

[HOUSE OF REPRESENTATIVES/DELAWARE STATE SENATE]
149th GENERAL ASSEMBLY

[HOUSE/SENATE] BILL NO. ____

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

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

Section 1. Amend § 151(f), Title 8 of the Delaware Code, by making insertions as shown by underline and
deletions as shown by strike through as follows:

(f) If any corporation shall be authorized to issue more than 1 class of stock or more than 1 series of any
class, the powers, designations, preferences and relative, participating, optional, or other special rights of each class
of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be
set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent
such class or series of stock, provided that, except as otherwise provided in § 202 of this title, in lieu of the
foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue
to represent such class or series of stock, a statement that the corporation will furnish without charge to each
stockholder who so requests the powers, designations, preferences and relative, participating, optional, or other
special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such
preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, ~~the~~
~~corporation shall send to~~ the registered owner thereof shall be given a written notice, in writing or by electronic
transmission, containing the information required to be set forth or stated on certificates pursuant to this section or §
156, § 202(a) ~~or~~ § 218(a) or § 364 of this title or with respect to this section a statement that the corporation will
furnish without charge to each stockholder who so requests the powers, designations, preferences and relative
participating, optional or other special rights of each class of stock or series thereof and the qualifications,

18 limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the
19 rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of
20 certificates representing stock of the same class and series shall be identical.

21 Section 2. Amend § 202(a), Title 8 of the Delaware Code, by making insertions as shown by underline and
22 deletions as shown by strike through as follows:

23 (a) A written restriction or restrictions on the transfer or registration of transfer of a security of a
24 corporation, or on the amount of the corporation's securities that may be owned by any person or group of persons,
25 if permitted by this section and noted conspicuously on the certificate or certificates representing the security or
26 securities so restricted or, in the case of uncertificated shares, contained in the notice or notices ~~sent~~given pursuant
27 to § 151(f) of this title, may be enforced against the holder of the restricted security or securities or any successor or
28 transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like
29 responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate or certificates
30 representing the security or securities so restricted or, in the case of uncertificated shares, contained in the notice or
31 notices ~~sent~~given pursuant to § 151(f) of this title, a restriction, even though permitted by this section, is ineffective
32 except against a person with actual knowledge of the restriction.

33 Section 3. Amend § 203(b)(3), Title 8 of the Delaware Code, by making insertions as shown by underline
34 and deletions as shown by strike through as follows:

35 (3) The corporation, by action of its stockholders, adopts an amendment to its certificate of
36 incorporation or bylaws expressly electing not to be governed by this section; provided that, in
37 addition to any other vote required by law, such amendment to the certificate of incorporation or
38 bylaws must be ~~approved~~adopted by the affirmative vote of a majority of the ~~shares~~shares outstanding
39 stock entitled to vote. ~~An amendment adopted pursuant to this paragraph shall be effective~~
40 ~~immediately in thereon.~~ In the case of a corporation that both (i) has never had a class of voting
41 stock that falls within any of the 2 categories set out in paragraph (b)(4) of this section, and (ii) has
42 not elected by a provision in its original certificate of incorporation or any amendment thereto to
43 be governed by this section, such amendment shall become effective upon (x) in the case of an
44 amendment to the certificate of incorporation, the date and time at which the certificate filed in
45 accordance with § 103 of this title becomes effective thereunder or (y) in the case of an

46 amendment to the bylaws, the date of the adoption of such amendment. In all other cases, an
47 amendment adopted pursuant to this paragraph shall ~~not be effective until 12 months after~~become
48 effective (x) in the case of an amendment to the certificate of incorporation, 12 months after the
49 date and time at which the certificate filed in accordance with § 103 of this title becomes effective
50 thereunder or (y) in the case of an amendment to the bylaws, 12 months after the date of the
51 adoption of such amendment, and, in either case, the election not to be governed by this section
52 shall not apply to any business combination between such corporation and any person who
53 became an interested stockholder of such corporation on or ~~prior to such adoption~~before (A) in the
54 case of an amendment to the certificate of incorporation, the date and time at which the certificate
55 filed in accordance with § 103 of this title becomes effective thereunder or (B) in the case of an
56 amendment to the bylaws, the date of the adoption of such amendment. A bylaw amendment
57 adopted pursuant to this paragraph shall not be further amended by the board of directors;

58 Section 4. Amend the final sentence of § 203(b), Title 8 of the Delaware Code, by making insertions as
59 shown by underline and deletions as shown by strike through as follows:

60 Notwithstanding paragraphs (b)(1), (2), (3) and (4) of this section, a corporation may elect by a provision of
61 its original certificate of incorporation or any amendment thereto to be governed by this section; provided that any
62 such amendment to the certificate of incorporation shall not apply to restrict a business combination between the
63 corporation and an interested stockholder of the corporation if the interested stockholder became such ~~prior to the~~
64 ~~effective date of the amendment~~before the date and time at which the certificate filed in accordance with § 103 of
65 this title becomes effective thereunder.

66 Section 5. Amend § 219(a), Title 8 of the Delaware Code, by making insertions as shown by underline and
67 deletions as shown by strike through as follows:

68 (a) ~~The officer who has charge of the stock ledger of a~~The corporation shall prepare ~~and make~~, at least 10
69 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting;
70 provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the
71 meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date,
72 arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in
73 the name of each stockholder. Nothing contained in this section shall require the corporation to include electronic

mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 6. Amend § 219(c), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(c) For purposes of this chapter, “stock ledger” means one or more records administered by or on behalf of the corporation in which the names of all of the corporation’s stockholders of record, the address and number of shares registered in the name of each such stockholder, and all issuances and transfers of stock of the corporation are recorded in accordance with § 224 of this title. The stock ledger shall be the only evidence as to who are the stockholders entitled by this section to examine the list required by this section or to vote in person or by proxy at any meeting of stockholders.

Section 7. Amend § 224, Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 224. Form of records.

Any records ~~maintained~~ administered by ~~or on behalf of the~~ corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, ~~or method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases).~~ provided that the records so kept can be converted into clearly legible paper form within a reasonable time. ~~Any corporation shall so, and, with respect to the stock ledger,~~

that the records so kept (i) can be used to prepare the list of stockholders specified in § 219 and § 220 of this title, (ii) record the information specified in § 156, § 159, § 217(a) and § 218 of this title, and (iii) record transfers of stock as governed by Article 8 of subtitle I of Title 6. Any corporation shall convert any records so kept into clearly legible paper form upon the request of any person entitled to inspect such records pursuant to any provision of this chapter. When records are kept in such manner, a clearly legible paper form ~~produced~~prepared from or by means of the information storage device ~~or method shall be~~, method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases) shall be valid and admissible in evidence, and accepted for all other purposes, to the same extent as an original paper record of the same information would have been, provided the paper form accurately portrays the record.

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

~~(c) Every written consent shall bear the date of signature of each stockholder or member who signs the consent, and no~~ No written consent shall be effective to take the corporate action referred to therein unless, ~~within 60 days of the earliest dated consent delivered in the manner required by this section to the corporation,~~ written consents signed by a sufficient number of holders or members to take action are delivered to the corporation ~~by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded in the manner required by this section within 60 days of the first date on which a written consent is so delivered to the corporation.~~ Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made, ~~and, for the purposes of this section, if evidence of such instruction or provision is provided to the corporation, such later effective time shall serve as the date of signature.~~ Unless otherwise provided, any such consent shall be revocable prior to its becoming effective.

Section 9. Amend § 228(d)(1), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(d)(1) A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder, member or proxyholder, or by a person or persons authorized to act for a stockholder, member or proxyholder, shall be deemed to be written, and signed ~~and dated~~ for the purposes of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine (A) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder, member or proxyholder or by a person or persons authorized to act for the stockholder, member or proxyholder and (B) the date on which such stockholder, member or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. ~~The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed.~~ No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded. Delivery made to a corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission, may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded if, to the extent and in the manner provided by resolution of the board of directors or governing body of the corporation.

Section 10. Amend § 228(e), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

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

such action had been voted on by stockholders or by members at a meeting thereof, the certificate filed under such other section shall state, in lieu of any statement required by such section concerning any vote of stockholders or members, that written consent has been given in accordance with this section.

Section 11. Amend § 232(c), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(c) For purposes of this chapter, “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 12. Amend § 251(a), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(a) Any 2 or more corporations ~~existing under the laws of~~ this State may merge into a single surviving corporation, which may be any 1 of the constituent corporations or may consolidate into a new resulting corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

Section 13. Amend § 251(b)(6), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(6) Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, ~~interests or rights~~ rights or other securities of the surviving or resulting corporation or of any other corporation or entity the shares, rights or other securities of which are to be received in the merger or consolidation, or for any other arrangement with respect thereto, consistent with § 155 of this title.

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

(c) The agreement required by subsection (b) of this section shall be submitted to the stockholders of each constituent corporation at an annual or special meeting for the purpose of acting on the agreement. Due notice of the

time, place and purpose of the meeting shall be mailed to each holder of stock, whether voting or nonvoting, of the corporation at the stockholder's address as it appears on the records of the corporation, at least 20 days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof. At the meeting, the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or assistant secretary of the corporation, provided that such certification on the agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement. If the agreement shall be so adopted and certified by each constituent corporation, it shall then be filed and shall become effective, in accordance with § 103 of this title. In lieu of filing the agreement of merger or consolidation required by this section, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in accordance with § 103 of this title, which states:

- (1) The name and state of incorporation of each of the constituent corporations;
- (2) That an agreement of merger or consolidation has been approved, adopted, executed and acknowledged by each of the constituent corporations in accordance with this section;
- (3) The name of the surviving or resulting corporation;
- (4) In the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
- (5) In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as set forth in an attachment to the certificate;
- (6) That the executed agreement of consolidation or merger is on file at an office of the surviving or resulting corporation, stating the address thereof; and
- (7) That a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting corporation, on request and without cost, to any stockholder of any constituent corporation.

Section 15. Amend § 252, Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 252. Merger or consolidation of domestic and foreign corporations; service of process upon surviving or resulting corporation.

(a) Any 1 or more corporations of this State may merge or consolidate with 1 or more ~~other corporations of any other state or states of the United States, or of the District of Columbia if the laws of the other state or states, or of the District permit a corporation of such jurisdiction to merge or consolidate with a corporation of another jurisdiction~~ foreign corporations, unless the laws of the jurisdiction or jurisdictions under which such foreign corporation or corporations are organized prohibit such merger or consolidation. The constituent corporations may merge into a single surviving corporation, which may be any 1 of the constituent corporations, or they may consolidate into a new resulting corporation formed by the consolidation, which may be a corporation of the ~~state jurisdiction of incorporation~~ organization of any 1 of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. ~~In addition, any 1 or more corporations existing under the laws of this State may merge or consolidate with 1 or more corporations organized under the laws of any jurisdiction other than 1 of the United States if the laws under which the other corporation or corporations are organized permit a corporation of such jurisdiction to merge or consolidate with a corporation of another jurisdiction.~~

(b) All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

(1) The terms and conditions of the merger or consolidation;

(2) The mode of carrying the same into effect;

(3) In the case of a merger in which the surviving corporation is a corporation of this State, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

(4) In the case of a consolidation in which the resulting corporation is a corporation of this State, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;

~~(3)~~(5) The manner, if any, of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, or of cancelling some or all of such shares, and, if any shares of any of the constituent corporations are not to remain outstanding, to be converted solely into shares or other securities of the surviving or resulting corporation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of such shares are to receive in exchange for, or upon conversion of, such shares and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of the shares or other securities of the surviving or resulting corporation;

~~(4)~~(6) Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, rights or other securities of the surviving or resulting corporation or of any other corporation or entity the shares, rights or other securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto, consistent with § 155 of this title; and

~~(5)~~(7) Such other provisions or facts as shall be required to be set forth in ~~certificates of incorporation by the laws of the state which are stated in the agreement to be the laws that shall govern the~~an agreement of merger or consolidation (including any provision for amendment of the certificate of incorporation (or equivalent document) of a surviving or resulting foreign corporation and that can be stated in the case of a merger or consolidation) by the laws of each jurisdiction under which any of the foreign corporations are organized.

Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as

used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(c) The agreement shall be adopted, approved, certified, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is ~~formed~~organized, and, in the case of a ~~Delaware~~corporation of this State, in the same manner as is provided in § 251 of this title. The agreement shall be filed and shall become effective for all purposes of the laws of this State when and as provided in § 251 of this title with respect to the merger or consolidation of corporations of this State. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in accordance with § 103 of this title, which states:

(1) The name and ~~state or jurisdiction of incorporation~~organization of each of the constituent corporations;

(2) That an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with this subsection;

(3) The name of the surviving or resulting corporation;

(4) In the case of a merger in which the surviving corporation is a corporation of this State, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

(5) In the case of a consolidation in which the resulting corporation is a corporation of this State, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

(6) That the executed agreement of consolidation or merger is on file at an office of the surviving or resulting corporation and the address thereof;

(7) That a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting corporation, on request and without cost, to any stockholder of any constituent corporation;

(8) If the corporation surviving or resulting from the merger or consolidation is ~~to be a corporation~~ of this State, the authorized capital stock of each constituent corporation which is not a corporation of this State; and

(9) The agreement, if any, required by subsection (d) of this section.

(d) If the corporation surviving or resulting from the merger or consolidation is ~~to be governed by the laws of the District of Columbia or any state or jurisdiction other than this State~~ a foreign corporation, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation of this State, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of this title, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving or resulting corporation thereof by letter, directed to such surviving or resulting corporation at its address so specified, unless such surviving or resulting corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum of \$50 for the use of the State, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served, the fact that service has been effected

pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than 5 years from receipt of the service of process.

(e) Section 251(d) of this title shall apply to any merger or consolidation under this section; § 251(e) of this title shall apply to a merger under this section in which the surviving corporation is a corporation of this State; and § 251(f) and (h) of this title shall apply to any merger under this section.

Section 16. Amend § 253(a), Title 8 of the Delaware Code, and amend the heading of § 253, by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 253. Merger of parent corporation and subsidiary ~~or subsidiaries~~corporation or corporations.

(a) In any case in which: (1) at least 90% of the outstanding shares of each class of the stock of a corporation or corporations (other than a corporation which has in its certificate of incorporation the provision required by § 251(g)(7)(i) of this title), of which class there are outstanding shares that, absent this subsection, would be entitled to vote on such merger, is owned by another corporation and 1 of the corporations is a corporation of this State and the other or others are corporations of this State, or any other state or states, or the District of Columbia and the laws of the other state or states, or the District permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction, the corporation having such stock ownership may either merge the other or a foreign corporation, and (2) 1 or more of such corporations is a corporation of this State, unless the laws of the jurisdiction or jurisdictions under which the foreign corporation or corporations are organized prohibit such merger, the parent corporation may either merge the subsidiary corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and 1 or more of such other subsidiary corporations, into 1 of the other subsidiary corporations by executing, acknowledging and filing, in accordance with § 103 of this title, a certificate of such ownership and merger setting forth a copy of the resolution of its board of directors to so merge and the date of the adoption; provided, however, that in case the parent corporation shall not own all the outstanding stock of all the subsidiary corporations, parties to a merger as aforesaid, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation, or the cancellation of some or all of such shares. Any of the terms of the resolution of the board of directors to so merge may be made dependent upon facts ascertainable outside of such resolution, provided that the manner in which such facts shall operate upon the terms

of the resolution is clearly and expressly set forth in the resolution. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation. If the parent corporation be not the surviving corporation, the resolution shall include provision for the pro rata issuance of stock of the surviving corporation to the holders of the stock of the parent corporation on surrender of any certificates therefor, and the certificate of ownership and merger shall state that the proposed merger has been approved by a majority of the outstanding stock of the parent corporation entitled to vote thereon at a meeting duly called and held after 20 days’ notice of the purpose of the meeting mailed to each such stockholder at the stockholder’s address as it appears on the records of the corporation if the parent corporation is a corporation of this State or state that the proposed merger has been adopted, approved, certified, executed and acknowledged by the parent corporation in accordance with the laws under which it is organized if the parent corporation is ~~not a foreign corporation of this State~~. If the surviving corporation ~~exists under the laws of the District of Columbia or any state or jurisdiction other than this State~~ is a foreign corporation:

(1) Section 252(d) of this title or § 258(c) of this title, as applicable, shall also apply to a merger under this section; and

(2) The terms and conditions of the merger shall obligate the surviving corporation to provide the agreement, and take the actions, required by § 252(d) of this title or § 258(c) of this title, as applicable.

Section 17. Amend § 253(e), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

~~(e) A merger may be effected under this section although 1 or more of the corporations parties to the merger is a corporation organized under the laws of a jurisdiction other than 1 of the United States; provided that the laws of such jurisdiction permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction.~~

Section 18. Amend § 253(f), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

~~(f)~~(e) This section shall apply to nonstock corporations if the parent corporation is such a corporation and is the surviving corporation of the merger; provided, however, that references to the directors of the parent corporation shall be deemed to be references to members of the governing body of the parent corporation, and references to the

board of directors of the parent corporation shall be deemed to be references to the governing body of the parent corporation.

Section 19. Amend § 253(g), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

~~(e)~~(f) Nothing in this section shall be deemed to authorize the merger of a corporation with a charitable nonstock corporation, if the charitable status of such charitable nonstock corporation would thereby be lost or impaired.

Section 20. Amend § 254, Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 254. Merger or consolidation of domestic ~~corporation~~corporations and joint-stock or other ~~association~~associations.

(a) The term “joint-stock association” as used in this section, includes any association of the kind commonly known as a joint-stock association or joint-stock company and any unincorporated association, trust or enterprise having members or having outstanding shares of stock or other evidences of financial or beneficial interest therein, whether formed or organized by agreement or under statutory authority or otherwise and whether formed or organized under the laws of this State or any other jurisdiction, but does not include a corporation, partnership or limited liability company. The term “stockholder” as used in this section, includes every member of such joint-stock association or holder of a share of stock or other evidence of financial or beneficial interest therein.

(b) Any 1 or more corporations of this State may merge or consolidate with 1 or more joint-stock associations, ~~except unless the laws of the jurisdiction or jurisdictions under which such~~ joint-stock association ~~formed under the laws of a state which forbids~~ are formed or organized prohibit such merger or consolidation. Such corporation or corporations and such 1 or more joint-stock associations may merge into a single surviving corporation, or joint-stock association, which may be any one of such corporations or joint-stock associations, or they may consolidate into a new resulting corporation ~~or of this State or a~~ joint-stock association ~~of this State~~, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. The surviving or resulting entity may be organized for profit or not organized for profit, and if the surviving or resulting entity is a corporation, it may be a stock corporation of this State or a nonstock corporation of this State.

(c) Each such corporation and joint-stock association shall enter into a written agreement of merger or consolidation. The agreement shall state:

(1) The terms and conditions of the merger or consolidation;

(2) The mode of carrying the same into effect;

(3) In the case of a merger in which the surviving entity is a corporation of this State, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

(4) In the case of a consolidation in which the resulting entity is a corporation of this State, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;

~~(3)~~(5) The manner, if any, of converting the shares of stock of each stock corporation, the interest of members of each nonstock corporation, and the shares, membership or financial or beneficial interests in each of the joint-stock associations into shares or other securities of a stock corporation or membership interests of a nonstock corporation or into shares, memberships or financial or beneficial interests of the joint-stock association surviving or resulting from such merger or consolidation, or of cancelling some or all of such shares, memberships or financial or beneficial interests, and, if any shares of any such stock corporation, any membership interests of any such nonstock corporation or any shares, memberships or financial or beneficial interests in any such joint-stock association are not to remain outstanding, to be converted solely into shares or other securities of the stock corporation or membership interests of the nonstock corporation or into shares, memberships or financial or beneficial interests of the joint-stock association surviving or resulting from such merger or consolidation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of shares of any such stock corporation, membership interests of any such nonstock corporation, or shares, memberships or financial or beneficial interests of any such joint-stock association are to receive in exchange for,

or upon conversion of such shares, membership interests or shares, memberships or financial or beneficial interests, and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of the stock corporation or membership interests of the nonstock corporation or shares, memberships or financial or beneficial interests of the joint-stock association surviving or resulting from such merger or consolidation;~~and~~

~~(4)(6)~~ Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares where, rights, other securities or interests of the surviving or resulting entity is a corporation or of fractional shares, rights, other securities or interests of any other corporation or entity the securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto, consistent with § 155 of this title; and

(7) Such other provisions or facts as shall be required to be set forth in an agreement of merger or consolidation (including any provision for amendment of the governing documents of a surviving joint-stock association) or required to establish and maintain a joint-stock association by the laws under which the joint-stock association is formed or organized.

~~There shall also be set forth in the agreement such other matters or provisions as shall then be required to be set forth in certificates of incorporation or documents required to establish and maintain a joint stock association by the laws of this State and that can be stated in the case of such merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.~~

(d) The agreement required by subsection (c) of this section shall be adopted, approved, certified, executed and acknowledged by each of the stock or nonstock corporations in the same manner as is provided in § 251 or § 255 of this title, respectively, and in the case of the joint-stock associations in accordance with ~~their articles of~~

461 ~~association or other instrument containing the provisions by which they are organized or regulated or in accordance~~
462 ~~with the laws of the state~~jurisdiction under which they are formed, ~~as the case may be~~ or organized. ~~Where the~~
463 ~~surviving or resulting entity is a corporation, the~~ The agreement shall be filed and shall become effective for all
464 purposes of the laws of this State when and as provided in § 251 of this title with respect to the merger or
465 consolidation of corporations of this State. In lieu of filing the agreement of merger or consolidation, ~~where the~~
466 ~~surviving or resulting entity is a corporation it~~ may file a certificate of merger or consolidation, executed in
467 accordance with § 103 of this title, which states:

468 (1) The name, ~~state of domicile~~ jurisdiction of formation or organization and type of entity of each
469 of the constituent entities;

470 (2) That an agreement of merger or consolidation has been approved, adopted, certified, executed
471 and acknowledged by each of the constituent entities in accordance with this subsection;

472 (3) The name of the surviving or resulting corporation or joint-stock association;

473 (4) In the case of a merger in which the surviving entity is a corporation of this State, such
474 amendments or changes in the certificate of incorporation of the surviving corporation as are
475 desired to be effected by the merger (which amendments or changes may amend and restate the
476 certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments
477 or changes are desired, a statement that the certificate of incorporation of the surviving corporation
478 shall be its certificate of incorporation;

479 (5) In the case of a consolidation in which the resulting entity is a corporation of this State, that the
480 certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to
481 the certificate;

482 (6) That the executed agreement of consolidation or merger is on file at an office of the surviving
483 or resulting corporation or joint-stock association and the address thereof; ~~and~~

484 (7) That a copy of the agreement of consolidation or merger will be furnished by the surviving or
485 resulting corporation or joint-stock association, on request and without cost, to any stockholder or
486 member of any constituent entity; and

487 (8) The agreement, if any, required by § 252(d) of this title.

488 ~~Where the surviving or resulting entity is a joint stock association, the agreement shall be filed and shall be~~
489 ~~effective for all purposes when filed in accordance with the laws regulating the creation of joint stock associations.~~

490 (e) Sections 251(d), 251(e) to the extent the surviving entity is a corporation of this State, 251(f), 252(d),
491 259 through 262 and 328 of this title shall, insofar as they are applicable, apply to mergers or consolidations
492 between corporations and joint-stock associations; the word “corporation” where applicable, as used in those
493 sections, being deemed to include joint-stock associations as defined herein. Where the surviving or resulting entity
494 is a corporation, for purposes of the laws of this State, the personal liability, if any, of any stockholder of a joint-
495 stock association existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain
496 personal to such stockholder and shall not become the liability of any subsequent transferee of any share of stock in
497 such surviving or resulting corporation or of any other stockholder of such surviving or resulting corporation.

498 (f) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation or
499 charitable joint-stock association into a stock corporation or joint-stock association if the charitable status of such
500 nonstock corporation or joint-stock association would be thereby lost or impaired, but a stock corporation or a joint-
501 stock association may be merged into a charitable nonstock corporation or charitable joint-stock association which
502 shall continue as the surviving corporation or joint-stock association.

503 Section 21. Amend § 255(a), Title 8 of the Delaware Code, by making insertions as shown by underline
504 and deletions as shown by strike through as follows:

505 (a) Any 2 or more nonstock corporations of this State, whether or not organized for profit, may merge into
506 a single surviving corporation, which may be any 1 of the constituent corporations, or they may consolidate into a
507 new resulting nonstock corporation, whether or not organized for profit, formed by the consolidation, pursuant to an
508 agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

509 Section 22. Amend § 255(b), Title 8 of the Delaware Code, by making insertions as shown by underline
510 and deletions as shown by strike through as follows:

511 (b) Subject to subsection (d) of this section, the governing body of each corporation which desires to merge
512 or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall
513 state:

- 514 (1) The terms and conditions of the merger or consolidation;
- 515 (2) The mode of carrying the same into effect;

~~(3) Such other provisions or facts required or permitted by this chapter to be stated in a certificate of incorporation for nonstock corporations as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require; In the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;~~

~~(4) In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;~~

~~(4)(5) The manner, if any, of converting the memberships or membership interests of each of the constituent corporations into memberships or membership interests of the corporation surviving or resulting from the merger or consolidation, or of cancelling some or all of such memberships or membership interests, and, if any memberships or membership interests of any of the constituent corporations are not to remain outstanding, to be converted solely into memberships or membership interests of the surviving or resulting corporation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of such memberships or membership interests are to receive in exchange for, or upon conversion of, such memberships or membership interests, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of memberships or membership interests of the surviving or resulting corporation; and~~

~~(5)(6) Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, rights or other securities of any other corporation or entity the shares, rights or other securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto, consistent with § 155 of this title.~~

The agreement so adopted shall be executed and acknowledged in accordance with § 103 of this title. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of

such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

Section 23. Amend § 256(a), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(a) Any 1 or more nonstock corporations of this State may merge or consolidate with 1 or more ~~other nonstock corporations of any other state or states of the United States, or of the District of Columbia if the laws of such other state or states or of the District permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction.~~ foreign nonstock corporations, unless the laws of the jurisdiction or jurisdictions under which such foreign nonstock corporation or corporations are organized prohibit such merger or consolidation. The constituent corporations may merge into a single surviving corporation, which may be any 1 of the constituent corporations, or they may consolidate into a new resulting nonstock corporation formed by the consolidation, which may be a corporation of the state jurisdiction of incorporation organization of any 1 of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. ~~In addition, any 1 or more~~ The term “foreign nonstock corporations corporation” means a nonstock corporation organized under the laws of any jurisdiction other than 1 of the United States may merge or consolidate with 1 or more nonstock corporations of this State if the surviving or resulting corporation will be a corporation of this State, and if the laws under which the other corporation or corporations are formed permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction this State.

Section 24. Amend § 256(b), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(b) All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

(1) The terms and conditions of the merger or consolidation;

(2) The mode of carrying the same into effect;

(3) In the case of a merger in which the surviving corporation is a corporation of this State, such amendments or changes in the certificate of incorporation of the surviving corporation as are

572 desired to be effected by the merger (which amendments or changes may amend and restate the
573 certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments
574 or changes are desired, a statement that the certificate of incorporation of the surviving corporation
575 shall be its certificate of incorporation;

576 (4) In the case of a consolidation in which the resulting corporation is a corporation of this State,
577 that the certificate of incorporation of the resulting corporation shall be as is set forth in an
578 attachment to the agreement;

579 ~~(3)~~(5) The manner, if any, of converting the memberships or membership interests of each of the
580 constituent corporations into memberships or membership interests of the corporation surviving or
581 resulting from ~~such the~~ merger or consolidation, or of cancelling some or all of such memberships
582 or membership interests, and, if any memberships or membership interests of any of the
583 constituent corporations are not to remain outstanding, to be converted solely into memberships or
584 membership interests of the surviving or resulting corporation or to be cancelled, the cash,
585 property, rights or securities of any other corporation or entity which the holders of such
586 memberships or membership interests are to receive in exchange for, or upon conversion of, such
587 memberships or membership interests, which cash, property, rights or securities of any other
588 corporation or entity may be in addition to or in lieu of memberships or membership interests of
589 the surviving or resulting corporation;

590 ~~(4)~~(6) Such other details ~~and~~ or provisions as ~~shall be~~ deemed desirable, including, without
591 limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance
592 or recognition of fractional shares, rights or other securities of any other corporation or entity the
593 shares, rights or other securities of which are to be received in the merger or consolidation, or for
594 some other arrangement with respect thereto, consistent with § 155 of this title; and

595 ~~(5)~~(7) Such other provisions or facts as shall ~~then be~~ required to be ~~stated in a certificate of~~
596 ~~incorporation~~ set forth in an agreement of merger or consolidation (including any provision for
597 amendment of the certificate of incorporation (or equivalent document) of a surviving foreign
598 nonstock corporation) by the laws of the state which are stated in the agreement to be the laws that
599 shall govern the surviving or resulting corporation and that can be stated in the case of a merger or

consolidation each jurisdiction under which any of the foreign nonstock corporations are
organized.

Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

Section 25. Amend § 256(c), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(c) The agreement shall be adopted, approved, certified, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is ~~formed~~ organized and, in the case of a Delaware corporation, in the same manner as is provided in § 255 of this title. The agreement shall be filed and shall become effective for all purposes of the laws of this State when and as provided in § 255 of this title with respect to the merger of nonstock corporations of this State. Insofar as they may be applicable, the provisions set forth in the last sentence of § 252(c) of this title shall apply to a merger under this section, and the reference therein to “stockholder” shall be deemed to include “member” hereunder.

Section 26. Amend § 256(d), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(d) If the corporation surviving or resulting from the merger or consolidation is ~~to be governed by the laws of any state other than this State~~ a foreign nonstock corporation, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation of this State, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such

surviving or resulting corporation thereof by letter, directed to such corporation at its address so specified, unless such surviving or resulting corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served upon the Secretary of State. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being made pursuant to this subsection, and to pay the Secretary of State the sum of \$50 for the use of the State, which sum shall be taxed as a part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of State, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from receipt of the service of process.

Section 27. Amend § 257(a), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(a) Any 1 or more nonstock corporations of this State, whether or not organized for profit, may merge or consolidate with 1 or more stock corporations of this State, whether or not organized for profit. The constituent corporations may merge into a single surviving corporation, which may be any 1 of the constituent corporations, or they may consolidate into a new resulting corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. The surviving constituent corporation or the ~~new~~ resulting corporation may be organized for profit or not organized for profit and may be a stock corporation or a nonstock corporation.

Section 28. Amend § 257(b), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(b) The board of directors of each stock corporation which desires to merge or consolidate and the governing body of each nonstock corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

(1) The terms and conditions of the merger or consolidation;

(2) The mode of carrying the same into effect;

(3) ~~Such other provisions or facts required or permitted by this chapter to be stated in a certificate of incorporation as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require;~~ In the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

(4) In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;

~~(4)~~(5) The manner, if any, of converting the shares of stock of a stock corporation and the memberships or membership interests of a nonstock corporation into shares or other securities of a stock corporation or memberships or membership interests of a nonstock corporation surviving or resulting from such merger or consolidation or of cancelling some or all of such shares or memberships or membership interests, and, if any shares of any such stock corporation or memberships or membership interests of any such nonstock corporation are not to remain outstanding, to be converted solely into shares or other securities of the stock corporation or memberships or membership interests of the nonstock corporation surviving or resulting from such merger or consolidation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of shares of any such stock corporation or memberships or membership interests of any such nonstock corporation are to receive in exchange for, or upon conversion of such shares or memberships or membership interests, and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of any stock corporation or memberships or membership interests of any nonstock corporation surviving or resulting from such merger or consolidation; and

684 ~~(5)(6) Such other details or provisions as are deemed desirable, including, without limiting the~~
685 ~~generality of the foregoing, a provision for the payment of cash in lieu of the issuance or~~
686 ~~recognition of fractional shares, rights or other securities of the surviving or resulting corporation~~
687 ~~or of any other corporation or entity the shares, rights or other securities of which are to be~~
688 ~~received in the merger or consolidation, or for some other arrangement with respect thereto,~~
689 ~~consistent with § 155 of this title. In such merger or consolidation the memberships or~~
690 ~~membership interests of a constituent nonstock corporation may be treated in various ways so as to~~
691 ~~convert such memberships or membership interests into interests of value, other than shares of~~
692 ~~stock, in the surviving or resulting stock corporation or into shares of stock in the surviving or~~
693 ~~resulting stock corporation, voting or nonvoting, or into creditor interests or any other interests of~~
694 ~~value equivalent to their memberships or membership interests in their nonstock corporation. The~~
695 ~~voting rights of members of a constituent nonstock corporation need not be considered an element~~
696 ~~of value in measuring the reasonable equivalence of the value of the interests received in the~~
697 ~~surviving or resulting stock corporation by members of a constituent nonstock corporation, nor~~
698 ~~need the voting rights of shares of stock in a constituent stock corporation be considered as an~~
699 ~~element of value in measuring the reasonable equivalence of the value of the interests in the~~
700 ~~surviving or resulting nonstock corporations received by stockholders of a constituent stock~~
701 ~~corporation, and the voting or nonvoting shares of a stock corporation may be converted into any~~
702 ~~type of membership or membership interest, however designated, creditor interests or participating~~
703 ~~interests, in the nonstock corporation surviving or resulting from such merger or consolidation of a~~
704 ~~stock corporation and a nonstock corporation.~~

705 Any of the terms of the agreement of merger or consolidation may be made dependent upon facts
706 ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms
707 of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as
708 used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination
709 or action by any person or body, including the corporation.

710 Section 29. Amend § 257(d), Title 8 of the Delaware Code, by making insertions as shown by underline
711 and deletions as shown by strike through as follows:

(d) Section 251(e) of this title shall apply to a merger under this section, ~~if the surviving corporation is a corporation of this State~~; § 251(d) of this title shall apply to any constituent stock corporation participating in a merger or consolidation under this section; and § 251(f) of this title shall apply to any constituent stock corporation participating in a merger under this section.

Section 30. Amend § 258, Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 258. Merger or consolidation of domestic and foreign stock and nonstock corporations.

(a) Any 1 or more corporations of this State, whether stock or nonstock corporations and whether or not organized for profit, may merge or consolidate with 1 or more ~~other corporations of any other state or states of the United States or of the District of Columbia whether stock or nonstock corporations and whether or not organized for profit, if the laws under which the other corporation or corporations are formed shall permit such a corporation of such jurisdiction to merge with a corporation of another jurisdiction~~ foreign corporations, unless the laws of the jurisdiction or jurisdictions under which such foreign corporation or corporations are organized prohibit such merger or consolidation. The constituent corporations may merge into a single surviving corporation, which may be any 1 of the constituent corporations, or they may consolidate into a new resulting corporation formed by the consolidation, which may be a corporation of the place jurisdiction of incorporation organization of any 1 of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. The surviving or ~~new resulting~~ corporation may be either a domestic or foreign stock corporation or a domestic or foreign nonstock corporation, as shall be specified in the agreement of merger or consolidation required by subsection (b) of this section. For purposes of this section, the term "foreign corporation" includes a nonstock corporation organized under the laws of any jurisdiction other than this State.

(b) The method and procedure to be followed by the constituent corporations so merging or consolidating shall be as prescribed in § 257 of this title in the case of Delaware corporations. The agreement of merger or consolidation shall be as provided in § 257 of this title and also set forth such other matters or provisions or facts as shall then be required to be set forth in certificates an agreement of merger or consolidation (including any provision for amendment of the certificate of incorporation (or equivalent document) of a surviving foreign corporation) by the laws of the state jurisdiction or jurisdictions which are stated in the agreement to be the laws under which shall govern the surviving or resulting the foreign corporation and that can be stated in the case of a merger or

~~consolidation or corporations are organized.~~ The agreement, in the case of foreign corporations, shall be adopted, approved, certified, executed and acknowledged ~~by each of the constituent foreign corporations~~ in accordance with the laws under which each is ~~formed~~organized.

(c) The requirements of § 252(d) of this title as to the appointment of the Secretary of State to receive process and the manner of serving the same in the event the surviving or ~~new resulting~~ corporation is ~~to be governed by the laws of any other state~~ a foreign corporation shall also apply to mergers or consolidations effected under this section and such appointment, if any, shall be included in the certificate of merger or consolidation, if any, filed pursuant to subsection (b) of this section. Section 251(e) of this title shall apply to mergers effected under this section if the surviving corporation is a corporation of this State; § 251(d) of this title shall apply to any constituent corporation participating in a merger or consolidation under this section (provided, however, that for purposes of a constituent nonstock corporation, references to the board of directors, to stockholders, and to shares shall be deemed to be references to the governing body of the corporation, to members of the corporation, and to memberships or membership interests of the corporation, as applicable, respectively); and § 251(f) of this title shall apply to any constituent stock corporation of this State participating in a merger under this section.

(d) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired; but a stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

Section 31. Amend § 263, Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 263. Merger or consolidation of domestic corporations and partnerships; service of process upon surviving or resulting corporation or partnership.

(a) Any 1 or more corporations of this State may merge or consolidate with 1 or more partnerships (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), ~~of this State or of any other state or states of the United States, or of the District of Columbia, unless the laws of such other state or states or the District of Columbia forbid unless the laws of the jurisdiction or jurisdictions under which such partnership or partnerships are formed prohibit such merger or consolidation.~~ Such corporation or corporations and such 1 or more partnerships may merge with or into a surviving corporation, which

may be any 1 of such corporations, or they may merge with or into a surviving partnership, which may be any 1 of such partnerships, or they may consolidate into a new resulting corporation, which corporation shall be a corporation of this State, or a partnership formed ~~by the consolidation, which corporation shall be a corporation or partnership of this State or any other state of the United States, or the District of Columbia, which permits such merger or consolidation,~~ pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. The term “partnership” as used in this section includes any partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) formed under the laws of this State or the laws of any other jurisdiction.

(b) Each such corporation and partnership shall enter into a written agreement of merger or consolidation. The agreement shall state:

- (1) The terms and conditions of the merger or consolidation;
- (2) The mode of carrying the same into effect;
- (3) In the case of a merger in which the surviving entity is a corporation of this State, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
- (4) In the case of a consolidation in which the resulting entity is a corporation of this State, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;
- ~~(3)~~(5) The manner, if any, of converting the shares of stock of each such corporation and the partnership interests of each such partnership into shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation or of cancelling some or all of such shares or interests, and if any shares of any such corporation or any partnership interests of any such partnership are not to remain outstanding, to be converted solely into shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which

the holders of such shares or partnership interests are to receive in exchange for, or upon conversion of such shares or partnership interests and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation;~~and~~

~~(4)(6)~~ Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, rights, other securities or interests of the surviving or resulting corporation or partnership; or of any other corporation or entity the shares, rights, other securities or interests of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto, consistent with § 155 of this title; and

(7) Such other provisions or facts as shall be required to be set forth in an agreement of merger or consolidation (including any provision for amendment of the partnership agreement and statement of partnership existence or certificate of limited partnership (or equivalent documents) of the surviving partnership) by the laws of each jurisdiction under which any of the partnerships are formed.

Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(c) The agreement required by subsection (b) of this section shall be adopted, approved, certified, executed and acknowledged by each of the corporations in the same manner as is provided in § 251 or § 255 of this title and, in the case of the partnerships, in accordance with their partnership agreements and in accordance with the laws of the ~~state~~ jurisdiction under which they are formed, ~~as the case may be~~. If the surviving or resulting entity is a partnership, in addition to any other approvals, each stockholder of a merging corporation who will become a general partner of the surviving or resulting partnership must approve the agreement of merger or consolidation. The agreement shall be filed and shall become effective for all purposes of the laws of this State when and as provided in

§ 251 or § 255 of this title with respect to the merger or consolidation of corporations of this State. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation or partnership may file a certificate of merger or consolidation, executed in accordance with § 103 of this title, if the surviving or resulting entity is a corporation, or by a general partner, if the surviving or resulting entity is a partnership, which states:

(1) The name, ~~state of domicile~~ jurisdiction of formation or organization and type of entity of each of the constituent entities;

(2) That an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with this subsection;

(3) The name of the surviving or resulting corporation or partnership;

(4) In the case of a merger in which a corporation is the surviving entity, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

(5) In the case of a consolidation in which a corporation is the resulting entity, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

(6) That the executed agreement of consolidation or merger is on file at an office of the surviving or resulting corporation or partnership and the address thereof;

(7) That a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting entity, on request and without cost, to any stockholder of any constituent corporation or any partner of any constituent partnership; and

(8) The agreement, if any, required by subsection (d) of this section.

(d) If the entity surviving or resulting from the merger or consolidation is ~~to be governed by a partnership~~ formed under the laws of the District of Columbia or any state a jurisdiction other than this State, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation or partnership of this State, as well as for enforcement of any obligation of the surviving or resulting

corporation or partnership arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of this title, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving or resulting corporation or partnership thereof by letter, directed to such surviving or resulting corporation or partnership at its address so specified, unless such surviving or resulting corporation or partnership shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum of \$50 for the use of the State, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of State, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than 5 years from receipt of the service of process.

(e) Sections 251(d)-(f), 255(c) (second sentence) and (d)-(f), 259-261 and 328 of this title shall, insofar as they are applicable, apply to mergers or consolidations between corporations and partnerships.

(f) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a partnership, if the charitable status of such nonstock corporation would thereby be lost or impaired; but a partnership may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

Section 32. Amend § 264, Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 264. Merger or consolidation of domestic corporations and limited liability companies; service of process upon surviving or resulting corporation ~~and or~~ limited liability company.

(a) Any 1 or more corporations of this State may merge or consolidate with 1 or more limited liability companies, ~~of this State or of any other state or states of the United States, or of the District of Columbia, unless the laws of such other state or states or the District of Columbia forbid~~ unless the laws of the jurisdiction or jurisdictions under which such limited liability company or limited liability companies are formed prohibit such merger or consolidation. Such corporation or corporations and such 1 or more limited liability companies may merge with or into a surviving corporation, which may be any 1 of such corporations, or they may merge with or into a surviving limited liability company, which may be any 1 of such limited liability companies, or they may consolidate into a new resulting corporation, which corporation shall be a corporation of this State, or a limited liability company formed ~~by the consolidation, which shall be a corporation or limited liability company of this State or any other state of the United States, or the District of Columbia, which permits such merger or consolidation,~~ pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. The term “limited liability company” as used in this section includes any limited liability company formed under the laws of this State or the laws of any other jurisdiction.

(b) Each such corporation and limited liability company shall enter into a written agreement of merger or consolidation. The agreement shall state:

(1) The terms and conditions of the merger or consolidation;

(2) The mode of carrying the same into effect;

(3) In the case of a merger in which the surviving entity is a corporation of this State, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

(4) In the case of a consolidation in which the resulting entity is a corporation of this State, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;

~~(3)~~(5) The manner, if any, of converting the shares of stock of each such corporation and the limited liability company interests of each such limited liability company into shares, limited liability company interests or other securities of the entity surviving or resulting from such merger or consolidation or of cancelling some or all of such shares or interests, and if any shares of any such corporation or any limited liability company interests of any such limited liability company are not to remain outstanding, to be converted solely into shares, limited liability company interests or other securities of the entity surviving or resulting from such merger or consolidation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of such shares or limited liability company interests are to receive in exchange for, or upon conversion of such shares or limited liability company interests and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares, limited liability company interests or other securities of the entity surviving or resulting from such merger or consolidation; ~~and~~

~~(4)~~(6) Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, rights, other securities or interests of the surviving or resulting corporation or limited liability company; ~~or of any other corporation or entity the shares, rights, other securities or interests of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto, consistent with § 155 of this title; and~~

(7) Such other provisions or facts as shall be required to be set forth in an agreement of merger or consolidation (including any provision for amendment of the limited liability company agreement and certificate of formation (or equivalent documents) of the surviving limited liability company) by the laws of each jurisdiction under which any of the limited liability companies are formed.

Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms

of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(c) The agreement required by subsection (b) of this section shall be adopted, approved, certified, executed and acknowledged by each of the corporations in the same manner as is provided in § 251 or § 255 of this title and, in the case of the limited liability companies, in accordance with their limited liability company agreements and in accordance with the laws of the ~~state~~ jurisdiction under which they are formed, ~~as the case may be~~. The agreement shall be filed and shall become effective for all purposes of the laws of this State when and as provided in § 251 or § 255 of this title with respect to the merger or consolidation of corporations of this State. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation or limited liability company may file a certificate of merger or consolidation, executed in accordance with § 103 of this title, if the surviving or resulting entity is a corporation, or by an authorized person, if the surviving or resulting entity is a limited liability company, which states:

- (1) The name and ~~state of domicile~~ jurisdiction of formation or organization of each of the constituent entities;
- (2) That an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with this subsection;
- (3) The name of the surviving or resulting corporation or limited liability company;
- (4) In the case of a merger in which a corporation is the surviving entity, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
- (5) In the case of a consolidation in which a corporation is the resulting entity, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

(6) That the executed agreement of consolidation or merger is on file at an office of the surviving or resulting corporation or limited liability company and the address thereof;

(7) That a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting entity, on request and without cost, to any stockholder of any constituent corporation or any member of any constituent limited liability company; and

(8) The agreement, if any, required by subsection (d) of this section.

(d) If the entity surviving or resulting from the merger or consolidation is ~~to be governed by a limited liability company formed under~~ the laws of ~~the District of Columbia or any state~~ a jurisdiction other than this State, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation or limited liability company of this State, as well as for enforcement of any obligation of the surviving or resulting corporation or limited liability company arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to the provisions of § 262 of this title, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving or resulting corporation or limited liability company thereof by letter, directed to such surviving or resulting corporation or limited liability company at its address so specified, unless such surviving or resulting corporation or limited liability company shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum of \$50 for the use of the State, which sum shall be taxed as part of the costs in the proceeding, if the

plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of State, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than 5 years from receipt of the service of process.

(e) Sections 251(d)-(f), 255(c) (second sentence) and (d)-(f), 259-261 and 328 of this title shall, insofar as they are applicable, apply to mergers or consolidations between corporations and limited liability companies.

(f) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a limited liability company, if the charitable status of such nonstock corporation would thereby be lost or impaired; but a limited liability company may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

Section 33. Amend § 267(a), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(a) In any case in which: (1) at least 90% of the outstanding shares of each class of the stock of a corporation or corporations (other than a corporation which has in its certificate of incorporation the provision required by § 251(g)(7)(i) of this title), of which class there are outstanding shares that, absent this subsection, would be entitled to vote on such merger, is owned by an entity, and (2) 1 or more of such corporations is a corporation of this State, ~~and (3) any entity or corporation that is not an entity or corporation of this State is an entity or corporation of any other state or the District of Columbia, the laws of which do not forbid unless the laws of the jurisdiction or jurisdictions under which such entity or such foreign corporations are formed or organized prohibit~~ such merger, the entity having such stock ownership may either merge the corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other corporations by (a) authorizing such merger in accordance with such entity's governing documents and the laws of the jurisdiction under which such entity is formed or organized and (b) acknowledging and filing with the Secretary of State, in accordance with § 103 of this title, a certificate of such ownership and merger certifying (i) that such merger was authorized in accordance with such entity's governing documents and the laws of the jurisdiction under which such entity is formed or organized, such certificate executed in accordance with such entity's governing documents and in accordance with the laws of the jurisdiction under which such entity is formed or organized and

(ii) the type of entity of each constituent entity to the merger; provided, however, that in case the entity shall not own all the outstanding stock of all the corporations, parties to a merger as aforesaid, (A) the certificate of ownership and merger shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving constituent party upon surrender of each share of the corporation or corporations not owned by the entity, or the cancellation of some or all of such shares and (B) such terms and conditions of the merger may not result in a holder of stock in a corporation becoming a general partner in a surviving entity that is a partnership (other than a limited liability partnership or a limited liability limited partnership). Any of the terms of the merger may be made dependent upon facts ascertainable outside of the certificate of ownership and merger, provided that the manner in which such facts shall operate upon the terms of the merger is clearly and expressly set forth in the certificate of ownership and merger. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the entity. If the surviving constituent party ~~exists~~ is an entity formed or organized under the laws of ~~the District of Columbia or any state or a~~ jurisdiction other than this State, (1) § 252(d) of this title shall also apply to a merger under this section; if the surviving constituent party is the entity, the word “corporation” where applicable, as used in § 252(d) of this title, shall be deemed to include an entity as defined herein; and (2) the terms and conditions of the merger shall obligate the surviving constituent party to provide the agreement, and take the actions, required by § 252(d) of this title.

Section 34. Amend § 267(d), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

~~(d) A merger may be effected under this section although 1 or more of the constituent parties is a corporation organized under the laws of a jurisdiction other than 1 of the United States; provided that the laws of such jurisdiction do not forbid such merger.~~

Section 35. Amend § 267(e), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

~~(e)~~(d) As used in this section only, the term:

(1) “Constituent party” means an entity or corporation to be merged pursuant to this section;

(2) “Entity” means a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), limited liability company, any

association of the kind commonly known as a joint-stock association or joint-stock company and any unincorporated association, trust or enterprise having members or having outstanding shares of stock or other evidences of financial or beneficial interest therein, whether formed or organized by agreement or under statutory authority or otherwise and whether formed or organized under the laws of this State or the laws of any other jurisdiction; and

(3) “~~G~~overning documents” means a partnership agreement, limited liability company agreement, articles of association or any other instrument containing the provisions by which an entity is formed or organized.

Section 36. Amend § 364, Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 364 Stock certificates; notices regarding uncertificated stock.

Any stock certificate issued by a public benefit corporation shall note conspicuously that the corporation is a public benefit corporation formed pursuant to this subchapter. Any notice ~~sent~~given by a public benefit corporation pursuant to § 151(f) of this title shall state conspicuously that the corporation is a public benefit corporation formed pursuant to this subchapter.

Section 37. Amend § 374, Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 374. Annual report.

Annually ~~On~~ or before June 30 ~~in each year~~, a foreign corporation doing business in this State shall file a report with the Secretary of State. The report shall be made ~~on behalf of~~ on a form designated by the Secretary of State and shall be signed by the corporation’s ~~by its~~ president, secretary, treasurer or other proper officer duly authorized so to act, or by any ~~2~~ of its directors, or if filing an initial report by any incorporator in the event its board of directors shall not have been elected. The fact that an individual’s name is signed on a certification attached to a corporate report shall be prima facie evidence that such individual is authorized to certify the report on behalf of the corporation; however the official title or position of the individual signing the corporate report shall be designated. The report shall ~~be on a calendar year basis and shall state the address (in accordance with § 131(e) of this title) of its registered office in this State; the name of its registered agent at such address upon whom service of process against the corporation may be served; the address (which shall include the street, number, city, state or foreign~~

country) of the main or headquarters place of business of the corporation without this State; the names and addresses of all the directors and officers of the corporation and when the term of each expires; the date appointed for the next annual meeting of the stockholders for the election of directors; the number of shares of each class of its capital stock which it is authorized to issue, if any, and the par value thereof when applicable; and the number of shares of each class of the capital stock actually issued, if any; the amount of capital invested in real estate and other property in this State, and the tax paid thereon; and, if exempt from taxation in this State for any cause, the specific facts entitling the corporation to such exemption from taxation contain the following information:

- (1) The location of its registered office in this State, which shall include the street, number, city and postal code;
- (2) The name of the agent upon whom service of process against the corporation may be served;
- (3) The location of the principal place of business of the corporation, which shall include the street, number, city, state or foreign country; and
- (4) The names and addresses of all the directors as of the filing date of the report and the name and address of the officer who signs the report.

If any officer or director of a foreign corporation required to file an annual report with the Secretary of State shall knowingly make any false statement in the report, such officer or director shall be guilty of perjury.

Section 38. Amend § 502(a), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(a) Annually on or before March 1, every corporation now existing or hereafter incorporated under Chapter 1 of this title or which has accepted the Constitution of this State, shall make an annual franchise tax report to the Secretary of State. The report shall be made on a form designated by the Secretary of State and shall be signed by the corporation's president, secretary, treasurer or other proper officer duly authorized so to act, or by any of its directors, or if filing an initial report by any incorporator in the event its board of directors shall not have been elected. The fact that an individual's name is signed on the report shall be prima facie evidence that such individual is authorized to certify the report on behalf of the corporation; however, the official title or position of the individual signing the corporate report shall be designated. The report shall contain the following information:

- (1) The location of its registered office in this State, which shall include the street, number, city and postal
code~~stated with the degree of particularity required by § 102(a)(2) of this title;~~

- (2) The name of the agent upon whom service of process against the corporation may be served;
- (3) The location ~~(city, town, street and number of same, if number there be)~~ of the principal place of business of the corporation, which shall include the street, number, city, state or foreign country;
- (4) The names and addresses of all the directors as of the filing date of the report and the name and address of the officer who signs the report; provided, that other than an initial report, all reports shall list a director or directors excepting any report filed in conjunction with a certificate of dissolution filed by an incorporator pursuant to § 274 of this title or a certificate of dissolution filed pursuant to § 275(c) of this title;
- (5) The number of shares and the par value per share of each class of capital stock having a par value and the number of shares of each class of stock without par value which the corporation is authorized to issue;
- (6) If exempt from taxation for any cause, the specific facts entitling the corporation to exemption from taxation; and
- (7) Such additional information, schedules and attachments as the Secretary shall require to ascertain the franchise tax due to the State.

Section 39. Sections 1 through 7 and 11 through 38 shall be effective on August 1, 2017.

Section 40. Sections 8 through 10 shall be effective only for actions taken by consent having a record date, for purposes of determining the stockholders or members entitled to consent, on or after August 1, 2017.

SYNOPSIS

Section 1. Sections 1, 2, 5, 6, 7, 11 and 36 of this Act amend Sections 151(f), 202(a), 219(a), 219(c), 224, 232(c) and 364 of Title 8, respectively. Amendments to Sections 219, 224 and 232 and related provisions are intended to provide specific statutory authority for Delaware corporations to use networks of electronic databases (examples of which are described currently as “distributed ledgers” or a “blockchain”) for the creation and maintenance of corporate records, including the corporation’s stock ledger. Section 219(c), as amended, now includes a definition of “stock ledger.” Section 224, as amended, requires that the stock ledger serve three functions contemplated by the Delaware General Corporation Law: it must enable the corporation to prepare the list of stockholders specified in Sections 219 and 220; it must record the information specified in Sections 156, 159, 217(a) and 218; and, as required by Section 159, it must record transfers of stock as governed by Article 8 of subtitle I of

Title 6. Sections 151, 202 and 364 are also amended to clarify that the notices given to holders of uncertificated shares pursuant to those sections may be given by electronic transmission.

Section 2. Sections 3 and 4 of this Act amend Section 203(b) of Title 8. The amendments to Section 203(b)(3) clarify that an amendment to the corporation's certificate of incorporation opting out of the restrictions on business combinations under that section becomes effective at the date and time such amendment becomes effective under Section 103 (in the case of a corporation that has never had a class of voting stock listed on a national securities exchange or held of record by more than 2,000 stockholders and that has not elected through its original certificate of incorporation or any amendment thereto to be governed by Section 203) or 12 months after the effective date of such amendment (in the case of all other corporations), rather than, in each case, the time at which the amendment is adopted by stockholders. The amendment to the last sentence of Section 203(b) adopts the same language with respect to the effectiveness of an amendment as added in Section 203(b)(3).

Section 3. Sections 8, 9 and 10 of this Act amend Sections 228(c), 228(d) and 228(e) of Title 8, respectively. Section 228 is amended to provide that a consent need not bear the date of signature of the stockholder or member signing the consent. The amendments to Section 228(c) also provide that the sixty-day period for the delivery of consents will start on the first date a consent is delivered to the corporation. The amendments eliminate surplus language that specified where consents had to be delivered.

Section 4. Sections 12 through 35 of this Act amend the provisions on mergers and consolidations in subchapter IX of chapter 1 of Title 8. Sections 254, 263 and 264 are amended to permit mergers of Delaware corporations with joint-stock or other associations, limited liability companies and partnerships formed or organized under the laws of a non-US jurisdiction. Sections 252, 253, 258 and 267 are amended to use the term "foreign corporation" (as such term is defined in Section 371(a)) to refer consistently to mergers with a corporation organized under the laws of any jurisdiction other than the State of Delaware. Sections 255 and 256 are amended to clarify how membership interests in a non-stock corporation may be treated in a merger and, as a result, redundant language to this effect in Section 257 is eliminated. All sections relating to mergers are amended to conform language to eliminate inconsistencies. The term "organized" is used with respect to corporations and refers to the method by which a corporation is formed, incorporated, created or otherwise comes into being under the laws governing its internal affairs. The term "formed" is used with respect to non-corporate entities and includes the method by which a non-corporate entity is formed, created or otherwise comes into being under the laws governing its internal affairs.

Both terms are used with respect to joint stock associations given that the manner in which they are characterized may, depending upon the law at issue, include attributes of both “organized” and “formed”. The clarification of the terms used to refer to corporations and non-corporate entities and the elimination of the term “existing” from Section 251 are for clarification purposes only and do not change the intent of such sections prior to the amendments. Each of the statutes on mergers and consolidations involving Delaware corporations and non-Delaware entities are amended to provide that such mergers and consolidations are permitted so long as the laws of the applicable non-Delaware jurisdictions do not prohibit the transaction. These amendments change provisions of Sections 252, 253, 256 and 258 that permitted these mergers and consolidations under Delaware law only if the applicable non-Delaware law “permitted” the transaction and change the language of Sections 254, 263, 264 and 267 from not “forbid” to not “prohibit”. The amendments are intended to further facilitate mergers and consolidations of Delaware corporations with non-Delaware entities.

Section 5. Sections 37 and 38 of this Act amend Sections 374 and 502(a) of Title 8, respectively. Section 502 is amended to clarify the information required to be disclosed in annual reports filed by domestic corporations with the Office of the Secretary of State of the State of Delaware. Section 374 is amended to conform the annual reporting requirements for corporations formed in another jurisdiction and qualifying to do business in Delaware with the requirements for domestic corporations. The amendments will allow for seamless electronic integration and more efficient processing of these annual reports.

Section 6. Sections 39 and 40 of this Act relate to the effectiveness of the amendments to Title 8. Section 40 of this Act provides that Sections 8 through 10 of this Act (relating to the amendments to Section 228 of Title 8) are effective only for stockholder and member actions taken by consent having a record date, for purposes of determining the stockholders or members entitled to consent, on or after August 1, 2017. Section 39 of this Act provides that Sections 1 through 7 and Sections 11 through 38 of this Act (relating to the remaining amendments to Title 8 set forth in this Act) are effective on August 1, 2017.