(e) After the conversion is approved pursuant to~~
24 ~~subsection (a), the following documentation and filing~~
25 ~~requirements apply:~~

1 ~~"(1) If the conversion is to a corporation, limited~~
 2 ~~liability company, limited partnership, real estate investment~~
 3 ~~trust, or other entity required to file a certificate of~~
 4 ~~formation, the statement of conversion, when filed in~~
 5 ~~accordance with Section 10A-1-4.02(c)(1), shall be deemed to:~~

6 ~~"a. constitute a certificate of formation or amended~~
 7 ~~and restated certificate of formation, as the case may be, for~~
 8 ~~the converted entity; and~~

9 ~~"b. shall satisfy the requirements of Section~~
 10 ~~10A-1-4.02(a).~~

11 ~~"(2) In addition to any information or statements~~
 12 ~~otherwise required by law to be included in a certificate of~~
 13 ~~formation for a filing entity, a statement of conversion shall~~
 14 ~~include the following:~~

15 ~~"(1) if the converting entity is a domestic entity,~~
 16 ~~the converting entity shall deliver to the Secretary of State~~
 17 ~~for filing, a statement of conversion, which must include:~~

18 ~~"a. the name, type of entity, and mailing address of~~
 19 ~~the principal office of the converting entity, and its unique~~
 20 ~~identifying number or other designation as assigned by the~~
 21 ~~Secretary of State, if any, before conversion;~~

22 ~~"b. the date of the filing of the certificate of~~
 23 ~~formation of the converting entity, if any, and all prior~~
 24 ~~amendments and the filing office or offices, if any, where~~
 25 ~~such is filed;~~

1 "c. a statement that the converting entity has been
2 converted into the converted entity;

3 "d. the name and type of entity of the converted
4 entity and the jurisdiction of its governing statute;

5 "e. the street and mailing address of the principal
6 office of the converted entity;

7 "f. the date the conversion is effective under the
8 governing statute of the converted entity;

9 "g. a statement that the conversion was approved as
10 required by this chapter;

11 "h. a statement that the conversion was approved as
12 required by the governing statute of the converted entity;

13 "i. a statement that a copy of the plan of
14 conversion will be furnished by the converted entity, on
15 request and without cost, to any owner of the converted or
16 converting entity; and

17 "j. if the converted entity is a foreign entity not
18 authorized to conduct activities and affairs in this state,
19 the street and mailing address of an office for the purposes
20 of Section 10A-1-8.04 (b); and

21 "(2) if the converted entity is (I) a domestic
22 filing entity, the converting entity shall deliver to the
23 Secretary of State for filing a certificate of formation or
24 (II) a general partnership, the converting entity shall
25 deliver to the Secretary of State for filing a statement of

1 partnership, a statement of not for profit partnership, or a
2 statement of limited liability partnership, as applicable,
3 which certificate of formation or statement of partnership,
4 statement of not for profit partnership, or statement of
5 limited liability partnership, as applicable, must include, in
6 addition to the information required in the chapter governing
7 the certificate of formation of the converted entity, the
8 following:

9 "a. The name ~~and,~~ mailing address of the principal
10 office of, type of entity ~~of the converted entity,~~ and the
11 jurisdiction of ~~its~~ the governing statute of the converting
12 entity and its unique identifying number or other designation
13 as assigned by the Secretary of State, ~~if any,~~ before
14 conversion;

15 "~~b. The former name of the converting entity.~~

16 "~~c.~~b. A statement that the converting entity has
17 been converted into the converted entity~~;~~;

18 "~~d.~~c. The ~~public~~ filing office where the certificate
19 of formation, if any, of the converting entity is filed and
20 the date of the filing thereof~~;~~;

21 "~~e.~~d. If the converted entity is one in which one or
22 more owners lack limited liability protection, a statement
23 that each owner of the converting entity who is to become an
24 owner without limited liability protection of the converted

1 entity has consented in writing to the conversion as required
2 by this section~~;~~; and

3 ~~"f.e.~~ A statement that the conversion was approved
4 pursuant to this section and, if ~~either~~ the converting entity
5 ~~or the converted entity~~ is a foreign entity, that the
6 conversion was approved as required by the governing statute
7 of such foreign entity~~;~~;

8 "(3) if the converting entity is required pursuant
9 to subsections (e) (2) and (e) (3) to deliver to the Secretary
10 of State for filing both (I) a statement of conversion and
11 (II) (A) a certificate of formation or (B) a statement of
12 partnership, statement of not for profit partnership, or
13 statement of limited liability partnership, as applicable,
14 then the converting entity shall deliver the statement of
15 conversion and the certificate of formation or the statement
16 of partnership, statement of not for profit partnership or
17 statement of limited liability partnership, as applicable, to
18 the Secretary of State simultaneously; and

19 "(4) if the converting entity is a general
20 partnership and that partnership does not have an effective
21 statement of partnership, statement of not for profit
22 partnership, or statement of limited liability partnership on
23 file with the Secretary of State, then the converting
24 organization must deliver to the Secretary of State for
25 filing, a statement of partnership, statement of not for

1 profit partnership, or statement of limited liability
2 partnership simultaneously with the delivery to the Secretary
3 of State for filing, of a statement of conversion.

4 "(f) A conversion becomes effective:

5 "(1) if the converted entity is a domestic filing
6 entity, the effective date determined in accordance with
7 Article 4 of this chapter; and

8 "(2) if the converted entity is not a domestic
9 filing entity, as provided by the governing statute of the
10 converted entity.

11 ~~"(3)(g)~~ After the conversion has become effective in
12 accordance with subsection ~~(c)(f)~~, then, ~~as provided in~~
13 ~~Section 10A-1-4.02(c)(4)~~ except for (i) certified copies of
14 statements of authority, denial, or cancellation thereof
15 permitted to be delivered to the judge of probate for filing
16 pursuant to Chapter 8A, (ii) any document permitted to be
17 delivered to the judge of probate for filing pursuant to
18 Chapter 17, and (iii) certified copies of statements of merger
19 or conversion permitted to be delivered to the judge of
20 probate for filing pursuant to Chapter 1, Chapter 2A, Chapter
21 5A, Chapter 8A, or Chapter 9A, all filing instruments with
22 respect to the converted entity that would otherwise be
23 required by this title to be delivered to the judge of probate
24 for filing shall instead be delivered to the Secretary of
25 State for filing.

1 ~~"(c) A(h) When a conversion takes effect as follows~~
2 ~~becomes effective:~~

3 ~~"(1) Upon the filing of the statement of conversion~~
4 ~~in accordance with Section 10A-1-4.02(c)(1), except as~~
5 ~~otherwise provided in subdivision (2).~~

6 ~~"(2) Upon any delayed effective date if, but only~~
7 ~~if, each of the following requirements is satisfied:~~

8 ~~"a. A delayed effective date is specified in the~~
9 ~~statement of conversion; and~~

10 ~~"b. If either the converted entity or the converting~~
11 ~~entity is a foreign entity, then any filing required under the~~
12 ~~governing statute of such foreign entity to effectuate the~~
13 ~~conversion is filed before the effective date specified in the~~
14 ~~statement of conversion.~~

15 ~~"(3) If a delayed effective date is specified, and~~
16 ~~the conditions of subdivision (2) are met, the conversion is~~
17 ~~effective at the close of business, unless a different hour is~~
18 ~~specified, on that date.~~

19 ~~"(d) Conversion has the following effects:~~

20 ~~"(1)a. Any entity that has been converted pursuant~~
21 ~~to this article is for all purposes the same entity that~~
22 ~~existed before the conversion and the conversion shall~~
23 ~~constitute a continuation of the existence of the converting~~
24 ~~entity in the form of the converted entity. The conversion~~

1 ~~shall not be deemed to constitute a dissolution or termination~~
2 ~~of the converting entity.~~

3 ~~"b. If the Secretary of State has assigned a unique~~
4 ~~identifying number or other designation to the converting~~
5 ~~entity, that number or designation shall continue to be~~
6 ~~assigned to the converted entity.~~

7 ~~"(2)a. All (1) all property, real, personal, and~~
8 ~~mixed owned by the converting entity; all rights, immunities,~~
9 ~~and franchises of the converting entity, of a public as well~~
10 ~~as a private nature; and all debts or obligations due the~~
11 ~~converting entity, shall remain owned and held by, vested in,~~
12 ~~and due to, the converted entity, shall not be deemed to have~~
13 ~~been transferred to the converted entity as a consequence of~~
14 ~~the conversion, and and contract rights owned by the~~
15 ~~converting entity remain vested in the converted entity~~
16 ~~without transfer, reversion or impairment, and the title to~~
17 ~~any property vested by deed or otherwise in the converting~~
18 ~~entity shall not revert or be in any way impaired by reason of~~
19 ~~the conversion.~~;

20 ~~"b. A certified copy of the statement of conversion~~
21 ~~may be filed in the office of the judge of probate in any~~
22 ~~county in which the converting entity owned real property, to~~
23 ~~be recorded without payment and without collection by the~~
24 ~~judge of probate of any deed or other transfer tax or fee. The~~
25 ~~judge of probate shall, however, be entitled to collect the~~

1 ~~filing fees prescribed by Section 12-19-90. Any filing shall~~
2 ~~evidence chain of title, but lack of filing shall not affect~~
3 ~~the converted entity's title to the real property.~~

4 ~~"(3) All~~(2) all debts, obligations, ~~and or~~ other
5 liabilities of the converting entity ~~shall~~ continue as ~~the~~
6 debts, obligations, ~~and or~~ other liabilities of the converted
7 entity and ~~the converted entity shall continue to be~~
8 ~~responsible and liable for all the liabilities and obligations~~
9 ~~of the converting entity. Neither~~ neither the rights of
10 creditors, nor ~~any~~ the liens upon the property of the
11 converting entity, ~~shall be impaired by the conversion, and an~~
12 ~~owner of the converted entity shall continue to be liable for~~
13 ~~all obligations of the converting entity for which the owner~~
14 ~~was personally liable before the conversion.;~~

15 ~~"(4) Any claim existing or any~~ (3) an action or
16 proceeding ~~of any kind~~ pending by or against the converting
17 entity ~~shall be prosecuted or continued~~ continues as if the
18 conversion had not occurred and the name of the converted
19 entity may, but need not, be substituted for the name of the
20 converting entity in any pending action or proceeding;

21 "(4) except as prohibited by law other than this
22 chapter, all of the rights, privileges, immunities, powers,
23 and purposes of the converting entity remain vested in the
24 converted entity;

1 "(5) except as otherwise provided in the statement
2 of conversion, the terms and conditions of the statement of
3 conversion take effect;

4 "(6) except as otherwise agreed, for all purposes of
5 the laws of this state, the converting entity shall not be
6 required to wind up its affairs or pay its liabilities and
7 distribute its assets, and the conversion shall not be deemed
8 to constitute a dissolution of the converting entity;

9 "(7) for all purposes of the laws of this state, the
10 rights, privileges, powers, interests in property, debts,
11 liabilities and duties of the converting entity, shall be the
12 rights, privileges, powers, interests in property, debts,
13 liabilities and duties of the converted entity, and shall not
14 be deemed as a consequence of the conversion, to have been
15 transferred to the converted entity;

16 "(8) if the converted entity is a domestic entity,
17 for all purposes of the laws of this state, the converted
18 entity shall be deemed to be the same entity as the converting
19 entity, and the conversion shall constitute a continuation of
20 the existence of the converting entity in the form of the
21 converted entity;

22 "(9) if the converting entity is a domestic entity,
23 the existence of the converted entity shall be deemed to have
24 commenced on the date the converting entity commenced its
25 existence in the jurisdiction in which the converting entity

1 was first created, formed, organized, incorporated, or
2 otherwise came into being;

3 "(10) the conversion shall not affect the choice of
4 law applicable to matters arising prior to conversion;

5 (11) if the Secretary of State has assigned a unique
6 identifying number or other designation to the converting
7 entity and (i) the converted entity is formed pursuant to the
8 laws of this state or (ii) the converted entity is, within 30
9 days after the effective date of the conversion, registered to
10 transact business in this state, then that unique identifying
11 number or other designation shall continue to be assigned to
12 the converted entity; and

13 ~~"(5)a.~~ (12)a. An owner with limited liability
14 protection remains liable, if at all, for an obligation
15 incurred by the converting entity before the conversion takes
16 effect only to the extent, if any, the owner would have been
17 liable if the conversion had not occurred.

18 "b. An owner with limited liability protection who
19 becomes an owner without limited liability protection is
20 liable for an obligation of the converted entity incurred
21 after conversion to the extent provided for by the laws
22 applicable to the converted entity.

23 ~~"(6)~~ (13) An owner without limited liability
24 protection who as a result of a conversion becomes an owner of
25 a converted entity with limited liability protection remains

1 liable for an obligation incurred by the converting entity
2 before the conversion takes effect only to the extent, if any,
3 the owner would have been liable if the conversion had not
4 occurred.

5 "(i) If:

6 "(1) the converting entity is a filing entity, a
7 general partnership with an effective statement of
8 partnership, statement of not for profit partnership, or
9 statement of limited liability partnership on file with the
10 Secretary of State, a foreign filing entity registered to
11 transact business or not for profit activity in this state or
12 a qualified foreign limited liability partnership;

13 "(2) the converted entity will be a filing entity, a
14 general partnership with an effective statement of
15 partnership, statement of not for profit partnership, or
16 statement of limited liability partnership on file with the
17 Secretary of State, a foreign filing entity registered to
18 transact business or not for profit activity in this state or
19 a qualified foreign limited liability partnership;

20 "(3) the name of the converting entity and the
21 converted entity are to be the same, other than words,
22 phrases, or abbreviations indicating the type of entity; and

23 "(4) the name of the converted entity complies with
24 Division A of Article 5 of Chapter 1 or Section 10A-1-7.07, as
25 the case may be;

1 "then, notwithstanding Division B of Article 5 of
2 Chapter 1, no name reservation shall be required and the
3 converted entity shall for all purposes of this title be
4 entitled to utilize the name of the converting entity without
5 any further action by the converting entity or the converted
6 entity.

7 "(j) A certified copy of the statement of conversion
8 may be delivered to the office of the judge of probate in any
9 county in which the converting entity owned real property, to
10 be recorded without payment and without collection by the
11 judge of probate of any deed or other transfer tax or fee. The
12 judge of probate shall, however, be entitled to collect a
13 filing fee of five dollars (\$5). Any filing shall evidence
14 chain of title, but lack of filing shall not affect the
15 converted entity's title to the real property.

16 "§10A-1-8.02.

17 ~~"(a) Pursuant to an approved plan of merger, a~~
18 ~~corporation, limited partnership, limited liability company,~~
19 ~~general partnership, real estate investment trust, or any~~
20 ~~other entity may merge with any other entity or A merger of~~
21 ~~two or more entities, whether the other entity or entities are~~
22 ~~the same or another form of entity, may be accomplished as~~
23 ~~provided in this section.~~

24 ~~"(b) A plan of merger shall include the following:~~

1 ~~"(1) The name of each entity that is a party to the~~
2 ~~merger.~~

3 ~~"(2) The name of the surviving entity into which the~~
4 ~~other entity or entities will merge.~~

5 ~~"(3) The form of the surviving entity and the status~~
6 ~~in the surviving entity of each owner of an entity that is a~~
7 ~~party to the merger.~~

8 ~~"(4) The terms and conditions of the merger.~~

9 ~~"(5) The manner and basis of converting the~~
10 ~~interests of each party to the merger into interests or~~
11 ~~obligations of the surviving entity, or into money or other~~
12 ~~property in whole or part.~~

13 ~~"(c) A plan of merger may set forth:~~

14 ~~"(1) Amendments to the certificate of formation of~~
15 ~~the surviving entity.~~

16 ~~"(2) Other provisions relating to the merger.~~

17 ~~"(d) A plan of merger shall be approved as follows:~~

18 ~~"(1) CORPORATIONS.~~

19 ~~"a. In the case of a corporation, other than a~~
20 ~~nonprofit corporation, that is a party to a merger, ~~the~~ a plan~~
21 ~~of merger must be approved in accordance with the procedures~~
22 ~~and by the ~~shareholder~~ stockholder vote required by ~~Section~~~~
23 ~~~~10A-2-11.03~~ or ~~Section 10A-2-11.04~~ Article 11 of Chapter 2 or~~
24 ~~Article 11 of Chapter 2A, as applicable. If the governing~~
25 ~~documents of the corporation provide for approval of a merger~~

1 by less than all of the corporation's ~~shareholders~~
2 stockholders, approval of the merger shall constitute
3 corporate action subject to dissenter's rights pursuant to
4 Article 13 of Chapter 2, or appraisal rights pursuant to
5 Article 13 of Chapter 2A, as applicable. No merger of a
6 corporation into a general or limited partnership may be
7 effected without the consent in writing of each ~~shareholder~~
8 stockholder who will have personal liability with respect to
9 the ~~resulting or~~ surviving entity, notwithstanding any
10 provision in the governing documents of the corporation that
11 is a party to the merger providing for less than unanimous
12 ~~shareholder~~ stockholder approval for the conversion.

13 "b. In the case of a nonprofit corporation, that is
14 a party to the merger, a plan of merger must be approved by
15 all the nonprofit corporation's members entitled to vote
16 thereon, if it is a nonprofit corporation with members with
17 voting rights, or as otherwise provided in the nonprofit
18 corporation's governing documents; but in no case may the
19 governing documents provide for approval by less than a
20 majority of the members entitled to vote thereon. If the
21 nonprofit corporation has no members, or no members entitled
22 to vote thereon, the plan of merger must be approved by a
23 unanimous vote of the board of directors of the nonprofit
24 corporation, except as otherwise provided in the governing
25 documents; but in no case may the governing documents provide

1 for approval by less than a majority of the board of
2 directors.

3 "(2) LIMITED PARTNERSHIPS. In the case of a limited
4 partnership that is a party to the merger, ~~the~~ a plan of
5 merger must be approved in writing by all of the partners or
6 as otherwise provided in the partnership agreement. No merger
7 of a limited partnership with a general partnership in which
8 the general partnership is the surviving ~~or resulting~~ entity
9 may be effected without the consent in writing of each limited
10 partner who will have personal liability with respect to the
11 surviving ~~or resulting~~ entity, notwithstanding any provision
12 in the limited partnership agreement of the merging limited
13 partnership providing for approval of the merger by less than
14 all partners.

15 "(3) LIMITED LIABILITY COMPANIES. In the case of a
16 limited liability company that is a party to the merger, ~~the~~ a
17 plan of merger must be approved in writing by all of the
18 limited liability company's members or as otherwise provided
19 in the limited liability company's governing documents. No
20 merger of a limited liability company with a general or
21 limited partnership that is the surviving ~~or resulting~~ entity
22 may be effected without the consent in writing of each member
23 who will have personal liability with respect to the surviving
24 ~~or resulting~~ entity, notwithstanding any provision in the
25 governing documents of the merging limited liability company

1 providing for less than unanimous ~~shareholder~~ member approval
2 for a merger.

3 "(4) GENERAL PARTNERSHIPS, INCLUDING LIMITED
4 LIABILITY PARTNERSHIPS. In the case of a general partnership
5 that is a party to the merger, ~~the~~ a plan of merger must be
6 approved in writing by all of the partners or as otherwise
7 provided in the partnership agreement. No merger of a limited
8 liability partnership into a general or limited partnership
9 may be effected without the consent in writing of each partner
10 who will have personal liability with respect to the surviving
11 ~~or resulting~~ entity, notwithstanding any provision in the
12 partnership agreement of the limited liability partnership
13 providing for less than unanimous partner approval for a
14 merger. All general partnerships, other than a general
15 partnership that is created pursuant to the merger, that are
16 parties to a merger must have on file with the Secretary of
17 State a statement of partnership, statement of not for profit
18 partnership, or statement of limited liability partnership
19 prior to delivering the statement of merger to the Secretary
20 of State for filing.

21 "(5) REAL ESTATE INVESTMENT TRUST. In the case of a
22 real estate investment trust that is a party to the merger,
23 ~~the~~ a plan of merger must be approved in writing by all of the
24 trust's shareholders or as otherwise provided in the trust's
25 declaration of trust, but in no case may the vote required for

1 shareholder approval be set at less than a majority of all the
2 votes entitled to be cast. No merger of a real estate
3 investment trust with a general or limited partnership that is
4 to be the surviving ~~or resulting~~ entity may be effected
5 without the consent in writing of each shareholder who will
6 have personal liability with respect to the surviving ~~or~~
7 ~~resulting business~~ entity, notwithstanding any provision in
8 the declaration of trust of the converting real estate
9 investment trust providing for less than unanimous shareholder
10 approval for the merger.

11 "(6) OTHER ENTITY. In the case of an entity other
12 than a corporation, limited partnership, limited liability
13 company, general partnership, or real estate investment trust
14 that is a party to the merger, ~~by approval~~ a plan of merger
15 must be approved in writing ~~of~~ by all owners of the entity. No
16 merger of any entity shall be effected without the consent in
17 writing of any owner who has limited liability as an owner of
18 an entity party to the merger, and who will have personal
19 liability with respect to the surviving ~~or resulting~~ entity.

20 "(b) The plan of merger must be in writing, and:

21 "(1) must include the following:

22 "a. the name, type of entity, and mailing address of
23 the principal office of each entity that is a party to the
24 merger, the jurisdiction of the governing statute of each
25 entity that is a party to the merger, and the respective

1 unique identifying number or other designation as assigned by
2 the Secretary of State, if any, of each entity that is a party
3 to the merger;

4 "b. the name, type of entity, and mailing address of
5 the principal office of the surviving entity and, if the
6 surviving entity is to be created pursuant to the merger, the
7 surviving entity's organizational documents;

8 "c. the terms and conditions of the merger,
9 including the manner and basis for converting the interests in
10 each entity that is a party to the merger into any combination
11 of money, interests in the surviving entity, and other
12 consideration as allowed by subsection (c); and

13 "d. if the surviving entity is not to be created
14 pursuant to the merger, any amendments to be made by the
15 merger to the surviving entity's organizational documents; and

16 "(2) may include other provisions relating to the
17 merger not prohibited by law.

18 "(c) In connection with a merger, rights or
19 securities of or interests in a merged entity may be exchanged
20 for or converted into cash, property, or rights or securities
21 of or interests in the surviving entity, or, in addition to or
22 in lieu thereof, may be exchanged for or converted into cash,
23 property, or rights or securities of or interests in another
24 entity or may be cancelled.

1 ~~"(d) After a plan of merger is approved and before~~
2 ~~the merger takes effect, the plan may be amended or abandoned~~
3 ~~as provided in the plan, or if the plan does not provide for~~
4 ~~amendment or abandonment, in the same manner as required for~~
5 ~~the approval of the plan of merger originally.~~

6 ~~"(e) After a plan of merger is approved and before~~
7 ~~the merger takes effect, the plan may be amended or abandoned~~
8 ~~as provided in the plan, or if the plan does not provide for~~
9 ~~amendment or abandonment, in the same manner as required for~~
10 ~~the approval of the plan of merger originally.~~

11 ~~"(f) The merger takes effect as follows:~~

12 ~~"(1) Upon the filing of the statement of merger in~~
13 ~~accordance with Section 10A-1-4.02(c)(1), except as otherwise~~
14 ~~provided in subdivision (2).~~

15 ~~"(2) Upon any delayed effective date if, but only~~
16 ~~if, each of the following requirements is satisfied:~~

17 ~~"a. A delayed effective date is specified in the~~
18 ~~statement of merger.~~

19 ~~"b. If either the converted entity or the merging~~
20 ~~entity is a foreign entity, then any filing required under the~~
21 ~~governing statute of such foreign entity to effectuate the~~
22 ~~merger is filed before the effective date specified in the~~
23 ~~statement of merger.~~

24 ~~"(3) If a delayed effective date is specified and~~
25 ~~the conditions of subdivision (2) are met, the merger is~~

1 ~~effective at the close of business, unless a different hour is~~
2 ~~specified, on that date in accordance with and subject to~~
3 ~~Section 10A-1-4.12.~~

4 ~~"(g) The certificate of merger shall include the~~
5 ~~following:~~

6 ~~"(1) The names of each of the entities which are to~~
7 ~~merge and their respective unique identifying numbers or other~~
8 ~~designations as assigned by the Secretary of State, if any.~~

9 ~~"(2) The public office where the certificate of~~
10 ~~formation, if any, of each of the parties to the merger is~~
11 ~~filed.~~

12 ~~"(3) A statement that a plan of merger has been~~
13 ~~approved by each of the entities which are to merge in the~~
14 ~~manner set forth in this article.~~

15 ~~"(4) If the surviving or resulting entity is one in~~
16 ~~which one or more owners lack limited liability protection, a~~
17 ~~statement that each owner of an entity party to the merger who~~
18 ~~is to be an owner of the surviving or resulting entity without~~
19 ~~limited liability protection has consented in writing to the~~
20 ~~merger as required by this article.~~

21 ~~"(5) The name of the surviving or resulting entity.~~

22 ~~"(6) The date, or date and time, on which the merger~~
23 ~~becomes effective if it is not to be effective upon the filing~~
24 ~~of the certificate of merger.~~

1 ~~"(7) That the plan of merger is on file at a place~~
2 ~~of business of the surviving or resulting entity, and shall~~
3 ~~state the address thereof.~~

4 ~~"(8) That a copy of the plan of merger will be~~
5 ~~furnished by the surviving or resulting entity, on request and~~
6 ~~without cost, to any owner of any entity which is a party to~~
7 ~~the merger.~~

8 ~~"(9) If the plan of merger includes any amendments~~
9 ~~to the certificate of formation of the surviving or resulting~~
10 ~~entity, a statement of all such amendments.~~

11 ~~"(h) The certificate of merger shall be filed with~~
12 ~~the Secretary of State in accordance with Section 10A-1-4.02.~~

13 ~~"(i) The merger shall have the following effects:~~

14 ~~"(1) Every other entity party to the merger merges~~
15 ~~into the surviving entity which shall be deemed to be the~~
16 ~~resulting entity of the merger and the separate existence of~~
17 ~~every entity, other than the surviving or resulting entity,~~
18 ~~ceases.~~

19 ~~"(2) All property, real, personal, and mixed owned~~
20 ~~by each of the merged entities; all rights, immunities, and~~
21 ~~franchises of the merged entities, of a public as well as a~~
22 ~~private nature; and all debts and obligations due the merged~~
23 ~~entities, are taken and deemed to be transferred and vested in~~
24 ~~the surviving or resulting entity without the necessity of any~~
25 ~~deed or other instrument of conveyance to the surviving or~~

1 ~~resulting entity and without payment and without collection by~~
2 ~~any filing officer of any deed or other transfer tax or fee. A~~
3 ~~certified copy of the certificate of merger may be filed in~~
4 ~~the real estate records in the office of the judge of probate~~
5 ~~in any county in which any entity a party to the merger owned~~
6 ~~real property, to be recorded without payment and without~~
7 ~~collection by the judge of probate of any deed or other~~
8 ~~transfer tax or fee. The judge of probate shall, however, be~~
9 ~~entitled to collect the filing fees prescribed by Section~~
10 ~~12-19-90. Any filing shall evidence chain of title, but lack~~
11 ~~of filing does not affect the resulting entity's title to any~~
12 ~~real property.~~

13 ~~"(3) The surviving or resulting entity shall be~~
14 ~~responsible and liable for all the liabilities and obligations~~
15 ~~of the entities that are parties to the merger; however,~~
16 ~~neither the rights of creditors nor any liens upon the~~
17 ~~property of the entities that are parties to the merger shall~~
18 ~~be impaired by the merger.~~

19 ~~"(4) Any claim existing or action or proceeding, of~~
20 ~~any kind, pending by or against an entity that is a party to~~
21 ~~the merger may be prosecuted or continued as if the merger had~~
22 ~~not occurred, or the surviving or resulting entity may be~~
23 ~~substituted as a party to the action or proceeding.~~

24 ~~"(e) After each entity has approved the plan of~~
25 ~~merger, the entities must deliver to the Secretary of State~~

1 for filing a statement of merger signed on behalf of each
2 entity as provided by its governing statute which must
3 include:

4 "(1) the name, type of entity, and mailing address
5 of the principal office of each entity that is a party to the
6 merger, the jurisdiction of the governing statute of each
7 entity that is a party to the merger, and the respective
8 unique identifying number or other designation as assigned by
9 the Secretary of State, if any, of each entity that is a party
10 to the merger;

11 "(2) the name, type of entity, and mailing address
12 of the principal office of the surviving entity, the unique
13 identifying number or other designation as assigned by the
14 Secretary of State, if any, of the surviving entity, the
15 jurisdiction of the governing statute of the surviving entity,
16 and, if the surviving entity is created pursuant to the
17 merger, a statement to that effect;

18 "(3) for each entity other than a general
19 partnership, the date of the filing of the certificate of
20 formation, if any, and all prior amendments and the filing
21 office or offices, if any, where such is filed;

22 "(4) for each general partnership, the date of the
23 filing of the statement of partnership, statement of not for
24 profit partnership, or statement of limited liability

1 partnership, if any, and all prior amendments and the filing
2 office or offices, if any, where such is filed;

3 "(5) the date the merger is effective under the
4 governing statute of the surviving entity;

5 "(6) if the surviving entity is to be created
6 pursuant to the merger, (i) if it will be a filing entity, its
7 certificate of formation; or (ii) if it will be a non-filing
8 entity, any document that creates the entity that is required
9 to be in a public writing or in the case of a general
10 partnership, its statement of partnership, statement of not
11 for profit partnership, or statement of limited liability
12 partnership, as applicable;

13 "(7) if the surviving entity is a domestic entity
14 that exists before the merger, any amendments provided for in
15 the plan of merger for the organizational documents that
16 created the domestic entity that are required to be in a
17 public writing, or in the case of a general partnership, its
18 statement of partnership, statement of not for profit
19 partnership, or statement of limited liability partnership, as
20 applicable;

21 "(8) a statement as to each entity that the merger
22 was approved as required by the entity's governing statute;

23 "(9) a statement that a copy of the plan of merger
24 will be furnished by the surviving entity, on request and

1 without cost, to any owner of any entity which is a party to
2 the merger;

3 "(10) if the surviving entity is a foreign entity
4 not authorized to conduct activities and affairs in this
5 state, the street and mailing address of an office for the
6 purposes of Section 10A-1-8.04; and

7 "(11) any additional information required by the
8 governing statute of any entity that is a party to the merger.

9 "(f) Prior to the statement of merger being
10 delivered for filing to the Secretary of State in accordance
11 subsection (e), all parties to the merger that are general
12 partnerships, other than a general partnership that is created
13 pursuant to the merger, must have on file with the Secretary
14 of State a statement of partnership, statement of not for
15 profit partnership, or statement of limited liability
16 partnership.

17 "(g) If all of the entities that are parties to the
18 merger are domestic entities, the merger becomes effective on
19 the effective date determined in accordance with Article 4 of
20 Chapter 1. If one or more parties to the merger is a foreign
21 entity, or a foreign entity created by the merger is the
22 surviving entity, the merger shall become effective at the
23 later of:

1 "(1) when all documents required to be filed in
2 foreign jurisdictions to effect the merger have become
3 effective, or

4 "(2) the effective date determined in accordance
5 with Article 4 of Chapter 1.

6 "(h) After the merger has become effective in
7 accordance with subsection (g), then, except for (i) copies of
8 certified statements of authority, denial, or cancellation
9 thereof permitted to be delivered to the judge of probate for
10 filing pursuant to Chapter 8A, (ii) any documents permitted to
11 be delivered to the judge of probate for filing pursuant to
12 Chapter 17, and (iii) certified copies of statements of merger
13 or conversion permitted to be delivered to the judge of
14 probate for filing pursuant to Chapter 1, Chapter 2A, Chapter
15 5A, Chapter 8A, or Chapter 9A, all filing instruments with
16 respect to the surviving entity that would otherwise be
17 required by this title to be delivered to the judge of probate
18 for filing shall instead be delivered to the Secretary of
19 State for filing.

20 "(i) When a merger becomes effective:

21 "(1) the surviving entity continues or, in the case
22 of a surviving entity created pursuant to the merger, comes
23 into existence;

24 "(2) each entity that merges into the surviving
25 entity ceases to exist as a separate entity;

1 "(3) except as provided in the plan of merger, all
2 property owned by, and every contract right possessed by, each
3 merging entity that ceases to exist vests in the surviving
4 entity without transfer, reversion, or impairment and the
5 title to any property and contract rights vested by deed or
6 otherwise in the surviving entity shall not revert, be in any
7 way impaired, or be deemed to be a transfer by reason of the
8 merger;

9 "(4) all debts, obligations and other liabilities of
10 each merging entity, other than the surviving entity, are
11 debts, obligations and liabilities of the surviving entity,
12 and neither the rights of creditors, nor any liens upon the
13 property of any entity that is a party to the merger, shall be
14 impaired by the merger;

15 "(5) an action or proceeding, pending by or against
16 any merging entity that ceases to exist continues as if the
17 merger had not occurred and the name of the surviving entity
18 may, but need not be substituted in any pending proceeding for
19 the name of any merging entity whose separate existence ceased
20 in the merger;

21 "(6) except as prohibited by law other than this
22 chapter or as provided in the plan of merger, all the rights,
23 privileges, franchises, immunities, powers, and purposes of
24 each merging entity, other than the surviving entity, vest in
25 the surviving entity;

1 "(7) except as otherwise provided in the plan of
2 merger, the terms and conditions of the plan of merger take
3 effect;

4 "(8) except as otherwise agreed, if a merged entity
5 ceases to exist, the merger does not dissolve the merged
6 entity;

7 "(9) if the surviving entity is created pursuant to
8 the merger:

9 "(i) if it is a general partnership, the statement
10 of partnership, statement of not for profit partnership, or
11 statement of limited liability partnership becomes effective;
12 or

13 "(ii) if it is an organization other than a
14 partnership, the organizational documents that create the
15 entity become effective;

16 "(10) the interests in a merging entity that are to
17 be converted in accordance with the terms of the merger into
18 interests, obligations, rights to acquire interests, cash,
19 other property, or any combination of the foregoing, are
20 converted as provided in the plan of merger, and the former
21 holders of interests are entitled only to the rights provided
22 to them by those terms or to any appraisal or dissenters'
23 rights they may have under the governing statute governing the
24 merging entity;

1 "(11) if the surviving entity exists before the
2 merger:

3 "(i) except as provided in the plan of merger, all
4 the property and contract rights of the surviving entity
5 remain its property and contract rights without transfer,
6 reversion, or impairment;

7 "(ii) the surviving entity remains subject to all
8 its debts, obligations, and other liabilities; and

9 "(iii) except as provided by law other than this
10 chapter or the plan of merger, the surviving entity continues
11 to hold all of its rights, privileges, franchises, immunities,
12 powers and purposes.

13 ~~"(5) (12)~~ Service of process in an action or
14 proceeding against a surviving ~~or resulting~~ foreign entity to
15 enforce an obligation of a domestic entity that is a party to
16 a merger may be made by registered mail addressed to the
17 surviving entity at the address set forth in the ~~certificate~~
18 statement of merger or by any method provided by the Alabama
19 Rules of Civil Procedure. Any notice or demand required or
20 permitted by law to be served on a domestic entity may be
21 served on the surviving ~~or resulting~~ foreign entity by
22 registered mail addressed to the surviving entity at the
23 address set forth in the ~~certificate~~ statement of merger or in
24 any other manner similar to the procedure provided by the
25 Alabama Rules of Civil Procedure for the service of process.

1 "~~(6)~~ (13)a. An owner of an entity with limited
2 liability protection remains liable, if at all, for an
3 obligation incurred prior to the merger by an entity that
4 ceases to exist as a result of the merger only to the extent,
5 if any, that the owner would have been liable under the laws
6 applicable to owners of the form of entity that ceased to
7 exist if the merger had not occurred.

8 "b. An owner with limited liability protection who,
9 as a result of the merger, becomes an owner without limited
10 liability protection of the surviving ~~or resulting~~ entity is
11 liable for an obligation of the surviving ~~or resulting~~ entity
12 incurred after merger to the extent provided for by the laws
13 applicable to the surviving ~~or resulting~~ entity.

14 "~~(7)~~ (14) An owner without limited liability
15 protection of an entity that ceases to exist as a result of a
16 merger and who as a result of the merger becomes an owner of a
17 surviving ~~or resulting~~ entity with limited liability
18 protection remains liable for an obligation of the entity that
19 ceases to exist incurred before the merger takes effect only
20 to the extent, if any, that the owner would have been liable
21 if the merger had not occurred.

22 "(j) A certified copy of the statement of merger
23 required to be filed under this section may be filed in the
24 real estate records in the office of the judge of probate in
25 any county in which any merged entity owned real property,

1 without payment and without collection by the judge of probate
2 of any deed or other transfer tax or fee. The judge of
3 probate, however, shall be entitled to collect the filing fee
4 of five dollars (\$5). Any such filing shall evidence chain of
5 title, but lack of filing shall not affect the surviving
6 entity's title to such real property.

7 "§10A-1-8.04.

8 "(a) One or more foreign entities may merge with one
9 or more domestic entities in accordance with Section
10 10A-1-8.02, and a foreign entity may convert to a domestic
11 entity, or a domestic entity may convert to a foreign entity
12 in accordance with Section 10A-1-8.01 only if:

13 "(1) The merger or conversion is permitted by the
14 law of the state or country under whose law each foreign
15 entity is formed and each foreign entity complies with that
16 law in effecting the merger or conversion.

17 "(2) In the case of a conversion, the foreign entity
18 complies with ~~subsection (b)~~ the requirements of Section
19 10A-1-8.01.

20 "(3) In the case of a merger, the foreign entity
21 complies with ~~subsection (g)~~ the requirements of Section
22 10A-1-8.02 ~~if it is the surviving entity of the merger.~~

23 "(b) Upon the merger or conversion taking effect,
24 the surviving foreign entity of a merger and the foreign
25 converted entity ~~resulting from~~ in a conversion is deemed:

1 "(1) To consent that service of process in a
2 proceeding to enforce any obligation or any appraisal or
3 dissenter's rights of owners of each domestic entity a party
4 to the merger or conversion may be made by registered mail
5 addressed to the surviving or converted entity at the address
6 set forth in the ~~certificate~~ statement of merger or statement
7 of conversion, as the case may be, or by any method provided
8 by the Alabama Rules of Civil Procedure. Any notice or demand
9 required or permitted by law to be served on the domestic
10 entity may be served on the surviving or converted foreign
11 entity by registered mail addressed to the surviving or
12 converted entity at the address set forth in the plan of
13 merger or statement of conversion, as the case may be, or in
14 any other manner similar to the procedure provided by the
15 Alabama Rules of Civil Procedure for the service of process;
16 and

17 "(2) To consent to the jurisdiction of the courts of
18 this state to enforce any debt, obligation, or other liability
19 for which a converting or merging entity is liable if, before
20 the conversion or merger, the converting or merging entity was
21 subject to suit in this state on the debt, obligation, or
22 other liability. If the foreign entity fails to designate or
23 maintain a registered agent, or the designated registered
24 agent cannot with reasonable diligence be served, then service
25 of process on that foreign entity for the purposes of

1 enforcing a debt, obligation, or other liability under this
2 subsection may be made in the same manner and has the same
3 consequences as provided in Section 10A-1-5.35; and

4 ~~"(2)~~(3) To agree that it will promptly pay to
5 dissenting owners with appraisal or dissenter's rights, of
6 each domestic entity that is a party to the merger or
7 conversion the amount, if any, to which they are entitled
8 under Alabama law.

9 "§10A-1-9.01.

10 "This article does not apply to business
11 corporations, limited liability companies, general
12 partnerships, and limited partnerships.

13 "§10A-4-2.02.

14 "(a) Any corporation whose certificate of formation
15 includes as a stated purpose the performance of professional
16 services may be incorporated under this chapter by stating in
17 its certificate of formation that it is incorporated under
18 this chapter.

19 "(b) A professional business corporation, other than
20 a nonprofit professional corporation, which is subject to this
21 chapter shall cease being governed by this chapter and shall
22 be governed by the Alabama Business Corporation Law, ~~Section~~
23 ~~10A-2-1.01 et seq.,~~ if it is a domestic corporation, if it
24 amends its certificate of formation to delete the statement
25 that it is organized under this chapter, and conforms its

1 articles to the Alabama Business Corporation Law and, if it is
2 a foreign corporation, complies with the provisions of this
3 title applicable to foreign entities. A domestic nonprofit
4 professional corporation which is subject to this chapter
5 shall cease being governed by this chapter and shall be
6 governed by the Alabama Nonprofit Corporation Law, ~~Section~~
7 ~~10A-3-1.01 et seq.~~, if it is a domestic corporation, if it
8 amends its certificate of formation to delete the statement
9 that it is organized under this chapter, and conforms its
10 certificate to the Alabama Nonprofit Corporation Law and, if
11 it is a foreign corporation, complies with the provisions of
12 this title applicable to foreign entities.

13 "(c) Any corporation which is not subject to this
14 chapter may become subject to this chapter, if it is a
15 domestic corporation, by conforming its articles to this
16 chapter.

17 "(d) Any foreign professional corporation which
18 renders professional services in Alabama shall be subject to
19 this chapter.

20 "§10A-4-4.01.

21 "Administrators, executors, guardians, conservators,
22 or receivers of the estates of shareholders of a domestic
23 professional corporation who hold all of the outstanding
24 shares of the corporation may amend the certificate of
25 formation by signing a written consent to the amendment and

1 delivering the amendment for filing to the judge of probate of
2 the county in which the corporation's certificate of formation
3 was filed in accordance with Article 4 of Chapter 1. The
4 certificate of amendment shall set forth, in addition to the
5 information required to be included in the certificate of
6 amendment by ~~Sections 10A-1-3.13 and 10A-2-10.06~~ the Alabama
7 Business Corporation Law, a statement that the administrators,
8 executors, guardians, conservators, or receivers own all the
9 outstanding shares.

10 "§10A-4-4.02.

11 "(a) A domestic professional corporation may convert
12 to or merge or consolidate with another corporation, ~~or~~
13 professional corporation, or another type of entity, domestic
14 or foreign, under ~~Article 11 of Chapter 2~~ the Alabama Business
15 Corporation Law, or may merge with or convert to another type
16 of entity as permitted by Article 8 of Chapter 1. Upon the
17 merger, consolidation, or conversion, if the surviving or new
18 corporation or converted entity, as the case may be, is to
19 render professional services in Alabama, it shall comply with
20 the provisions of this chapter.

21 "(b) An unincorporated professional association
22 organized under Article 1 of Chapter 30 may merge or
23 consolidate with a professional corporation organized under
24 this chapter. In the merger, the procedure specified in

1 ~~Article 11 of Chapter 2~~ the Alabama Business Corporation Law
2 shall apply, provided that:

3 "(1) The surviving corporation shall be a domestic
4 professional corporation,

5 "(2) The following terms, when used in ~~Article 11~~
6 the Alabama Business Corporation Law to refer to an
7 unincorporated professional association, shall have the
8 following meanings:

9 "a. "Board of directors" shall mean "board of
10 governors,"

11 "b. "Corporation" shall mean "unincorporated
12 association,"

13 "c. "Shares or securities" in the case of an
14 unincorporated professional association which is a nonstock
15 organization, shall mean the undivided interests of the
16 members in the assets of the association,

17 "d. "Shareholder" in the case of an unincorporated
18 association which is a nonstock organization, shall mean
19 "member."

20 "(3) The plan of merger or plan of ~~consolidation~~
21 conversion shall be approved by a vote of two thirds of the
22 members of the professional association.

23 "§10A-4-5.01.

24 "The Attorney General may institute proceedings to
25 involuntarily dissolve a domestic professional corporation

1 ~~under Section 10A-2-14.30, or, in the case of a domestic~~
2 ~~nonprofit professional corporation, to involuntarily dissolve~~
3 ~~it under the provisions of the Alabama Nonprofit Corporation~~
4 ~~Law.~~ A licensing authority may request that the Attorney
5 General institute such proceedings.

6 "§10A-4-5.04.

7 "(a) Every professional corporation, domestic or
8 foreign, ~~which~~ is required to file an annual report under
9 ~~Section 10A-2-16.22~~ the Alabama Business Corporation Law, and
10 shall include in the annual report, in addition to the items
11 required by ~~Section 10A-2-16.22~~ the Alabama Business
12 Corporation Law:

13 "(1) A statement that all the shareholders, at least
14 one director, and the president of the corporation are
15 qualified persons with respect to the corporation, and

16 "(2) In the case of a foreign professional
17 corporation, the name or names of the Alabama licensed
18 professional or professionals through whom the foreign
19 professional corporation will render professional services in
20 Alabama.

21 "(b) Financial information contained in the annual
22 report of a professional corporation, other than the amount of
23 stated capital of the corporation, shall not be open to public
24 inspection nor shall the licensing authority disclose any
25 facts or information obtained therefrom except insofar as its

1 official duty may require the same to be made public or in the
2 event the information is required for evidence in any criminal
3 proceedings or in any other action by the State of Alabama.

4 "§10A-5A-10.01.

5 "(a) An organization other than a limited liability
6 company may convert to a limited liability company, and a
7 limited liability company may convert to an organization other
8 than a limited liability company pursuant to this section,
9 Sections 10A-5A-10.02 through 10A-5A-10.03, and a plan of
10 conversion, if:

11 "(1) the governing statute of the organization that
12 is not a limited liability company authorizes the conversion;

13 "(2) the law of the jurisdiction governing the
14 converting organization and the converted organization does
15 not prohibit the conversion; and

16 "(3) the converting organization and the converted
17 organization each comply with the governing statute and
18 organizational documents applicable to that organization in
19 effecting the conversion.

20 "(b) A plan of conversion must be in writing and
21 must include:

22 "(1) the name, type of organization, and mailing
23 address of the principal office of the converting
24 organization, and its unique identifying number or other

1 designation as assigned by the Secretary of State, if any,
 2 before conversion;

3 "(2) the name, type of organization, and mailing
 4 address of the principal office of the converted organization
 5 after conversion;

6 "(3) the terms and conditions of the conversion,
 7 including the manner and basis for converting interests in the
 8 converting organization into any combination of money,
 9 interests in the converted organization, and other
 10 consideration allowed in Section 10A-5A-10.01(c); and

11 "(4) the organizational documents of the converted
 12 organization.

13 "(c) In connection with a conversion, rights or
 14 securities of or interests in the converting organization may
 15 be exchanged for or converted into cash, property, or rights
 16 or securities of or interests in the converted organization,
 17 or, in addition to or in lieu thereof, may be exchanged for or
 18 converted into cash, property, or rights or securities of or
 19 interests in another organization or may be cancelled.

20 "§10A-5A-10.03.

21 "(a) After a plan of conversion is approved:

22 "(1) if the converting organization is an
 23 organization formed under, or its internal affairs are
 24 governed by, the laws of this state, the converting
 25 organization shall file a statement of conversion in

1 accordance with subsection (c), which statement of conversion
2 must be signed in accordance with Section 10A-5A-2.04(a) and
3 which must include:

4 "(A) the name, type of organization, and mailing
5 address of the principal office of the converting
6 organization, and its unique identifying number or other
7 designation as assigned by the Secretary of State, if any,
8 before conversion;

9 "(B) the date of the filing of the certificate of
10 formation of the converting organization, if any, and all
11 prior amendments and the filing office or offices, if any,
12 where such is filed;

13 "(C) a statement that the converting organization
14 has been converted into the converted organization;

15 "(D) the name and type of organization of the
16 converted organization and the jurisdiction of its governing
17 statute;

18 "(E) the street and mailing address of the principal
19 office of the converted organization;

20 "(F) the date the conversion is effective under the
21 governing statute of the converted organization;

22 "(G) a statement that the conversion was approved as
23 required by this chapter;

1 "(H) a statement that the conversion was approved as
2 required by the governing statute of the converted
3 organization; and

4 "(I) a statement that a copy of the plan of
5 conversion will be furnished by the converted organization, on
6 request and without cost, to any owner of the converting
7 organization; and

8 "~~(I)~~ (J) if the converted organization is a foreign
9 organization not authorized to conduct activities and affairs
10 in this state, the street and mailing address of an office for
11 the purposes of Section 10A-5A-10.04(b); and

12 "(2) if the converted organization is a limited
13 liability company, the converting organization shall ~~file~~
14 deliver for filing a certificate of formation in accordance
15 with subsection (d), which certificate of formation must
16 include, in addition to the information required by Section
17 10A-5A-2.01(a):

18 "(A) a statement that the limited liability company
19 was converted from the converting organization;

20 "(B) the name and type of organization of the
21 converting organization, ~~and~~ and the jurisdiction of the
22 converting organization's governing statute, and the
23 converting organization's unique identifying number or other
24 designation as assigned by the Secretary of State, if any; and

1 "(C) a statement that the conversion was approved in
2 a manner that complied with the converting organization's
3 governing statute.

4 "(b) A conversion becomes effective:

5 "(1) if the converted organization is a limited
6 liability company, when the certificate of formation takes
7 effect; and

8 "(2) if the converted organization is not a limited
9 liability company, as provided by the governing statute of the
10 converted organization.

11 "(c) If the converting organization is an
12 organization formed under, or its internal affairs are
13 governed by, the laws of this state, then the converting
14 organization shall ~~file~~ deliver for filing the statement of
15 conversion required under subsection (a) (1) ~~with to~~ the
16 Secretary of State ~~in accordance with Section~~
17 ~~10A-1-4.02(c)(1)~~.

18 "(d) If the converted organization is a limited
19 liability company, ~~then notwithstanding Section 10A-1-4.02(b),~~
20 the converting organization shall ~~file~~ deliver for filing the
21 certificate of formation required under subsection (a) (2) ~~with~~
22 to the Secretary of State ~~in accordance with Section~~
23 ~~10A-1-4.02(c)(5), along with the fees specified in Section~~
24 ~~10A-1-4.31 subject to subsection (f)(3)~~.

1 "(e) If the converting organization is required to
2 ~~file~~ deliver for filing a statement of conversion and a
3 certificate of formation ~~with~~ to the Secretary of State, then
4 the converting organization shall ~~file~~ deliver for filing the
5 statement of conversion and the certificate of formation ~~with~~
6 to the Secretary of State simultaneously.

7 ~~"(f) In the case of a statement of conversion that
8 is to be filed with the Secretary of State pursuant to
9 subsection (c):~~

10 ~~"(1) if the converting organization has a
11 certificate of formation filed with the judge of probate, the
12 Secretary of State shall within 10 days transmit a certified
13 copy of the statement of conversion to the office of the judge
14 of probate in the county in which the certificate of formation
15 for such converting organization was filed along with the
16 proper fee for the judge of probate.~~

17 ~~"(2) if the converting organization did not file its
18 certificate of formation with the judge of probate, but rather
19 in accordance with this title filed its certificate of
20 formation with the Secretary of State, the Secretary of State
21 shall not transmit a certified copy of the statement of
22 conversion to the office of the judge of probate and shall not
23 collect any fee for the judge of probate.~~

24 ~~"(3) if the converting organization, immediately
25 prior to the conversion becoming effective, is an organization~~

1 ~~described in Section 10A-1-4.02(c)(4), but is not required~~
2 ~~under this title to file its organizational documents with the~~
3 ~~judge of probate, the Secretary of State shall not transmit a~~
4 ~~certified copy of the statement of the statement of conversion~~
5 ~~to the office of the judge of probate and shall not collect~~
6 ~~any fee for the judge of probate.~~

7 ~~"(g) In the case of a certificate of formation that~~
8 ~~is to be filed with the Secretary of State pursuant to~~
9 ~~subsection (d), the Secretary of State shall not transmit a~~
10 ~~certified copy of the certificate of formation to the office~~
11 ~~of the judge of probate and shall not collect any fee for the~~
12 ~~judge of probate, but shall collect the fee provided for the~~
13 ~~Secretary of State in Section 10A-1-4.31(a)(1).~~

14 ~~"(h)(f) After a conversion becomes effective, if the~~
15 ~~converted organization is a limited liability company, then,~~
16 ~~except for certified copies of documents permitted to be~~
17 ~~delivered to the judge of probate for filing pursuant to~~
18 ~~subsection (h) all filing instruments required to be filed~~
19 ~~under this title regarding that converted organization shall~~
20 ~~be filed with the Secretary of State.~~

21 ~~"(i)(g) If:~~

22 ~~"(1) the converting organization is a filing entity~~
23 ~~or a foreign filing entity registered to conduct activities~~
24 ~~and affairs in this state;~~

1 "(2) the converted organization will be a filing
2 entity or a foreign filing entity registered to conduct
3 activities and affairs in this state;

4 "(3) the name of the converting organization and the
5 converted organization are to be the same, other than words,
6 phrases, or abbreviations indicating the type of entity; and

7 "(4) the name of the converted organization complies
8 with Division A of Article 5 of Chapter 1 or
9 Section 10A-1-7.07, as the case may be; then notwithstanding
10 Division B of Article 5 of Chapter 1, no name reservation
11 shall be required and the converted organization shall for all
12 purpose of this title be entitled to utilize the name of the
13 converting organization without any further action by the
14 converting organization or the converted organization.

15 "~~(j)~~(h) A certified copy of any document required to
16 be filed under this section may be filed in the real estate
17 records in the office of the judge of probate in any county in
18 which the converting organization owned real property, without
19 payment and without collection by the judge of probate of any
20 deed or other transfer tax or fee. The judge of probate shall,
21 however, be entitled to collect a filing fee of five dollars
22 (\$5). Any such filing shall evidence chain of title, but lack
23 of filing shall not affect the converted organization's title
24 to such real property.

1 "~~(k)~~(i) A statement of conversion ~~shall be~~ is a
 2 filing instrument under Chapter 1.

3 "~~(l)~~(j) ~~Except as set forth in subsection (f) (2),~~
 4 ~~the~~ The filing fees for a statement of conversion shall be ~~the~~
 5 ~~same fee as provided in Section 10A-1-4.31(a) (5)~~ as set forth
 6 in Chapter 1.

7 "§10A-5A-10.04.

8 "(a) When a conversion takes effect:

9 "(1) all property and contract rights owned by the
 10 converting organization, or series thereof, remains vested in
 11 the converted organization without ~~reservation~~ transfer,
 12 reversion, or impairment and the title to any property vested
 13 by deed or otherwise in the converting organization shall not
 14 revert or be in any way impaired by reason of the conversion;

15 "(2) all debts, obligations, or other liabilities of
 16 the converting organization, or series thereof, continue as
 17 debts, obligations, or other liabilities of the converted
 18 organization and neither the rights of creditors, nor the
 19 liens upon the property of the converting organization shall
 20 be impaired by the conversion;

21 "(3) an action or proceeding pending by or against
 22 the converting organization, or series thereof, continues as
 23 if the conversion had not occurred and the name of the
 24 converted entity may, but need not, be substituted for the

1 name of the converting entity in any pending action or
2 proceeding;

3 "(4) except as prohibited by law other than this
4 chapter, all of the rights, privileges, immunities, powers,
5 and purposes of the converting organization, or series
6 thereof, remain vested in the converted organization;

7 "(5) except as otherwise provided in the plan of
8 conversion, the terms and conditions of the plan of conversion
9 take effect;

10 "(6) except as otherwise agreed, for all purposes of
11 the laws of this state, the converting organization, and any
12 series thereof, shall not be required to wind up its affairs
13 or pay its liabilities and distribute its assets, and the
14 conversion shall not be deemed to constitute a dissolution of
15 the converting organization, or series thereof;

16 "(7) for all purposes of the laws of this state, the
17 rights, privileges, powers, interests in property, debts,
18 liabilities, and duties of the converting organization, and
19 all series thereof, shall be the rights, privileges, powers,
20 interests in property, debts, liabilities, and duties of the
21 converted organization, and shall not be deemed as a
22 consequence of the conversion, to have been transferred to the
23 converted organization;

24 "(8) if the converted organization is a limited
25 liability company, for all purposes of the laws of this state,

1 the limited liability company shall be deemed to be the same
2 organization as the converting organization, and the
3 conversion shall constitute a continuation of the existence of
4 the converting organization in the form of a limited liability
5 company;

6 "(9) if the converted organization is a limited
7 liability company, the existence of the limited liability
8 company shall be deemed to have commenced on the date the
9 converting organization commenced its existence in the
10 jurisdiction in which the converting organization was first
11 created, formed, organized, incorporated, or otherwise came
12 into being;

13 "(10) the conversion shall not affect the choice of
14 law applicable to matters arising prior to conversion; and

15 "(11) If the Secretary of State has assigned a
16 unique identifying number or other designation to the
17 converting organization and (i) the converted organization is
18 formed pursuant to, or its internal affairs are governed by,
19 the laws of this state or (ii) the converted organization is,
20 within 30 days after the effective date of the conversion,
21 registered to transact business in this state, then that
22 unique identifying number or other designation shall continue
23 to be assigned to the converted organization.

24 "(b) A converted organization that is a foreign
25 entity consents to the jurisdiction of the courts of this

1 state to enforce any debt, obligation, or other liability for
2 which the converting limited liability company, or series
3 thereof, is liable if, before the conversion, the converting
4 limited liability company was subject to suit in this state on
5 the debt, obligation, or other liability. If a converted
6 organization that is a foreign entity fails to designate or
7 maintain a registered agent, or the designated registered
8 agent cannot with reasonable diligence be served, then service
9 of process on that converted organization for the purposes of
10 enforcing a debt, obligation, or other liability under this
11 subsection may be made in the same manner and has the same
12 consequences as provided in Section 10A-1-5.35.

13 "§10A-5A-10.05.

14 "(a) A limited liability company may merge with one
15 or more other constituent organizations pursuant to this
16 section, Sections 10A-5A-10.06 through 10A-5A-10.08, and a
17 plan of merger, if:

18 "(1) the governing statute of each of the other
19 organizations authorizes the merger;

20 "(2) the merger is not prohibited by the law of a
21 jurisdiction that enacted any of those governing statutes; and

22 "(3) each of the other organizations complies with
23 its governing statute in effecting the merger.

24 "(b) A plan of merger must be in writing and must
25 include:

1 "(1) the name, type of organization, and mailing
2 address of the principal office of each constituent
3 organization, the jurisdiction of the governing statute of
4 each constituent organization, and the respective unique
5 identifying number or other designation as assigned by the
6 Secretary of State, if any, of each constituent organization;

7 "(2) the name, type of organization, and mailing
8 address of the principal office of the surviving organization, the
9 unique identifying number or other designation as assigned
10 by the Secretary of State, if any, of the surviving
11 organization, the jurisdiction of the governing statute of the
12 surviving organization, and, if the surviving organization is
13 to be created pursuant to the merger, a statement to that
14 effect;

15 "(3) the terms and conditions of the merger,
16 including the manner and basis for converting the interests in
17 each constituent organization into any combination of money,
18 interests in the surviving organization, and other
19 consideration as allowed by subsection (c);

20 "(4) if the surviving organization is to be created
21 pursuant to the merger, the surviving organization's
22 organizational documents; and

23 "(5) if the surviving organization is not to be
24 created pursuant to the merger, any amendments to be made by

1 the merger to the surviving organization's organizational
2 documents.

3 "(c) In connection with a merger, rights or
4 securities of or interests in a constituent organization may
5 be exchanged for or converted into cash, property, or rights
6 or securities of or interests in the surviving organization,
7 or, in addition to or in lieu thereof, may be exchanged for or
8 converted into cash, property, or rights or securities of or
9 interests in another organization or may be cancelled.

10 "§10A-5A-10.07.

11 "(a) After each constituent organization has
12 approved the plan of merger, a statement of merger must be
13 signed on behalf of:

14 "(1) each constituent limited liability company, as
15 provided in Section 10A-5A-2.04(a); and

16 "(2) each other constituent organization, as
17 provided by its governing statute.

18 "(b) A statement of merger under this section must
19 include:

20 "(1) the name, type of organization, and mailing
21 address of the principal office of each constituent
22 organization, ~~and~~ and the jurisdiction of its the governing
23 statute of each constituent organization, and the respective
24 unique identifying number or other designation as assigned by

1 the Secretary of State, if any, if any of each constituent
2 organization;

3 "(2) the name, type of organization, and mailing
4 address of the principal office of the surviving organization,
5 the unique identifying number or other designation as assigned
6 by the Secretary of State, if any, of the surviving
7 organization, the jurisdiction of ~~its~~ the governing statute of of
8 the surviving organization, and, if the surviving organization
9 is created pursuant to the merger, a statement to that effect;

10 "(3) the date of the filing of the certificate of
11 formation, if any, and all prior amendments and the filing
12 office or offices, if any, and where such is filed of each
13 constituent organization which was formed under the laws of
14 this state;

15 "(4) the date the merger is effective under the
16 governing statute of the surviving organization;

17 "(5) if the surviving organization is to be created
18 pursuant to the merger:

19 "(A) if it will be a limited liability company, the
20 limited liability company's certificate of formation; or

21 "(B) if it will be an organization other than a
22 limited liability company, any organizational document that
23 creates the organization that is required to be in a public
24 writing;

1 "(6) if the surviving organization exists before the
2 merger, any amendments provided for in the plan of merger for
3 the organizational document that created the organization that
4 are required to be in a public writing;

5 "(7) a statement as to each constituent organization
6 that the merger was approved as required by the organization's
7 governing statute;

8 "(8) a statement that a copy of the plan of merger
9 will be furnished by the surviving organization, on request
10 and without cost, to any owner of any constituent organization
11 which is a party to the merger;

12 "~~(8)(9)~~ if the surviving organization is a foreign
13 organization not authorized to conduct activities and affairs
14 in this state, the street and mailing address of an office for
15 the purposes of Section 10A-5A-10.08 (b); and

16 "~~(9)(10)~~ any additional information required by the
17 governing statute of any constituent organization.

18 "(c) The statement of merger shall be delivered for
19 filing to the Secretary of State, ~~in accordance with Section~~
20 ~~10A-1-4.02(c)(1), along with the fees specified in Section~~
21 ~~10A-1-4.31, subject to the last sentence of this subsection~~
22 ~~(c). For each constituent organization which is formed under~~
23 ~~the laws of this state and which is not, immediately prior to~~
24 ~~the merger becoming effective, an organization described in~~
25 ~~Section 10A-1-4.02(c)(4), the Secretary of State shall within~~

1 ~~10 days transmit a certified copy of the statement of merger~~
2 ~~to the office of the judge of probate in the county in which~~
3 ~~the certificate of formation for each such constituent~~
4 ~~organization was filed along with the proper fee for the judge~~
5 ~~of probate. For each constituent organization which is formed~~
6 ~~under the laws of this state and which is, immediately prior~~
7 ~~to the merger becoming effective, an organization described in~~
8 ~~Section 10A-1-4.02(c)(4), but which has a certificate of~~
9 ~~formation filed with the judge of probate, the Secretary of~~
10 ~~State shall transmit a certified copy of the statement of~~
11 ~~merger to the office of the judge of probate in the county in~~
12 ~~which the certificate of formation for each such constituent~~
13 ~~organization was filed along with the proper fee for the judge~~
14 ~~of probate. For each constituent organization which (1) is~~
15 ~~formed under the laws of this state, (2) is, immediately prior~~
16 ~~to the merger becoming effective, an organization described in~~
17 ~~Section 10A-1-4.02(c)(4), and (3) did not file its certificate~~
18 ~~of formation with the judge of probate, but rather in~~
19 ~~accordance with this title filed its certificate of formation~~
20 ~~with the Secretary of State, the Secretary of State shall not~~
21 ~~transmit a certified copy of the statement of merger to the~~
22 ~~office of the judge of probate and shall not collect any fee~~
23 ~~for the judge of probate.~~

24 "(d) A merger becomes effective under this article:

1 "(1) if the surviving organization is a limited
2 liability company, upon the later of:

3 "(A) the filing of the statement of merger with the
4 Secretary of State; or

5 "(B) as specified in the statement of merger; or

6 "(2) if the surviving organization is not a limited
7 liability company, as provided by the governing statute of the
8 surviving organization.

9 "(e) After a merger becomes effective, if the
10 surviving organization is a limited liability company, then,
11 except for certified copies of the statement of merger
12 permitted to be delivered to the judge of probate for filing
13 pursuant to subsection (f), all filing instruments required to
14 be filed under this title regarding that surviving
15 organization shall be ~~filed~~ delivered for filing with to the
16 Secretary of State.

17 "(f) A certified copy of the statement of merger
18 required to be filed under this section may be filed in the
19 real estate records in the office of the judge of probate in
20 any county in which any constituent organization owned real
21 property, without payment and without collection by the judge
22 of probate of any deed or other transfer tax or fee. The judge
23 of probate, however, shall be entitled to collect the filing
24 fee of five dollars (\$5). Any such filing shall evidence chain

1 of title, but lack of filing shall not affect the surviving
2 organization's title to such real property.

3 "(g) A statement of merger ~~shall be~~ is a filing
4 instrument under Chapter 1.

5 "(h) ~~Except as provided in the last sentence of~~
6 ~~subsection (c), the~~ The filing fees for a statement of merger
7 shall be ~~the same fees as provided in Section 10A-1-4.31(a)(5)~~
8 as set forth in Chapter 1.

9 "§10A-5A-10.08.

10 "(a) When a merger becomes effective:

11 "(1) the surviving organization continues or, in the
12 case of a surviving organization created pursuant to the
13 merger, comes into existence;

14 "(2) each constituent organization that merges into
15 the surviving organization ceases to exist as a separate
16 entity;

17 "(3) except as provided in the plan of merger, all
18 property owned by, and every contract right possessed by, each
19 constituent organization, or series thereof, that ceases to
20 exist vests in the surviving organization without transfer,
21 reversion, or impairment and the title to any property and
22 contract rights vested by deed or otherwise in the surviving
23 organization shall not revert, be in any way impaired, or be
24 deemed to be a transfer by reason of the merger;

1 "(4) all debts, obligations, and other liabilities
2 of each constituent organization, or series thereof, other
3 than the surviving organization, are debts, obligations, and
4 other liabilities of the surviving organization, and neither
5 the rights of creditors, nor any liens upon the property of
6 any constituent organization, shall be impaired by the merger;

7 "(5) an action or proceeding pending by or against
8 any constituent organization, or series thereof, continues as
9 if the merger had not occurred and the name of the surviving
10 organization may be, but need not be, substituted in any
11 pending proceeding for the name of any constituent
12 organization whose separate existence ceased in the merger;

13 "(6) except as prohibited by law other than this
14 chapter, or ~~the terms of the merger~~ as provided in the plan of
15 merger, all of the rights, privileges, ~~franchise~~ franchises,
16 immunities, powers, and purposes of each constituent
17 organization, or series thereof, other than the surviving
18 organization, vest in the surviving organization;

19 "(7) except as otherwise provided in the plan of
20 merger, the terms and conditions of the plan of merger take
21 effect;

22 "(8) except as otherwise agreed, if a constituent
23 limited liability company ceases to exist, the merger does not
24 dissolve the limited liability company and does not dissolve a
25 series thereof;

1 "(9) if the surviving organization is created
2 pursuant to the merger:

3 "(A) if it is a limited liability company, the
4 certificate of formation becomes effective; or

5 "(B) if it is an organization other than a limited
6 liability company, the organizational documents that create
7 the organization become effective; and

8 "(10) if the surviving organization existed before
9 the merger, any amendments provided for in the statement of
10 merger for the organizational documents ~~that created the~~ of
11 that organization become effective;

12 "(11) the transferable interests of each limited
13 liability company that is a constituent organization to the
14 merger, and the ownership interests of each organization that
15 is not a limited liability company, but is a constituent
16 organization to the merger, that are to be converted in
17 accordance with the terms of the merger into transferable
18 interests, ownership interests, other securities, obligations,
19 rights to acquire transferable interests, ownership interests,
20 or other securities, cash, other property, or any combination
21 of the foregoing, are converted, and the former holder of such
22 transferable interests or ownership interests is entitled only
23 to the rights provided to that former holder by those terms or
24 the statute governing that former holder's constituent
25 organization; and

1 "(12) if the surviving organization exists before
2 the merger:

3 "(i) except as provided in the plan of merger, all
4 property and contract rights of the surviving organization
5 remain its property and contract rights without transfer,
6 reversion, or impairment;

7 "(ii) the surviving organization remains subject to
8 all its debts, obligations, and other liabilities; and

9 "(iii) except as provided by law other than this
10 chapter, or the plan of merger, the surviving organization
11 continues to hold all of its rights, privileges, franchises,
12 immunities, powers, and purposes.

13 "(b) A surviving organization that is a foreign
14 entity consents to the jurisdiction of this state to enforce
15 any debt, obligation, or other liability owed by a constituent
16 organization, if before the merger the constituent
17 organization was subject to suit in this state on the debt,
18 obligation, or other liability. If a surviving organization
19 that is a foreign entity fails to designate or maintain a
20 registered agent, or the designated registered agent cannot
21 with reasonable diligence be served, then the service of
22 process on that surviving organization for the purposes of
23 enforcing a debt, obligation, or other liability under this
24 subsection may be made in the same manner and has the same
25 consequences as provided in Section 10A-1-5.35.

1 "§10A-8A-9.02.

2 "(a) An organization other than a partnership may
3 convert to a partnership, and a partnership may convert to an
4 organization other than a partnership pursuant to this
5 section, Sections 10A-8A-9.03 through 10A-8A-9.05, and a plan
6 of conversion, if:

7 "(1) the governing statute of the organization that
8 is not a partnership authorizes the conversion;

9 "(2) the law of the jurisdiction governing the
10 converting organization and the converted organization does
11 not prohibit the conversion; and

12 "(3) the converting organization and the converted
13 organization each comply with the governing statute and
14 organizational documents applicable to that organization in
15 effecting the conversion.

16 "(b) A plan of conversion must be in writing and
17 must include:

18 "(1) the name, type of organization, and mailing
19 address of the principal office of the converting
20 organization, and its unique identifying number or other
21 designation as assigned by the Secretary of State, if any,
22 before conversion;

23 "(2) the name, type of organization, and mailing
24 address of the principal office of the converted organization
25 after conversion;

1 "(3) the terms and conditions of the conversion,
2 including the manner and basis for converting interests in the
3 converting organization into any combination of money,
4 interests in the converted organization, and other
5 consideration allowed in Section 10A-8A-9.02(c); and

6 "(4) the organizational documents of the converted
7 organization.

8 "(c) In connection with a conversion, rights or
9 securities of or interests in the converting organization may
10 be exchanged for or converted into cash, property, or rights
11 or securities of or interests in the converted organization,
12 or, in addition to or in lieu thereof, may be exchanged for or
13 converted into cash, property, or rights or securities of or
14 interests in another organization or may be cancelled.

15 "(d) If a partnership is the converting organization
16 and that partnership does not have an effective statement of
17 partnership, statement of not for profit partnership, or
18 statement of limited liability partnership on file with the
19 Secretary of State, then that partnership must, before
20 proceeding with a conversion deliver to the Secretary of State
21 for filing, a statement of partnership, statement of not for
22 profit partnership, or statement of limited liability
23 partnership simultaneously with the delivery to the Secretary
24 of State for filing, of a statement of conversion.

1 "(e) If an organization is converting to a
2 partnership, the converting organization must deliver to the
3 Secretary of State for filing a statement of partnership,
4 statement of not for profit partnership, or a statement of
5 limited liability partnership in accordance with Section
6 10A-8A-9.04.

7 "§10A-8A-9.04.

8 "(a) After a plan of conversion is approved:

9 "(1) if the converting organization is an
10 organization formed under, or its internal affairs are
11 governed by, the laws of this state, the converting
12 organization shall file a statement of conversion in
13 accordance with subsection (c), which statement of conversion
14 must be signed in accordance with Section 10A-8A-2.03 and
15 which must include:

16 "(A) the name, type of organization, and mailing
17 address of the principal office of the converting
18 organization, and its unique identifying number or other
19 designation as assigned by the Secretary of State, if any,
20 before conversion;

21 "(B) the date of the filing of the certificate of
22 formation of the converting organization, if any, and all
23 prior amendments and the filing office or offices, if any,
24 where such is filed;

1 "(C) a statement that the converting organization
2 has been converted into the converted organization;

3 "(D) the name and type of organization of the
4 converted organization and the jurisdiction of its governing
5 statute;

6 "(E) the street and mailing address of the principal
7 office of the converted organization;

8 "(F) the date the conversion is effective under the
9 governing statute of the converted organization;

10 "(G) a statement that the conversion was approved as
11 required by this chapter;

12 "(H) a statement that the conversion was approved as
13 required by the governing statute of the converted
14 organization; and

15 "(I) a statement that a copy of the plan of
16 conversion will be furnished by the converted organization, on
17 request and without cost, to any owner of the converting
18 organization; and

19 "~~(I)~~ (J) if the converted organization is a foreign
20 organization not authorized to conduct business or not for
21 profit activity in this state, the street and mailing address
22 of an office for the purposes of Section 10A-8A-9.05(b); and

23 "(2) if the converted organization is a partnership,
24 the converting organization shall deliver to the Secretary of
25 State for filing a statement of partnership, statement of not

1 for profit partnership, or statement of limited liability
2 partnership, as applicable, which statement of partnership,
3 statement of not for profit partnership, or statement of
4 limited liability partnership must include, in addition to the
5 information required by Section 10A-8A-2.02 or 10A-8A-10.01,
6 as applicable:

7 "(A) a statement that the partnership was converted
8 from the converting organization;

9 "(B) the name and type of organization of the
10 converting organization, ~~and~~ the jurisdiction of the
11 converting organization's governing statute, and the
12 converting organization's unique identifying number or other
13 designation as assigned by the Secretary of State, if any; and

14 "(C) a statement that the conversion was approved in
15 a manner that complied with the converting organization's
16 governing statute.

17 "(3) if the converting organization is a partnership
18 and that partnership does not have an effective statement of
19 partnership, statement of not for profit partnership, or
20 statement of limited liability partnership on file with the
21 Secretary of State, then the converting organization must
22 deliver to the Secretary of State for filing, a statement of
23 partnership, statement of not for profit partnership, or
24 statement of limited liability partnership simultaneously with

1 the delivery to the Secretary of State for filing, of a
2 statement of conversion.

3 "(b) A conversion becomes effective:

4 "(1) if the converted organization is a partnership,
5 when the statement of partnership, statement of not for profit
6 partnership, or statement of limited liability partnership
7 takes effect; and

8 "(2) if the converted organization is not a
9 partnership, as provided by the governing statute of the
10 converted organization.

11 "(c) If the converting organization is an
12 organization formed under, or its internal affairs are
13 governed by, the laws of this state, then the converting
14 organization shall ~~file~~ deliver for filing the statement of
15 conversion required under subsection (a) (1) and the statement,
16 if any, required under subsection (a) (3) ~~with~~ to the Secretary
17 of State ~~in accordance with Section 10A-1-4.02(c) (1)~~.

18 "(d) If the converted organization is a partnership,
19 ~~then, notwithstanding Section 10A-1-4.02(b),~~ the converting
20 organization shall ~~file~~ deliver for filing a statement of
21 partnership, statement of not for profit partnership, or
22 statement of limited liability partnership required under
23 subsection (a) (2) ~~with~~ to the Secretary of State ~~in accordance~~
24 ~~with Section 10A-1-4.02(c) (5), along with the fees specified~~

1 ~~in Section 10A-1-4.31 subject to subsections (f)(3) and (f)(4).~~

2 "(e) If the converting organization is required to
3 ~~file~~ deliver for filing a statement of conversion and a
4 statement of partnership, statement of not for profit
5 partnership, or statement of limited liability partnership
6 ~~with to~~ the Secretary of State, then the converting
7 organization shall ~~file~~ deliver for filing the statement of
8 conversion and the statement of partnership, statement of not
9 for profit partnership, or statement of limited liability
10 partnership ~~with to~~ the Secretary of State simultaneously.

11 ~~"(f) In the case of a statement of conversion that
12 is to be filed with the Secretary of State pursuant to
13 subsection (c):~~

14 ~~"(1) if the converting organization has a
15 certificate of formation filed with the judge of probate, the
16 Secretary of State shall within 10 days transmit a certified
17 copy of the statement of conversion to the office of the judge
18 of probate in the county in which the certificate of formation
19 for such converting organization was filed along with the
20 proper fee for the judge of probate.~~

21 ~~"(2) if the converting organization did not file its
22 certificate of formation with the judge of probate, but rather
23 in accordance with this title filed its certificate of
24 formation with the Secretary of State, the Secretary of State
25 shall not transmit a certified copy of the statement of~~

1 ~~conversion to the office of the judge of probate and shall not~~
2 ~~collect any fee for the judge of probate.~~

3 ~~"(3) if the converting organization is, immediately~~
4 ~~prior to the conversion becoming effective, an organization~~
5 ~~described in Section 10A-1-4.02(c)(4), but is not required~~
6 ~~under this title to file its organizational documents with the~~
7 ~~judge of probate, the Secretary of State shall not transmit a~~
8 ~~certified copy of the statement of conversion to the office of~~
9 ~~the judge of probate and shall not collect any fee for the~~
10 ~~judge of probate.~~

11 ~~"(4) if the converting organization is a~~
12 ~~partnership, the Secretary of State shall not transmit a~~
13 ~~certified copy of the statement of conversion to the office of~~
14 ~~the judge of probate and shall not collect any fee for the~~
15 ~~judge of probate.~~

16 ~~"(g) In the case of a statement of partnership,~~
17 ~~statement of not for profit partnership, or statement of~~
18 ~~limited liability partnership that is to be filed with the~~
19 ~~Secretary of State pursuant to subsection (d), the Secretary~~
20 ~~of State shall not transmit a certified copy of the statement~~
21 ~~of partnership, statement of not for profit partnership, or~~
22 ~~statement of limited liability partnership to the office of~~
23 ~~the judge of probate and shall not collect any fee for the~~
24 ~~judge of probate, but shall collect the fee provided for the~~
25 ~~Secretary of State in Section 10A-1-4.31(a)(1).~~

1 "~~(h)~~(f) After a conversion becomes effective, if the
2 converted organization is a partnership, then, except for (I)
3 certified copies of documents permitted to be delivered to the
4 judge of probate for filing pursuant to subsection (h) and
5 (II) certified copies of statements of authority, denial, and
6 cancellations thereof permitted to be delivered to the judge
7 of probate for filing pursuant to Sections 10A-8A-3.03 and
8 10A-8A-3.04, all filing instruments required to be filed under
9 this title regarding that converted organization shall be
10 filed with the Secretary of State.

11 "~~(i)~~(g) If:

12 "(1) the converting organization is a filing entity,
13 a partnership with an effective statement of partnership,
14 statement of not for profit partnership, or statement of
15 limited liability partnership on file with the Secretary of
16 State, a foreign filing entity registered to conduct business
17 or not for profit activity in this state or a qualified
18 foreign limited liability partnership;

19 "(2) the converted organization will be a filing
20 entity, a partnership with an effective statement of
21 partnership, statement of not for profit partnership, or
22 statement of limited liability partnership on file with the
23 Secretary of State, a foreign filing entity registered to
24 conduct business or not for profit activity in this state or a
25 qualified foreign limited liability partnership;

1 "(3) the name of the converting organization and the
2 converted organization are to be the same, other than words,
3 phrases or abbreviations indicating the type of entity; and

4 "(4) the name of the converted organization complies
5 with Division A of Article 5 of Chapter 1 or Section
6 10A-1-7.07, as the case may be; then notwithstanding Division
7 B of Article 5 of Chapter 1, no name reservation shall be
8 required and the converted organization shall for all purposes
9 of this title be entitled to utilize the name of the
10 converting organization without any further action by the
11 converting organization or the converted organization.

12 "~~(j)~~(h) A certified copy of any document required to
13 be filed under this section may be filed in the real estate
14 records in the office of the judge of probate in any county in
15 which the converting organization owned real property, without
16 payment and without collection by the judge of probate of any
17 deed or other transfer tax or fee. The judge of probate shall,
18 however, be entitled to collect a filing fee of five dollars
19 (\$5). Any such filing shall evidence chain of title, but lack
20 of filing shall not affect the converted organization's title
21 to such real property.

22 "~~(k)~~(i) A statement of conversion is a filing
23 instrument under Chapter 1.

24 "~~(l)~~(j) ~~Except as set forth in subsections (f)(2),~~
25 ~~(f)(3), and (f)(4), the~~ The filing fees for a statement of

1 conversion shall be ~~the same fee as provided in Section~~
2 ~~10A-1-4.31(a)(5)~~ as set forth in Chapter 1.

3 "§10A-8A-9.05.

4 "(a) When a conversion takes effect:

5 "(1) all property and contract rights owned by the
6 converting organization remains vested in the converted
7 organization without ~~reservation~~ transfer, reversion, or
8 impairment and the title to any property vested by deed or
9 otherwise in the converting organization shall not revert or
10 be in any way impaired by reason of the conversion;

11 "(2) all debts, obligations, or other liabilities of
12 the converting organization continue as debts, obligations, or
13 other liabilities of the converted organization and neither
14 the rights of creditors, nor the liens upon the property of
15 the converting organization shall be impaired by the
16 conversion;

17 "(3) an action or proceeding pending by or against
18 the converting organization continues as if the conversion had
19 not occurred and the name of the converted entity may, but
20 need not, be substituted for the name of the converting entity
21 in any pending action or proceeding;

22 "(4) except as prohibited by law other than this
23 chapter, all of the rights, privileges, immunities, powers,
24 and purposes of the converting organization remain vested in
25 the converted organization;

1 "(5) except as otherwise provided in the plan of
2 conversion, the terms and conditions of the plan of conversion
3 take effect;

4 "(6) except as otherwise agreed, for all purposes of
5 the laws of this state, the converting organization shall not
6 be required to wind up its business or not for profit activity
7 or pay its liabilities and distribute its assets, and the
8 conversion shall not be deemed to constitute a dissolution of
9 the converting organization;

10 "(7) for all purposes of the laws of this state, the
11 rights, privileges, powers, interests in property, debts,
12 liabilities and duties of the converting organization, shall
13 be the rights, privileges, powers, interests in property,
14 debts, liabilities and duties of the converted organization,
15 and shall not be deemed as a consequence of the conversion, to
16 have been transferred to the converted organization;

17 "(8) if the converted organization is a partnership,
18 for all purposes of the laws of this state, the partnership
19 shall be deemed to be the same organization as the converting
20 organization, and the conversion shall constitute a
21 continuation of the existence of the converting organization
22 in the form of a partnership;

23 "(9) if the converted organization is a partnership,
24 the existence of the partnership shall be deemed to have
25 commenced on the date the converting organization commenced

1 its existence in the jurisdiction in which the converting
2 organization was first created, formed, organized,
3 incorporated, or otherwise came into being;

4 "(10) the conversion shall not affect the choice of
5 law applicable to matters arising prior to conversion; and

6 "(11) If the Secretary of State has assigned a
7 unique identifying number or other designation to the
8 converting organization and

9 "(i) the converted organization is formed pursuant
10 to, or its internal affairs are governed by, the laws of this
11 state or

12 "(ii) the converted organization is, within 30 days
13 after the effective date of the conversion, registered to
14 transact business in this state, then that unique identifying
15 number or other designation shall continue to be assigned to
16 the converted organization.

17 "(b) A converted organization that is a foreign
18 entity consents to the jurisdiction of the courts of this
19 state to enforce any debt, obligation, or other liability for
20 which the converting partnership is liable if, before the
21 conversion, the converting partnership was subject to suit in
22 this state on the debt, obligation, or other liability. If a
23 converted organization that is a foreign entity fails to
24 designate or maintain a registered agent, or the designated
25 registered agent cannot with reasonable diligence be served,

1 then service of process on that converted organization for the
2 purposes of enforcing a debt, obligation, or other liability
3 under this subsection may be made in the same manner and has
4 the same consequences as provided in Section 10A-1-5.35.

5 "§10A-8A-9.06.

6 "(a) A partnership may merge with one or more other
7 constituent organizations pursuant to this section, Sections
8 10A-8A-9.07 through 10A-8A-9.09, and a plan of merger, if:

9 "(1) the governing statute of each of the other
10 organizations authorizes the merger;

11 "(2) the merger is not prohibited by the law of a
12 jurisdiction that enacted any of those governing statutes; and

13 "(3) each of the other organizations complies with
14 its governing statute in effecting the merger.

15 "(b) A plan of merger must be in writing and must
16 include:

17 "(1) the name, type of organization, and mailing
18 address of the principal office of each constituent
19 organization, the jurisdiction of the governing statute of
20 each constituent organization, and the respective unique
21 identifying numbers or other designations as assigned by the
22 Secretary of State, if any, of each constituent organization;

23 "(2) the name, type of organization, and mailing
24 address of the principal office of the surviving organization, and
25 the unique identifying number or other designation as assigned

1 by the Secretary of State, if any, of the surviving
2 organization, the jurisdiction of the governing statute of the
3 surviving organization, and, if the surviving organization is
4 to be created pursuant to the merger, a statement to that
5 effect;

6 "(3) the terms and conditions of the merger,
7 including the manner and basis for converting the interests in
8 each constituent organization into any combination of money,
9 interests in the surviving organization, and other
10 consideration as allowed by subsection (c);

11 "(4) if the surviving organization is to be created
12 pursuant to the merger, the surviving organization's
13 organizational documents; and

14 "(5) if the surviving organization is not to be
15 created pursuant to the merger, any amendments to be made by
16 the merger to the surviving organization's organizational
17 documents.

18 "(c) In connection with a merger, rights or
19 securities of or interests in a constituent organization may
20 be exchanged for or converted into cash, property, or rights
21 or securities of or interests in the surviving organization,
22 or, in addition to or in lieu thereof, may be exchanged for or
23 converted into cash, property, or rights or securities of or
24 interests in another organization or may be cancelled.

25 "§10A-8A-9.08.

1 "(a) After each constituent organization has
2 approved the plan of merger, a statement of merger must be
3 signed on behalf of:

4 "(1) each constituent partnership, as provided in
5 Section 10A-8A-2.03(a); and

6 "(2) each other constituent organization, as
7 provided by its governing statute.

8 "(b) A statement of merger under this section must
9 include:

10 "(1) the name, type of organization, and mailing
11 address of the principal office of each constituent
12 organization ~~and~~ the jurisdiction of its the governing
13 statute of each constituent organization, and the respective
14 unique identifying numbers or other designations as assigned
15 by the Secretary of State, if any, of each constituent
16 organization;

17 "(2) the name, type of organization, and mailing
18 address of the principal office of the surviving organization,
19 the unique identifying number or other designation as assigned
20 by the Secretary of State, if any, of the surviving
21 organization, the jurisdiction of its the governing statute of
22 the surviving organization, and, if the surviving organization
23 is created pursuant to the merger, a statement to that effect;

24 "(3) the date of the filing of the certificate of
25 formation, if any, and all prior amendments and the filing

1 office or offices, if any, and where such is filed of each
2 constituent organization which was formed under the laws of
3 this state;

4 "(4) the date of the filing of the statement of
5 partnership, statement of not for profit partnership, or
6 statement of limited liability partnership, if any, and all
7 prior amendments and the filing office or offices, if any, and
8 where such is filed of each constituent organization which is
9 a partnership;

10 "(5) the date the merger is effective under the
11 governing statute of the surviving organization;

12 "(6) if the surviving organization is to be created
13 pursuant to the merger:

14 "(A) if it will be a partnership, the partnership's
15 statement of partnership, statement of not for profit
16 partnership, or statement of limited liability partnership; or

17 "(B) if it will be an organization other than a
18 partnership, any organizational document that creates the
19 organization that is required to be in a public writing;

20 "(7) if the surviving organization exists before the
21 merger, any amendments provided for in the plan of merger for
22 the organizational document that are required to be in a
23 public writing;

1 "(8) a statement as to each constituent organization
2 that the merger was approved as required by the organization's
3 governing statute;

4 "(9) a statement that a copy of the plan of merger
5 will be furnished by the surviving organization, on request
6 and without cost, to any owner of any constituent organization
7 which is a party to the merger;

8 "~~(9)~~(10) if the surviving organization is a foreign
9 organization not authorized to conduct business or not for
10 profit activity in this state, the street and mailing address
11 of an office for the purposes of Section 10A-8A-9.09(b); and

12 "~~(10)~~(11) any additional information required by the
13 governing statute of any constituent organization.

14 "(c) Prior to the statement of merger being
15 delivered for filing to the Secretary of State in accordance
16 subsection (d), all constituent organizations that are
17 partnerships, other than a partnership that is created
18 pursuant to the merger, must have on file with the Secretary
19 of State a statement of partnership, statement of not for
20 profit partnership, or statement of limited liability
21 partnership.

22 "(d) The statement of merger shall be delivered for
23 filing to the Secretary of State ~~in accordance with Section~~
24 ~~10A-1-4.02(c)(1), along with the fees specified in Section~~
25 ~~10A-1-4.31, subject to the last two sentences of this~~

1 ~~subsection (d). For each constituent organization which is~~
2 ~~formed under the laws of this state pursuant to a certificate~~
3 ~~of formation and which is not, immediately prior to the merger~~
4 ~~becoming effective, an organization described in Section~~
5 ~~10A-1-4.02(c)(4), the Secretary of State shall within 10 days~~
6 ~~transmit a certified copy of the statement of merger to the~~
7 ~~office of the judge of probate in the county in which the~~
8 ~~certificate of formation for each such constituent~~
9 ~~organization was filed along with the proper fee for the judge~~
10 ~~of probate. For each constituent organization which is formed~~
11 ~~under the laws of this state pursuant to a certificate of~~
12 ~~formation, which is, immediately prior to the merger becoming~~
13 ~~effective, an organization described in Section~~
14 ~~10A-1-4.02(c)(4), but which has a certificate of formation~~
15 ~~filed with the judge of probate, the Secretary of State shall~~
16 ~~transmit a certified copy of the statement of merger to the~~
17 ~~office of the judge of probate in the county in which the~~
18 ~~certificate of formation for each such constituent~~
19 ~~organization was filed along with the proper fee for the judge~~
20 ~~of probate. For each constituent organization which (1) is~~
21 ~~formed under the laws of this state pursuant to a certificate~~
22 ~~of formation, (2) is, immediately prior to the merger becoming~~
23 ~~effective, an organization described in Section~~
24 ~~10A-1-4.02(c)(4), and (3) did not file its certificate of~~
25 ~~formation with the judge of probate, but rather in accordance~~

1 ~~with this title filed its certificate of formation with the~~
2 ~~Secretary of State, the Secretary of State shall not transmit~~
3 ~~a certified copy of the statement of merger to the office of~~
4 ~~the judge of probate and shall not collect any fee for the~~
5 ~~judge of probate. For each constituent organization which is a~~
6 ~~partnership, the Secretary of State shall not transmit a~~
7 ~~certified copy of the statement of merger to the office of the~~
8 ~~judge of probate and shall not collect any fee for the judge~~
9 ~~of probate.~~

10 "(e) A merger becomes effective under this article:

11 "(1) if the surviving organization is a partnership,
12 upon the later of:

13 "(A) the filing of the statement of merger with the
14 Secretary of State; or

15 "(B) as specified in the statement of merger; or

16 "(2) if the surviving organization is not a
17 partnership, as provided by the governing statute of the
18 surviving organization.

19 "(f) After a merger becomes effective, if the
20 surviving organization is a partnership, then, except (I) the
21 statement of merger permitted to be delivered to the judge of
22 probate for filing pursuant to subsection (g) and (II)
23 certified copies of statements of authority, denial, and
24 cancellations thereof permitted to be delivered to the judge
25 of probate for filing pursuant to Sections 10A-8A-3.03 and

1 10A-8A-3.04for certified copies of, all filing instruments
2 required to be filed under this title regarding that surviving
3 organization shall be ~~filed~~ delivered for filing with to the
4 Secretary of State.

5 "(g) A certified copy of the statement of merger
6 required to be filed under this section may be filed in the
7 real estate records in the office of the judge of probate in
8 any county in which any constituent organization owned real
9 property, without payment and without collection by the judge
10 of probate of any deed or other transfer tax or fee. The judge
11 of probate, however, shall be entitled to collect the filing
12 fee of five dollars (\$5). Any such filing shall evidence chain
13 of title, but lack of filing shall not affect the surviving
14 organization's title to such real property.

15 "(h) A statement of merger is a filing instrument
16 under Chapter 1.

17 ~~"(i) Except as provided in the last two sentences of~~
18 ~~subsection (d), the~~ The filing fees for a statement of merger
19 shall be ~~the same fees as provided in Section 10A-1-4.31(a)(5)~~
20 as set forth in Chapter 1.

21 "§10A-8A-9.09.

22 "(a) When a merger becomes effective:

23 "(1) the surviving organization continues or, in the
24 case of a surviving organization created pursuant to the
25 merger, comes into existence;

1 "(2) each constituent organization that merges into
2 the surviving organization ceases to exist as a separate
3 entity;

4 "(3) except as provided in the plan of merger, all
5 property owned by, and every contract right possessed by, each
6 constituent organization that ceases to exist vests in the
7 surviving organization without transfer, reversion, or
8 impairment and the title to any property and contract rights
9 vested by deed or otherwise in the surviving organization
10 shall not revert, be in any way impaired, or be deemed to be a
11 transfer by reason of the merger;

12 "(4) all debts, obligations, and other liabilities
13 of each constituent organization, other than the surviving
14 organization, are debts, obligations, and other liabilities of
15 the surviving organization, and neither the rights of
16 creditors, nor any liens upon the property of any constituent
17 organization, shall be impaired by the merger;

18 "(5) an action or proceeding pending by or against
19 any constituent organization continues as if the merger had
20 not occurred and the name of the surviving organization may
21 be, but need not be, substituted in any pending proceeding for
22 the name of any constituent organization whose separate
23 existence ceased in the merger;

24 "(6) except as prohibited by law other than this
25 chapter, or ~~the terms~~ as provided in the plan of ~~the~~ merger,

1 all of the rights, privileges, franchises, immunities, powers,
2 and purposes of each constituent organization, other than the
3 surviving organization, vest in the surviving organization;

4 "(7) except as otherwise provided in the plan of
5 merger, the terms and conditions of the plan of merger take
6 effect;

7 "(8) except as otherwise agreed, if a constituent
8 partnership ceases to exist, the merger does not dissolve the
9 partnership;

10 "(9) if the surviving organization is created
11 pursuant to the merger:

12 "(A) if it is a partnership, the statement of
13 partnership, statement of not for profit partnership or
14 statement of limited liability partnership becomes effective;
15 or

16 "(B) if it is an organization other than a
17 partnership, the organizational documents that create the
18 organization become effective;

19 "(10) if the surviving organization existed before
20 the merger, any amendments provided for in the statement of
21 merger for the organizational documents of that organization
22 become effective;

23 "(11) the transferable interests of each partnership
24 that is a constituent organization to the merger, and the
25 ownership interests of each organization that is not a

1 partnership, but is a constituent organization to the merger,
2 that are to be converted in accordance with the terms of the
3 merger into transferable interests, ownership interests, other
4 securities, obligations, rights to acquire transferable
5 interests, ownership interests, or other securities, cash,
6 other property, or any combination of the foregoing, are
7 converted, and the former holder of such transferable
8 interests or ownership interests is entitled only to the
9 rights provided to that former holder by those terms or the
10 statute governing that former holder's constituent
11 organization; and

12 "(12) if the surviving organization exists before
13 the merger:

14 "(i) except as provided in the plan of merger all
15 the property and contract rights of the surviving organization
16 remain its property and contract rights without transfer,
17 reversion, or impairment;

18 "(ii) the surviving organization remains subject to
19 all its debts, obligations, and other liabilities; and

20 "(iii) except as provided by law other than this
21 chapter, or the plan of merger, the surviving organization
22 continues to hold all of its rights, privileges, franchises,
23 immunities, powers, and purposes.

24 "(b) A surviving organization that is a foreign
25 entity consents to the jurisdiction of this state to enforce

1 any debt, obligation, or other liability owed by a constituent
2 organization, if before the merger the constituent
3 organization was subject to suit in this state on the debt,
4 obligation, or other liability. If a surviving organization
5 that is a foreign entity fails to designate or maintain a
6 registered agent, or the designated registered agent cannot
7 with reasonable diligence be served, then the service of
8 process on that surviving organization for the purposes of
9 enforcing a debt, obligation, or other liability under this
10 subsection may be made in the same manner and has the same
11 consequences as provided in Section 10A-1-5.35.

12 "§10A-9A-10.02.

13 "(a) An organization other than a limited
14 partnership may convert to a limited partnership, and a
15 limited partnership may convert to an organization other than
16 a limited partnership pursuant to this section, Sections
17 10A-9A-10.03 through 10A-9A-10.05, and a plan of conversion,
18 if:

19 "(1) the governing statute of the organization that
20 is not a limited partnership authorizes the conversion;

21 "(2) the law of the jurisdiction governing the
22 converting organization and the converted organization does
23 not prohibit the conversion; and

24 "(3) the converting organization and the converted
25 organization each comply with the governing statute and

1 organizational documents applicable to that organization in
2 effecting the conversion.

3 "(b) A plan of conversion must be in writing and
4 must include:

5 "(1) the name, type of organization, and mailing
6 address of the principal office of the converting
7 organization, and its unique identifying number or other
8 designation as assigned by the Secretary of State, if any,
9 before conversion;

10 "(2) the name, type of organization, and mailing
11 address of the principal office of the converted organization
12 after conversion;

13 "(3) the terms and conditions of the conversion,
14 including the manner and basis for converting interests in the
15 converting organization into any combination of money,
16 interests in the converted organization, and other
17 consideration allowed in Section 10A-9A-10.02(c); and

18 "(4) the organizational documents of the converted
19 organization.

20 "(c) In connection with a conversion, rights or
21 securities of or interests in the converting organization may
22 be exchanged for or converted into cash, property, or rights
23 or securities of or interests in the converted organization,
24 or, in addition to or in lieu thereof, may be exchanged for or

1 converted into cash, property, or rights or securities of or
2 interests in another organization or may be cancelled.

3 "§10A-9A-10.04.

4 "(a) After a plan of conversion is approved:

5 "(1) if the converting organization is an
6 organization formed under, or its internal affairs are
7 governed by, the laws of this state, the converting
8 organization shall file a statement of conversion in
9 accordance with subsection (c), which statement of conversion
10 must be signed in accordance with Section 10A-9A-2.03(a) and
11 which must include:

12 "(A) the name, type of organization, and mailing
13 address of the principal office of the converting
14 organization, and its unique identifying number or other
15 designation as assigned by the Secretary of State, if any,
16 before conversion;

17 "(B) the date of the filing of the certificate of
18 formation of the converting organization, if any, and all
19 prior amendments and the filing office or offices, if any,
20 where such is filed;

21 "(C) a statement that the converting organization
22 has been converted into the converted organization;

23 "(D) the name and type of organization of the
24 converted organization and the jurisdiction of its governing
25 statute;

1 "(E) the street and mailing address of the principal
2 office of the converted organization;

3 "(F) the date the conversion is effective under the
4 governing statute of the converted organization;

5 "(G) a statement that the conversion was approved as
6 required by this chapter;

7 "(H) a statement that the conversion was approved as
8 required by the governing statute of the converted
9 organization; and

10 "(I) a statement that a copy of the plan of
11 conversion will be furnished by the converted organization, on
12 request and without cost, to any owner of the converting
13 organization; and

14 "~~(I)~~(J) if the converted organization is a foreign
15 organization not authorized to conduct activities and affairs
16 in this state, the street and mailing address of an office for
17 the purposes of Section 10A-9A-10.05(b); and

18 "(2) if the converted organization is a limited
19 partnership, the converting organization shall ~~file~~ deliver
20 for filing a certificate of formation in accordance with
21 subsection (d), which certificate of formation must include,
22 in addition to the information required by Section
23 10A-9A-2.01(a):

24 "(A) a statement that the limited partnership was
25 converted from the converting organization;

1 "(B) the name and type of organization of the
2 converting organization ~~and,~~ the jurisdiction of the
3 converting organization's governing statute, and the
4 converting organization's unique identifying number or other
5 designation as assigned by the Secretary of State, if any; and

6 "(C) a statement that the conversion was approved in
7 a manner that complied with the converting organization's
8 governing statute.

9 "(b) A conversion becomes effective:

10 "(1) if the converted organization is a limited
11 partnership, when the certificate of formation takes effect;
12 and

13 "(2) if the converted organization is not a limited
14 partnership, as provided by the governing statute of the
15 converted organization.

16 "(c) If the converting organization is an
17 organization formed under, or its internal affairs are
18 governed by, the laws of this state, then the converting
19 organization shall ~~file~~ deliver for filing the statement of
20 conversion required under subsection (a) (1) ~~with~~ to the
21 Secretary of State ~~in accordance with Section~~
22 ~~10A-1-4.02(c)(1).~~

23 "(d) If the converted organization is a limited
24 partnership, ~~then, notwithstanding Section 10A-1-4.02(b),~~ the
25 converting organization shall ~~file~~ deliver for filing the

1 certificate of formation required under subsection (a) (2) ~~with~~
2 ~~to~~ the Secretary of State ~~in accordance with Section~~
3 ~~10A-1-4.02(c)(5), along with the fees specified in Section~~
4 ~~10A-1-4.31 subject to subsection (f)(3).~~

5 "(e) If the converting organization is required to
6 ~~file~~ deliver for filing a statement of conversion and a
7 certificate of formation ~~with~~ to the Secretary of State, then
8 the converting organization shall ~~file~~ deliver for filing the
9 statement of conversion and the certificate of formation ~~with~~
10 to the Secretary of State simultaneously.

11 "~~(f) In the case of a statement of conversion that~~
12 ~~is to be filed with the Secretary of State pursuant to~~
13 ~~subsections (c):~~

14 "~~(1) if the converting organization has a~~
15 ~~certificate of formation filed with the judge of probate, the~~
16 ~~Secretary of State shall within 10 days transmit a certified~~
17 ~~copy of the statement of conversion to the office of the judge~~
18 ~~of probate in the county in which the certificate of formation~~
19 ~~for such converting organization was filed along with the~~
20 ~~proper fee for the judge of probate.~~

21 "~~(2) if the converting organization did not file its~~
22 ~~certificate of formation with the judge of probate, but rather~~
23 ~~in accordance with this title filed its certificate of~~
24 ~~formation with the Secretary of State, the Secretary of State~~
25 ~~shall not transmit a certified copy of the statement of~~

1 ~~conversion to the office of the judge of probate and shall not~~
2 ~~collect any fee for the judge of probate.~~

3 ~~"(3) if the converting organization is, immediately~~
4 ~~prior to the conversion becoming effective, an organization~~
5 ~~described in Section 10A-1-4.02(c)(4), but is not required~~
6 ~~under this title to file its organizational documents with the~~
7 ~~judge of probate, the Secretary of State shall not transmit a~~
8 ~~certified copy of the statement of the statement of conversion~~
9 ~~to the office of the judge of probate and shall not collect~~
10 ~~any fee for the judge of probate.~~

11 ~~"(g) In the case of a certificate of formation that~~
12 ~~is to be filed with the Secretary of State pursuant to~~
13 ~~subsection (d), the Secretary of State shall not transmit a~~
14 ~~certified copy of the certificate of formation to the office~~
15 ~~of the judge of probate and shall not collect any fee for the~~
16 ~~judge of probate, but shall collect the fee provided for the~~
17 ~~Secretary of State in Section 10A-1-4.31(a)(1).~~

18 ~~"(h)(f) After a conversion becomes effective, if the~~
19 ~~converted organization is a limited partnership, then, except~~
20 ~~for certified copies of documents permitted to be delivered to~~
21 ~~the judge of probate for filing pursuant to subsection (h),~~
22 ~~all filing instruments required to be filed under this title~~
23 ~~regarding that converted organization shall be filed with the~~
24 ~~Secretary of State.~~

25 ~~"(i)(g) If:~~

1 "(1) the converting organization is a filing entity
2 or a foreign filing entity registered to conduct activities
3 and affairs in this state;

4 "(2) the converted organization will be a filing
5 entity or a foreign filing entity registered to conduct
6 activities and affairs in this state;

7 "(3) the name of the converting organization and the
8 converted organization are to be the same, other than words,
9 phrases or abbreviations indicating the type of entity; and

10 "(4) the name of the converted organization complies
11 with Division A of Article 5 of Chapter 1 or Section
12 10A-1-7.07, as the case may be; then notwithstanding Division
13 B of Article 5 of Chapter 1, no name reservation shall be
14 required and the converted organization shall for all purpose
15 of this title be entitled to utilize the name of the
16 converting organization without any further action by the
17 converting organization or the converted organization.

18 "~~(j)~~ (h) A certified copy of any document required to
19 be filed under this section may be filed in the real estate
20 records in the office of the judge of probate in any county in
21 which the converting organization owned real property, without
22 payment and without collection by the judge of probate of any
23 deed or other transfer tax or fee. The judge of probate shall,
24 however, be entitled to collect a filing fee of five dollars
25 (\$5). Any such filing shall evidence chain of title, but lack

1 of filing shall not affect the converted organization's title
2 to such real property.

3 ~~"(k)(i)~~ A statement of conversion shall be is a
4 filing instrument under Chapter 1.

5 ~~"(l)(j) Except as set forth in subsection (f)(2),~~
6 ~~the~~ The filing fees for a statement of conversion shall be ~~the~~
7 ~~same fee as provided in Section 10A-1-4.31(a)(5)~~ as set forth
8 in Chapter 1.

9 "§10A-9A-10.05.

10 "(a) When a conversion takes effect:

11 "(1) all property and contract rights owned by the
12 converting organization remains vested in the converted
13 organization without ~~reservation~~ transfer, reversion, or
14 impairment and the title to any property vested by deed or
15 otherwise in the converting organization shall not revert or
16 be in any way impaired by reason of the conversion;

17 "(2) all debts, obligations, or other liabilities of
18 the converting organization continue as debts, obligations, or
19 other liabilities of the converted organization and neither
20 the rights of creditors, nor the liens upon the property of
21 the converting organization shall be impaired by the
22 conversion;

23 "(3) an action or proceeding pending by or against
24 the converting organization continues as if the conversion had
25 not occurred and the name of the converted entity may, but

1 need not, be substituted for the name of the converting entity
2 in any pending action or proceeding;

3 "(4) except as prohibited by law other than this
4 chapter, all of the rights, privileges, immunities, powers,
5 and purposes of the converting organization remain vested in
6 the converted organization;

7 "(5) except as otherwise provided in the plan of
8 conversion, the terms and conditions of the plan of conversion
9 take effect;

10 "(6) except as otherwise agreed, for all purposes of
11 the laws of this state, the converting organization shall not
12 be required to wind up its affairs or pay its liabilities and
13 distribute its assets, and the conversion shall not be deemed
14 to constitute a dissolution of the converting organization;

15 "(7) for all purposes of the laws of this state, the
16 rights, privileges, powers, interests in property, debts,
17 liabilities, and duties of the converting organization, shall
18 be the rights, privileges, powers, interests in property,
19 debts, liabilities, and duties of the converted organization,
20 and shall not be deemed as a consequence of the conversion, to
21 have been transferred to the converted organization;

22 "(8) if the converted organization is a limited
23 partnership, for all purposes of the laws of this state, the
24 limited partnership shall be deemed to be the same
25 organization as the converting organization, and the

1 conversion shall constitute a continuation of the existence of
2 the converting organization in the form of a limited
3 partnership;

4 "(9) if the converted organization is a limited
5 partnership, the existence of the limited partnership shall be
6 deemed to have commenced on the date the converting
7 organization commenced its existence in the jurisdiction in
8 which the converting organization was first created, formed,
9 organized, incorporated, or otherwise came into being;

10 "(10) the conversion shall not affect the choice of
11 law applicable to matters arising prior to conversion; and

12 "(11) if the Secretary of State has assigned a
13 unique identifying number or other designation to the
14 converting organization and (i) the converted organization is
15 formed pursuant to, or its internal affairs are governed by,
16 the laws of this state or (ii) the converted organization is,
17 within 30 days after the effective date of the conversion,
18 registered to transact business in this state, then that
19 unique identifying number or other designation shall continue
20 to be assigned to the converted organization.

21 "(b) A converted organization that is a foreign
22 entity consents to the jurisdiction of the courts of this
23 state to enforce any debt, obligation, or other liability for
24 which the converting limited partnership, or series thereof,
25 is liable if, before the conversion, the converting limited

1 partnership was subject to suit in this state on the debt,
2 obligation, or other liability. If a converted organization
3 that is a foreign entity fails to designate or maintain a
4 registered agent, or the designated registered agent cannot
5 with reasonable diligence be served, then service of process
6 on that converted organization for the purposes of enforcing a
7 debt, obligation, or other liability under this subsection may
8 be made in the same manner and has the same consequences as
9 provided in Section 10A-1-5.35.

10 "§10A-9A-10.06.

11 "(a) A limited partnership may merge with one or
12 more other constituent organizations pursuant to this section,
13 Sections 10A-9A-10.07 through 10A-9A-10.09, and a plan of
14 merger, if:

15 "(1) the governing statute of each of the other
16 organizations authorizes the merger;

17 "(2) the merger is not prohibited by the law of a
18 jurisdiction that enacted any of those governing statutes; and

19 "(3) each of the other organizations complies with
20 its governing statute in effecting the merger.

21 "(b) A plan of merger must be in writing and must
22 include:

23 "(1) the name, type of organization, and mailing
24 address of the principal office of each constituent
25 organization, the jurisdiction of the governing statute of

1 each constituent organization, and the respective unique
2 identifying numbers or other designations as assigned by the
3 Secretary of State, if any, of each constituent organization;

4 "(2) the name, type of organization, and mailing
5 address of the principal office of the surviving organization,
6 the unique identifying number or other designation as assigned
7 by the Secretary of State, if any, of the surviving
8 organization, the jurisdiction of the governing statute of the
9 surviving organization, and, if the surviving organization is
10 to be created pursuant to the merger, a statement to that
11 effect;

12 "(3) the terms and conditions of the merger,
13 including the manner and basis for converting the interests in
14 each constituent organization into any combination of money,
15 interests in the surviving organization, and other
16 consideration as allowed by subsection (c);

17 "(4) if the surviving organization is to be created
18 pursuant to the merger, the surviving organization's
19 organizational documents; and

20 "(5) if the surviving organization is not to be
21 created pursuant to the merger, any amendments to be made by
22 the merger to the surviving organization's organizational
23 documents.

24 "(c) In connection with a merger, rights or
25 securities of or interests in a constituent organization may

1 be exchanged for or converted into cash, property, or rights
2 or securities of or interests in the surviving organization,
3 or, in addition to or in lieu thereof, may be exchanged for or
4 converted into cash, property, or rights or securities of or
5 interests in another organization or may be cancelled.

6 "§10A-9A-10.08.

7 "(a) After each constituent organization has
8 approved the plan of merger, a statement of merger must be
9 signed on behalf of:

10 "(1) each constituent limited partnership, as
11 provided in Section 10A-9A-2.03(a); and

12 "(2) each other constituent organization, as
13 provided by its governing statute.

14 "(b) A statement of merger under this section must
15 include:

16 "(1) the name, type of organization, and mailing
17 address of the principal office of each constituent
18 organization ~~and,~~ the jurisdiction of ~~its~~ the governing
19 statute of each constituent organization, and the respective
20 unique identifying numbers or other designations as assigned
21 by the Secretary of State, if any, of each constituent
22 organization;

23 "(2) the name, type of organization, and mailing
24 address of the principal office of the surviving organization,
25 the unique identifying number or other designation as assigned

1 by the Secretary of State, if any of the surviving
2 organization, the jurisdiction of ~~its~~ the governing statute of
3 the surviving organization, and, if the surviving organization
4 is created pursuant to the merger, a statement to that effect;

5 "(3) the date of the filing of the certificate of
6 formation, if any, and all prior amendments and the filing
7 office or offices, if any, and where such is filed of each
8 constituent organization which was formed under the laws of
9 this state;

10 "(4) the date the merger is effective under the
11 governing statute of the surviving organization;

12 "(5) if the surviving organization is to be created
13 pursuant to the merger:

14 "(A) if it will be a limited partnership, the
15 limited partnership's certificate of formation; or

16 "(B) if it will be an organization other than a
17 limited partnership, any organizational document that creates
18 the organization that is required to be in a public writing;

19 "(6) if the surviving organization exists before the
20 merger, any amendments provided for in the plan of merger for
21 the organizational document that created the organization that
22 are required to be in a public writing;

23 "(7) a statement as to each constituent organization
24 that the merger was approved as required by the organization's
25 governing statute;

1 "(8) a statement that a copy of the plan of merger
2 will be furnished by the surviving organization, on request
3 and without cost, to any owner of any constituent organization
4 which is a party to the merger;

5 ~~"(8)(9)~~ if the surviving organization is a foreign
6 organization not authorized to conduct activities and affairs
7 in this state, the street and mailing address of an office for
8 the purposes of Section 10A-9A-10.09(b); and

9 ~~"(9)(10)~~ any additional information required by the
10 governing statute of any constituent organization.

11 "(c) The statement of merger shall be delivered for
12 filing to the Secretary of State ~~in accordance with Section~~
13 ~~10A-1-4.02(c)(1), along with the fees specified in Section~~
14 ~~10A-1-4.31, subject to the last sentence of this subsection~~
15 ~~(c). For each constituent organization which is formed under~~
16 ~~the laws of this state and which is not, immediately prior to~~
17 ~~the merger becoming effective, an organization described in~~
18 ~~Section 10A-1-4.02(c)(4), the Secretary of State shall within~~
19 ~~10 days transmit a certified copy of the statement of merger~~
20 ~~to the office of the judge of probate in the county in which~~
21 ~~the certificate of formation for each such constituent~~
22 ~~organization was filed along with the proper fee for the judge~~
23 ~~of probate. For each constituent organization which is formed~~
24 ~~under the laws of this state and which is, immediately prior~~
25 ~~to the merger becoming effective, an organization described in~~

1 ~~Section 10A-1-4.02(c)(4), but which has a certificate of~~
2 ~~formation filed with the judge of probate, the Secretary of~~
3 ~~State shall transmit a certified copy of the statement of~~
4 ~~merger to the office of the judge of probate in the county in~~
5 ~~which the certificate of formation for each such constituent~~
6 ~~organization was filed along with the proper fee for the judge~~
7 ~~of probate. For each constituent organization which (1) is~~
8 ~~formed under the laws of this state, (2) is, immediately prior~~
9 ~~to the merger becoming effective, an organization described in~~
10 ~~Section 10A-1-4.02(c)(4), and (3) did not file its certificate~~
11 ~~of formation with the judge of probate, but rather in~~
12 ~~accordance with this title filed its certificate of formation~~
13 ~~with the Secretary of State, the Secretary of State shall not~~
14 ~~transmit a certified copy of the statement of merger to the~~
15 ~~office of the judge of probate and shall not collect any fee~~
16 ~~for the judge of probate.~~

17 "(d) A merger becomes effective under this article:

18 "(1) if the surviving organization is a limited
19 partnership, upon the later of:

20 "(A) the filing of the statement of merger with the
21 Secretary of State; or

22 "(B) as specified in the statement of merger; or

23 "(2) if the surviving organization is not a limited
24 partnership, as provided by the governing statute of the
25 surviving organization.

1 "(e) After a merger becomes effective, if the
2 surviving organization is a limited partnership, then, except
3 for certified copies of the statement of merger permitted to
4 be delivered to the judge of probate for filing pursuant to
5 subsection (f), all filing instruments required to be filed
6 under this title regarding that surviving organization shall
7 be ~~filed~~ delivered for filing with to the Secretary of State.

8 "(f) A certified copy of the statement of merger
9 required to be filed under this section may be filed in the
10 real estate records in the office of the judge of probate in
11 any county in which any constituent organization owned real
12 property, without payment and without collection by the judge
13 of probate of any deed or other transfer tax or fee. The judge
14 of probate, however, shall be entitled to collect the filing
15 fee of five dollars (\$5). Any such filing shall evidence chain
16 of title, but lack of filing shall not affect the surviving
17 organization's title to such real property.

18 "(g) A statement of merger ~~shall be~~ is a filing
19 instrument under Chapter 1.

20 "~~Except as provided in the last sentence of~~
21 ~~subsection (c), the~~ The filing fees for a statement of merger
22 shall be ~~the same fees as provided in Section 10A-1-4.31(a)(5)~~
23 as set forth in Chapter 1.

24 "§10A-9A-10.09.

25 "(a) When a merger becomes effective:

1 "(1) the surviving organization continues or, in the
2 case of a surviving organization created pursuant to the
3 merger, comes into existence;

4 "(2) each constituent organization that merges into
5 the surviving organization ceases to exist as a separate
6 entity;

7 "(3) except as provided in the plan of merger all
8 property owned by, and every contract right possessed by, each
9 constituent organization that ceases to exist vests in the
10 surviving organization without transfer, reversion, or
11 impairment and the title to any property and contract rights
12 vested by deed or otherwise in the surviving organization
13 shall not revert, be in any way impaired, or be deemed to be a
14 transfer by reason of the merger;

15 "(4) all debts, obligations, and other liabilities
16 of each constituent organization, other than the surviving
17 organization, are debts, obligations, and other liabilities of
18 the surviving organization, and neither the rights of
19 creditors, nor any liens upon the property of any constituent
20 organization, shall be impaired by the merger;

21 "(5) an action or proceeding pending by or against
22 any constituent organization, ~~or series thereof,~~ continues as
23 if the merger had not occurred and the name of the surviving
24 organization may be, but need not be, substituted in any

1 pending proceeding for the name of any constituent
2 organization whose separate existence ceased in the merger;

3 "(6) except as prohibited by law other than this
4 chapter, or ~~the terms~~ as provided in the plan of ~~the~~ merger,
5 all of the rights, privileges, ~~franchise~~ franchises,
6 immunities, powers, and purposes of each constituent
7 organization, other than the surviving organization, vest in
8 the surviving organization;

9 "(7) except as otherwise provided in the plan of
10 merger, the terms and conditions of the plan of merger take
11 effect;

12 "(8) except as otherwise agreed, if a constituent
13 limited partnership ceases to exist, the merger does not
14 dissolve the limited partnership;

15 "(9) if the surviving organization is created
16 pursuant to the merger:

17 "(A) if it is a limited partnership, the certificate
18 of formation becomes effective; or

19 "(B) if it is an organization other than a limited
20 partnership, the organizational documents that create the
21 organization become effective; ~~and~~

22 "(10) if the surviving organization existed before
23 the merger, any amendments provided for in the statement of
24 merger for the organizational documents ~~that created the~~ of
25 that organization become effective;

1 "(11) the transferable interests of each limited
2 partnership that is a constituent organization to the merger,
3 and the ownership interests of each organization that is not a
4 limited partnership, but is a constituent organization to the
5 merger, that are to be converted in accordance with the terms
6 of the merger into transferable interest, ownership interests,
7 other securities, obligations, rights to acquire transferable
8 interest, ownership interests, or other securities, cash,
9 other property, or any combination of the foregoing, are
10 converted, and the former holder of such transferable
11 interests or ownership interests is entitled only to the
12 rights provided to that former holder by those terms or the
13 statute governing that former holder's constituent
14 organization; and

15 "(12) if the surviving organization exists before
16 the merger:

17 "(i) except as provided in the plan of merger, all
18 the property and contract rights of the surviving organization
19 remain its property and contract rights without transfer,
20 reversion, or impairment;

21 "(ii) the surviving organization remains subject to
22 all its debts, obligations, and other liabilities; and

23 "(iii) except as provided by law other than this
24 chapter, or the plan of merger, the surviving organization

1 continues to hold all of its rights, privileges, franchises,
2 immunities, powers, and purposes.

3 "(b) A surviving organization that is a foreign
4 entity consents to the jurisdiction of this state to enforce
5 any debt, obligation, or other liability owed by a constituent
6 organization, if before the merger the constituent
7 organization was subject to suit in this state on the debt,
8 obligation, or other liability. If a surviving organization
9 that is a foreign entity fails to designate or maintain a
10 registered agent, or the designated registered agent cannot
11 with reasonable diligence be served, then the service of
12 process on that surviving organization for the purposes of
13 enforcing a debt, obligation, or other liability under this
14 subsection may be made in the same manner and has the same
15 consequences as provided in Section 10A-1-5.35.

16 "§10A-10-1.09.

17 "A real estate investment trust has the power to:

18 "(1) Unless the declaration of trust provides
19 otherwise, have perpetual existence unaffected by any rule
20 against perpetuities.

21 "(2) Sue, be sued, complain, and defend in all
22 courts.

23 "(3) Transact its business, carry on its operations,
24 and exercise the powers granted by this chapter in any state,

1 territory, district, or possession of the United States and in
2 any foreign country.

3 "(4) Make contracts, incur liabilities, and borrow
4 money.

5 "(5) Sell, mortgage, lease, pledge, exchange,
6 convey, transfer, and otherwise dispose of all or any part of
7 its assets.

8 "(6) Issue bonds, notes, and other obligations, and
9 secure them by mortgage or deed of trust of all or any part of
10 its assets.

11 "(7) Subject to Section 10A-10-1.10, acquire by
12 purchase, or in any other manner, take, receive, own, hold,
13 use, employ, improve, encumber, and otherwise deal with any
14 interest in real and personal property, wherever located.

15 "(8) Purchase, take, receive, subscribe for, or
16 otherwise acquire, own, hold, vote, use, employ, sell,
17 mortgage, loan, pledge, or otherwise dispose of and deal with:

18 "a. Securities, shares, and other interests in any
19 obligations of domestic and foreign corporations, other real
20 estate investment trusts, associations, partnerships, and
21 individuals.

22 "b. Direct and indirect obligations of the United
23 States, any other government, state, territory, government
24 district, and municipality, and any of their
25 instrumentalities.

1 "(9) Elect or appoint trustees, officers, and agents
 2 of the trust for the period of time the declaration of trust
 3 or bylaws provide, define their duties, and determine their
 4 compensation.

5 "(10) Adopt and implement employee or officer
 6 benefit plans.

7 "(11) Make and alter bylaws not inconsistent with
 8 law or with its declaration of trust to regulate the
 9 government of the real estate investment trust and the
 10 administration of its affairs.

11 "(12) Exercise these powers, including the power to
 12 take, hold, and dispose of the title to real and personal
 13 property in the name of the trust or in the name of its
 14 trustees, without the filing of any bond.

15 "(13) Generally exercise the powers set forth in its
 16 declaration of trust which are not inconsistent with law and
 17 are appropriate to promote and attain the purposes set forth
 18 in its declaration of trust.

19 "(14) Indemnify or advance expenses to trustees,
 20 officers, employees, and agents of the trust to the same
 21 extent as permitted for directors, officers, employees, and
 22 agents of an Alabama corporation under ~~Sections 10A-2-8.50 to~~
 23 ~~10A-2-8.58, inclusive~~ the Alabama Business Corporation Law.

24 "§10A-10-1.12.

1 "A shareholder has the same right to inspect the
2 records of the real estate investment trust as a shareholder
3 of a corporation under ~~Section 10A-2-16.02~~ the Alabama
4 Business Corporation Law.

5 "§10A-10-1.15.

6 "(a) For purposes of this section, the following
7 words shall have the respective meanings ascribed to them:

8 "(1) ALABAMA REAL ESTATE INVESTMENT TRUST. A real
9 estate investment trust organized in compliance with the
10 provisions of this chapter.

11 "(2) BUSINESS TRUST.

12 "a. An entity described in Section 10A-16-1.01.

13 "b. An unincorporated trust or association,
14 including an Alabama real estate investment trust, a
15 common-law trust, or a Massachusetts trust, which is engaged
16 in business and in which property is acquired, held, managed,
17 administered, controlled, invested, or disposed of for the
18 benefit and profit of any person who may become a holder of a
19 transferable unit of beneficial interest in the trust.

20 "(3) DOMESTIC LIMITED LIABILITY COMPANY. A limited
21 liability company formed under the laws of this state.

22 "(4) DOMESTIC LIMITED PARTNERSHIP. A partnership
23 formed by two or more persons under the laws of the state and
24 having one or more general partners and one or more limited
25 partners.

1 "(5) FOREIGN BUSINESS TRUST. A business trust
2 organized under the laws of the United States, another state
3 of the United States, or a territory, possession, or district
4 of the United States.

5 "(6) FOREIGN LIMITED LIABILITY COMPANY. A limited
6 liability company formed under the laws of any state other
7 than the State of Alabama or under the laws of a foreign
8 country.

9 "(7) FOREIGN LIMITED PARTNERSHIP. A partnership
10 formed under the laws of any state other than the State of
11 Alabama or under the laws of a foreign country and having as
12 partners one or more general partners and one or more limited
13 partners.

14 "(b) Unless the declaration of trust provides
15 otherwise, an Alabama real estate investment trust may merge
16 into an Alabama or foreign business trust, into an Alabama or
17 foreign corporation having capital stock, or into a domestic
18 or foreign limited partnership or limited liability company;
19 or one or more business trusts, corporations, domestic or
20 foreign limited partnerships, or limited liability companies
21 may merge into an Alabama real estate investment trust.

22 "(c) A merger shall be approved in the manner
23 provided by this section, except that:

24 "(1) A foreign business trust, an Alabama business
25 trust, other than an Alabama real estate investment trust, a

1 corporation, a domestic or foreign limited partnership, or a
2 domestic or foreign limited liability company party to the
3 merger shall have the merger advised, authorized, and approved
4 in the manner and by the vote required by its declaration of
5 trust, charter, or partnership agreement, and the laws of the
6 place where it is organized.

7 "(2) A merger needs to be approved by an Alabama
8 real estate investment trust successor only by a majority of
9 its entire board of trustees if:

10 "a. The merger does not reclassify or change its
11 outstanding shares or otherwise amend its declaration of
12 trust.

13 "b. The number of shares to be issued or delivered
14 in the merger is not more than 15 percent of the number of its
15 shares of the same class or series outstanding immediately
16 before the merger becomes effective.

17 "(d) The board of trustees of each Alabama real
18 estate investment trust proposing to merge shall:

19 "(1) Adopt a resolution that declares the proposed
20 transaction is advisable in substantially the terms and
21 conditions set forth or referred to in the resolution.

22 "(2) Direct that the proposed transaction be
23 submitted for consideration at either an annual or special
24 meeting of shareholders.

1 "(e) Notice which states that a purpose of a meeting
2 will be to act upon the proposed merger shall be given by each
3 Alabama real estate investment trust in the manner provided
4 for corporations by ~~Chapter 2~~ the Alabama Business Corporation
5 Law, to:

6 "(1) Each of its shareholders entitled to vote on
7 the proposed transaction.

8 "(2) Each of its shareholders not entitled to vote
9 on the proposed transaction, except the shareholders of a
10 successor in a merger if the merger does not alter the
11 contract rights of their shares as expressly set forth in the
12 declaration of trust.

13 "(f) Except as provided in subsection (c) of Section
14 10A-10-1.06, the proposed merger shall be approved by the
15 shareholders of each Alabama real estate investment trust by
16 the affirmative vote of two-thirds of all the votes entitled
17 to be cast on the matter.

18 "(g) Articles of merger containing the information
19 required by ~~Section 10A-2-11.05~~ the Alabama Business
20 Corporation Law, and the other provisions as permitted by that
21 section shall be:

22 "(1) Executed for each party to the articles of
23 merger in the manner required by ~~Article 1 of Chapter 2~~ the
24 Alabama Business Corporation Law.

1 "(2) Filed for the record in the Office of the
2 Secretary of State in accordance with the provisions of
3 Article 4 of Chapter 1.

4 "(h) (1) A proposed merger may be abandoned before
5 the effective date of the articles of merger:

6 "a. If the articles of merger so provide, by
7 majority vote of the entire board of trustees of any one
8 business trust party to the articles or by a majority of the
9 entire board of directors of any one corporation party to the
10 articles.

11 "b. Unless the articles of merger provide otherwise
12 by a majority vote of the entire board of trustees of each
13 Alabama real estate investment trust party to the articles.

14 "c. By unanimous consent of the members of a limited
15 liability company party to the articles of merger.

16 "d. By unanimous consent of the partners of a
17 limited partnership party to the articles of merger.

18 "(2) If the articles of merger have been filed in
19 the Office of the Secretary of State, notice of the
20 abandonment shall be given promptly to the Secretary of State.

21 "(3)a. If the proposed merger is abandoned as
22 provided in this subsection, no legal liability arises under
23 the articles of merger.

24 "b. An abandonment does not prejudice the rights of
25 any person under any other contract made by a business trust,

1 corporation, limited partnership, or limited liability company
2 party to the proposed articles of merger in connection with
3 the proposed merger.

4 "c. Each shareholder of an Alabama real estate
5 investment trust objecting to a merger of the Alabama real
6 estate investment trust shall have the same rights as ~~an~~
7 ~~objecting shareholder~~ a stockholder of an Alabama corporation
8 under Article 13 of Chapter 2A and under the same procedures.

9 "(i) The Secretary of State shall prepare
10 certificates of merger that specify:

11 "(1) The name of each party to the articles of
12 merger.

13 "(2) The name of the successor and the location of
14 its principal office in this state or, if it has none, its
15 principal place of business.

16 "(3) The time the articles of merger are accepted
17 for record by the Secretary of State.

18 "(j) If the successor in a merger is an Alabama real
19 estate investment trust, a merger is effective as of the later
20 of:

21 "(1) The time the Secretary of State accepts the
22 articles of merger for record.

23 "(2) The time established under the articles of
24 merger, not to exceed 30 days after the articles are accepted
25 for record.

1 "(k) (1) If the successor in a merger is a foreign
2 corporation, a foreign limited partnership, a foreign limited
3 liability company, or an Alabama or foreign business trust,
4 other than an Alabama real estate investment trust, the merger
5 is effective as of the later of:

6 "a. The time specified by the law of the place where
7 the successor is organized.

8 "b. The time the Secretary of State accepts the
9 articles of merger for record.

10 "(2) A foreign successor in a merger may file for
11 record with the judge of probate a certificate from the place
12 where it is organized which certifies the date the articles of
13 merger were filed. However, the failure to file this
14 certificate does not invalidate the merger.

15 "(1) (1) Consummation of a merger has the effects
16 provided in this subsection.

17 "(2) The separate existence of each business trust,
18 corporation, limited partnership, or limited liability company
19 party to the articles of merger, except the successor, ceases.

20 "(3) The shares of each business trust party to the
21 articles of merger which are to be converted or exchanged
22 under the terms of the articles cease to exist, subject to the
23 rights of an objecting shareholder under this section.

24 "(4) In addition to any other purposes and powers
25 set forth in the articles, if the articles of merger provide,

1 the successor has the purposes and powers of each party to the
2 articles.

3 "(5)a. The assets of each party to the articles of
4 merger, including any legacies which it would have been
5 capable of taking, transfer to, vest in, and devolve on the
6 successor without further act or deed.

7 "b. Confirmatory deeds, assignments, or similar
8 instruments to evidence the transfer may be executed and
9 delivered at any time in the name of the transferring party to
10 the articles of merger by its last acting officers or trustees
11 or by the appropriate officers or trustees of the successor.

12 "(6)a. The successor is liable for all the debts and
13 obligations of each nonsurviving party to the articles of
14 merger. An existing claim, action, or proceeding pending by or
15 against any nonsurviving party to the articles of merger may
16 be prosecuted to judgment as if the merger had not taken
17 place, or, on motion of the successor or any party, the
18 successor may be substituted as a party and the judgment
19 against the nonsurviving party to the articles of merger
20 constitutes a lien on the property of the successor.

21 "b. A merger does not impair the rights of creditors
22 or any liens on the property of any business trust,
23 corporation, limited partnership, or limited liability company
24 which is a party to the articles of merger.

1 "(m) This section is not exclusive. Real estate
2 investment trusts may merge or exchange their shares in any
3 other manner provided by law, including pursuant to the
4 provisions of Article ~~18~~ of Chapter ~~81~~.

5 "§10A-10-1.16.

6 "(a) A real estate investment trust may terminate
7 its existence by voluntary dissolution and wind up its
8 business and affairs in the manner and on the grounds provided
9 in ~~Article 14 of Chapter 2~~ the Alabama Business Corporation
10 Law.

11 "(b) A real estate investment trust may curtail or
12 cease its trust activities by partially or completely
13 distributing its assets.

14 "(c) (1) The Attorney General may institute
15 proceedings to dissolve a real estate investment trust which
16 has abused, misused, or failed to use its powers. The
17 proceedings shall be brought in the manner and on the grounds
18 provided in ~~Article 14 of Chapter 2 of this title~~ the Alabama
19 Business Corporation Law, with respect to judicial dissolution
20 of a corporation.

21 "(2) The venue of an action under this subsection is
22 in a county where an officer or resident agent of the real
23 estate investment trust is located.

24 "§10A-11-1.01.

1 "This chapter and the provisions of (A) Chapter 1
2 and (B) Chapter 2 or Chapter 2A, as applicable, to the extent
3 applicable to employee cooperative associations may be cited
4 as the "Alabama Employee Cooperative Corporations Law."

5 "§10A-11-1.03.

6 "Any corporation ~~organized under Chapter 2~~ governed
7 by the Alabama Business Corporation Law may elect to be
8 governed as an employee cooperative under this chapter, by so
9 stating in its certificate of formation or certificate of
10 amendment filed in accordance with ~~Chapter 2~~ the Alabama
11 Business Corporation Law.

12 "§10A-11-1.04.

13 "An employee cooperative may revoke its election
14 under this chapter by a vote of two-thirds of the members and
15 through articles of amendment filed in accordance with ~~Chapter~~
16 ~~2~~ the Alabama Business Corporation Law.

17 "§10A-11-1.06.

18 "(a) The governing documents shall establish
19 qualifications and the method of acceptance and termination of
20 members. No person may be accepted as a member unless employed
21 by the employee cooperative on a full-time or part-time basis.
22 In order to qualify for membership, part-time employment shall
23 be at least half-time.

24 "(b) An employee cooperative shall issue a class of
25 voting stock designated as "membership shares." Each member

1 shall own only one membership share, and only members may own
2 such shares.

3 "(c) Membership shares shall be issued for a fee as
4 shall be determined by the directors. An employee cooperative
5 may allow for payment of such fee by payroll deduction,
6 installments, or similar methods. A membership share may be
7 issued to a person upon acceptance for membership regardless
8 of whether the membership fee is fully paid.

9 "(d) Members of an employee cooperative shall have
10 all the rights and responsibilities of stockholders of a
11 corporation ~~organized under Chapter 2~~ governed by the Alabama
12 Business Corporation Law, except as otherwise provided in this
13 chapter.

14 "§10A-11-1.12.

15 "(a) When an employee cooperative revokes its
16 election in accordance with Section 10A-11-1.04, the
17 certificate of amendment shall provide for conversion of
18 membership shares and internal capital accounts or their
19 conversion to securities or other property in a manner
20 consistent with ~~Chapter 2~~ the Alabama Business Corporation
21 Law.

22 "(b) An employee cooperative which has not revoked
23 its election under this chapter may not consolidate or merge
24 with another corporation other than an employee cooperative.
25 Two or more employee cooperatives may consolidate or merge in

1 accordance with ~~Article 11 of Chapter 2~~ the Alabama Business
2 Corporation Law.

3 "§10A-30-2.01.

4 "(a) This article applies to all close corporations,
5 as defined in Section 10A-30-2.02.

6 "(b) All provisions of this article shall be
7 applicable to all close corporations as defined in Section
8 10A-30-2.02 except insofar as this article otherwise provides.

9 "(c) Neither election to become, nor operation as, a
10 close corporation shall deprive any shareholder of such
11 corporation of the limitation of liability provided under
12 ~~former Section 10-2A-43 or a successor statute, including~~
13 ~~Section 10A-2-6.22~~ the Alabama Business Corporation Law.

14 "(d) This chapter shall apply only to close
15 corporations formed in accordance with Section 10A-30-2.03
16 before January 1, 1995, or electing to become a close
17 corporation pursuant to Section 10A-30-2.04 before January 1,
18 1995, and which has not voluntarily terminated its status as a
19 close corporation or otherwise ceased to be a close
20 corporation to which the provisions of this article apply
21 before January 1, 1995.

22 "§10A-30-2.03.

23 "A close corporation ~~shall be~~ which was formed in
24 accordance with former Sections 10-2A-90 through 10-2A-96, ~~or~~
25 ~~any successor statute, including Article 2 of Chapter 2,~~

1 ~~except that such formation must be~~ have been authorized by the
2 affirmative vote of all holders of and subscribers to shares
3 of the corporation, and:

4 "(1) The certificate of formation ~~shall contain~~
5 contains a heading stating the name of the corporation and
6 that it is a close corporation; and

7 "(2) The certificate of formation ~~shall contain~~
8 contains the provisions required by Section 10A-30-2.02; and

9 "(3) Each certificate for shares ~~shall~~ conspicuously
10 ~~note~~ notes the fact that the corporation is a close
11 corporation and make reference to the restriction on transfer
12 of shares set forth in the certificate of formation.

13 "§10A-30-2.04.

14 "(a) A corporation may voluntarily terminate its
15 status as a close corporation and cease to be subject to this
16 article by amending its certificate of formation to delete
17 therefrom the additional provisions required or permitted by
18 Section 10A-30-2.02 to be stated in the certificate of
19 formation of close corporations except such provisions as are
20 permitted by ~~Chapter 2~~ the Alabama Business Corporation Law
21 which the corporation chooses to retain. Any such amendment
22 shall be adopted and shall become effective in accordance with
23 ~~Article 10 of Chapter 2~~ the Alabama Business Corporation Law,
24 except that it must be approved by a vote of the holders of

1 record of at least one-third of the shares of each class of
2 stock of the corporation which are outstanding.

3 "(b) The certificate of formation of a close
4 corporation may provide that on any amendment to terminate its
5 status as a close corporation, a vote greater than one-third
6 or a vote of all shares of any class shall be required; and if
7 the certificate of incorporation contains such a provision,
8 that provision shall not be amended, repealed, or modified by
9 any vote less than that required to terminate the
10 corporation's status as a close corporation.

11 "§10A-30-2.05.

12 "(a) If shares of a close corporation are issued or
13 transferred to any person who is not entitled under any
14 provision of the certificate of formation permitted by Section
15 10A-30-2.02 to be a holder of record of shares of the
16 corporation, and if the certificate for shares conspicuously
17 notes the qualifications of the persons entitled to be holders
18 of record thereof, such person is conclusively presumed to
19 have notice of the fact of his or her ineligibility to be a
20 shareholder.

21 "(b) If a certificate for shares of any close
22 corporation conspicuously notes the fact of a restriction on
23 transfer of shares of the corporation and the restriction is
24 one which is permitted by ~~former Section 10-2A-41 or any~~
25 ~~successor statute, including Section 10A-2-6.27~~ the Alabama

1 Business Corporation Law, the transferee of the shares is
2 conclusively presumed to have notice of the fact that he or
3 she has acquired shares in violation of the restriction, if
4 such acquisition violates the restriction.

5 "(c) Whenever any person to whom shares of a close
6 corporation have been issued or transferred has, or is
7 conclusively presumed under this section to have notice either
8 that he or she is a person not eligible to be a holder of
9 shares of the corporation, or that the transfer of shares is
10 in violation of a restriction on transfer of shares, the
11 corporation may, at its option, refuse to register transfer of
12 the shares into the name of the transferee in addition to any
13 remedies which may be available under ~~former Section 10-2A-41~~
14 ~~or any successor statute, including Section 10A-2-6.27 or~~
15 ~~otherwise~~ the Alabama Business Corporation Law.

16 "(d) The provisions of subsection (c) shall not be
17 applicable if the transfer of shares even though otherwise
18 contrary to subsections (a) or (b), has been consented to by
19 all the shareholders of the close corporation, or if the close
20 corporation has amended its certificate of formation in
21 accordance with Section 10A-30-2.04.

22 "(e) The term "transfer," as used in this section,
23 is not limited to a transfer for value.

24 "(f) The provisions of this section do not in any
25 way impair any rights of a transferee regarding any right to

1 rescind the transaction or to recover under any applicable
2 warranty express or implied.

3 "§10A-30-2.06.

4 "If a restriction on transfer of shares of a close
5 corporation is held not to be authorized by ~~former Section~~
6 ~~10-2A-41 or any successor statute, including Section~~
7 ~~10A-2-6.27~~ the Alabama Business Corporation Law, the
8 corporation shall nevertheless have an option for a period of
9 30 days after the judgment setting aside the restriction
10 becomes final, to acquire the restricted shares at a price
11 which is agreed upon by the parties or if no agreement is
12 reached as to price, then at the fair value as determined by
13 the circuit court of the county in which the corporation has
14 its registered office or any court in such place having
15 jurisdiction. In order to determine fair value, the court may
16 appoint an appraiser to receive evidence and report to the
17 court his or her findings and recommendation as to fair value.
18 The appraiser shall have such powers and shall proceed, so far
19 as applicable, in the same manner as appraisers appointed
20 under ~~former Section 10-2A-163 or any successor statute,~~
21 ~~including Section 10A-2-13.30(e)~~ Article 13 of Chapter 2A.

22 "§10A-30-2.09.

23 "(a) The circuit court of the county in which the
24 corporation has its registered office or any court in such
25 place having jurisdiction, upon application of any

1 shareholder, may appoint one or more persons to be custodians,
2 and, if the corporation is insolvent, to be receivers, of any
3 close corporation when:

4 "(1) Pursuant to Section 10A-30-2.08, the business
5 and affairs of the corporation are managed by the shareholders
6 and they are so divided that the business of the corporation
7 is suffering or is threatened with irreparable injury and any
8 remedy with respect to such deadlock provided in the governing
9 documents or in any written agreement of the shareholders has
10 failed; or

11 "(2) The petitioning shareholder has the right to
12 the dissolution of the corporation under a provision of the
13 certificate of formation permitted by Section 10A-30-2.12.

14 "(b) In lieu of appointing a custodian for a close
15 corporation under this section, the court may appoint a
16 provisional director, whose powers and status shall be as
17 provided in Section 10A-30-2.10 if the court determines that
18 it would be in the best interest of the corporation. The
19 appointment shall not preclude any subsequent order of the
20 court appointing a custodian for such corporation.

21 "(c) A custodian appointed under this section shall
22 have all the powers of a receiver or custodian appointed under
23 ~~former Section 10-2A-196 or any successor statute, including~~
24 ~~Section 10A-2-14.32~~ the Alabama Business Corporation Law, but
25 the authority of the custodian is to continue the business of

1 the corporation and not to liquidate its affairs and
2 distribute its assets, except when the court shall otherwise
3 order.

4 "§10A-30-2.12.

5 "(a) The certificate of formation of any close
6 corporation may include a provision granting to any
7 shareholder, or to the holders of any specified number or
8 percentage of shares of any class of shares, an option to have
9 the corporation dissolved at will or upon the occurrence of
10 any specified event or contingency. Whenever any such option
11 to dissolve is exercised, the shareholders exercising the
12 option shall give written notice thereof to all other
13 shareholders. After the expiration of 30 days following the
14 sending of the notice, the dissolution of the corporation
15 shall proceed as if the required number of shareholders having
16 voting power had consented in writing to dissolution of the
17 corporation as provided by ~~Section 10A-2-14.02~~ the Alabama
18 Business Corporation Law.

19 "(b) If the certificate of formation as originally
20 filed does not contain a provision authorized by subsection
21 (a), the certificate of formation may be amended to include
22 such provision if adopted by the affirmative vote of the
23 holders of all the outstanding shares, whether or not entitled
24 to vote, unless the certificate of formation specifically
25 authorizes such an amendment by a vote which shall be not less

1 than two-thirds of all the outstanding shares whether or not
2 entitled to vote.

3 "(c) Each certificate for shares in any corporation
4 whose certificate of formation authorizes dissolution as
5 permitted by this section shall conspicuously note on the face
6 thereof the existence of the provision. Unless noted
7 conspicuously on the face of the certificate for shares the
8 provision is ineffective.

9 "§10A-30-2.13.

10 "This article shall not be deemed to repeal any
11 statute or rule of law which is or would be applicable to any
12 corporation which is ~~organized under the provisions of Chapter~~
13 ~~2~~ governed by the Alabama Business Corporation Law but is not
14 a close corporation."

15 Section 3. All laws or parts of laws which conflict
16 with this act are repealed. Chapter 2 of Title 10A, consisting
17 of Sections 10A-2-1.01 to 10A-2-17.02, inclusive, Code of
18 Alabama 1975, is repealed effective January 1, 2021.

19 Section 4. This act shall become effective January
20 1, 2020, following its passage and approval by the Governor,
21 or its otherwise becoming law.

