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SENATE BILL DRS45391-MLf-107A (02/28)

Short Title: Business Corporation Act Revisions. (Public)

Sponsors: Senators Barringer and Newton (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS REVISIONS TO THE NORTH CAROLINA BUSINESS
3 CORPORATION ACT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 55-1-22(a) reads as rewritten:

6 "(a) The Secretary of State shall collect the following fees when the documents
7 described in this subsection are delivered to the Secretary for filing:

8 Document Fee

9 ...

10 (28) Articles of validation 150.00"

11 **SECTION 2.** G.S. 55-2-02(b) reads as rewritten:

12 "(b) The articles of incorporation may set forth any provision that under this Chapter is
13 required or permitted to be set forth in the bylaws, and may also set forth any or all of the
14 following:

15 (1) The names and addresses of the individuals who are to serve as the initial
16 ~~directors;~~ directors.

17 (2) Provisions not inconsistent with law regarding (i) the purpose or purposes
18 for which the corporation is organized; (ii) managing the business and
19 regulating the affairs of the corporation; (iii) defining, limiting, and
20 regulating the powers of the corporation, its board of directors, and
21 shareholders; (iv) a par value for authorized shares or classes of shares; (v)
22 the imposition of personal liability on shareholders for the debts of the
23 corporation to a specified extent and upon specified conditions; (vi) any
24 limitation on the duration of the ~~corporation;~~ and corporation.

25 ...

26 (4) A provision limiting or eliminating any duty of a director, an officer, or any
27 other person, to offer the corporation the right to have or participate in any
28 business opportunities, or classes or categories of business opportunities,
29 prior to the pursuit or taking of the opportunity by the director, officer, or
30 other person."

31 **SECTION 3.** Article 1 of Chapter 55 of the General Statutes is amended by adding
32 a new Part to read:

33 "Part 6. Ratification of Defective Corporate Actions.

34 **§ 55-1-60. Definitions.**

35 In this Part, the following definitions apply:



* D R S 4 5 3 9 1 - M L F - 1 0 7 A *

- 1 (1) Corporate action. – Any action taken by or on behalf of the corporation,
2 including any action taken by the incorporator, the board of directors, a
3 committee, a subcommittee, an officer or agent of the corporation, or the
4 shareholders.
- 5 (2) Date of the defective corporate action. – The date the defective corporate
6 action was purported to have been taken or, if the exact date is unknown, the
7 approximate date thereof.
- 8 (3) Defective corporate action. – Any corporate action purportedly taken that is,
9 and at the time the corporate action was purportedly taken would have been,
10 within the power of the corporation, but is void or voidable due to a failure
11 of authorization. This term includes an overissue. This term does not include
12 a business combination subject to G.S. 55-9-02, unless the business
13 combination was approved by shareholders in accordance with G.S. 55-9-02.
- 14 (4) Failure of authorization. – The (i) failure to authorize, approve, or otherwise
15 effect a corporate action in compliance with the provisions of this Chapter,
16 the articles of incorporation or bylaws of the corporation, a corporate
17 resolution, or any plan or agreement to which the corporation is a party, if
18 and to the extent the failure would render the corporate action void or
19 voidable, or (ii) failure of the board of directors or any officer of the
20 corporation to authorize or approve any act or transaction taken by or on
21 behalf of the corporation that would have required for its due authorization
22 the approval of the board of directors or the officer.
- 23 (5) Overissue. – The purported issuance of either of the following:
- 24 a. Shares of a class or series in excess of the number of shares of a class
25 or series the corporation has the power to issue under G.S. 55-6-01 at
26 the time of the issuance.
- 27 b. Shares of any class or series that is not then authorized for issuance
28 by the articles of incorporation.
- 29 (6) Putative shares. – The shares of any class or series of the corporation,
30 including shares issued upon exercise of rights, options, warrants, or other
31 securities convertible into shares of the corporation, or interests with respect
32 thereto, that were created or issued as a result of a defective corporate action,
33 and that satisfy either of the following conditions:
- 34 a. Would constitute valid shares but for any failure of authorization.
35 b. Cannot be determined by the board of directors to be valid shares.
- 36 (7) Validation effective time. – With respect to any defective corporate action
37 ratified under this Part, means the later of (i) the time at which the
38 ratification of the defective corporate action is approved by the shareholders,
39 or if approval of shareholders is not required, the time at which the notice
40 required by G.S. 55-1-64 becomes effective in accordance with G.S. 55-1-41
41 or (ii) the time at which any articles of validation filed in accordance with
42 G.S. 55-1-66 become effective. The validation effective time shall not be
43 affected by the filing or pendency of a judicial proceeding in accordance
44 with this Chapter or otherwise, unless otherwise ordered by the court.
- 45 (8) Valid shares. – The shares of any class or series of the corporation that have
46 been duly authorized and validly issued in accordance with this Chapter,
47 including as a result of ratification or validation under this Part.

48 **"§ 55-1-61. Defective corporate actions.**

49 (a) A defective corporate action is not void or voidable if ratified in accordance with
50 G.S. 55-1-62 or validated in accordance with G.S. 55-1-67.

1 **(b)** Ratification under G.S. 55-1-62 or validation under G.S. 55-1-67 is not the
2 exclusive means of ratifying or validating any defective corporate action, and the absence or
3 failure of ratification in accordance with this Part does not, of itself, affect the validity or
4 effectiveness of any corporate action properly ratified under common law or otherwise, nor
5 does it create a presumption that the corporate action is or was a defective corporate action or
6 void or voidable.

7 **(c)** In the case of an overissue, putative shares shall be valid shares effective as of the
8 date originally issued or purportedly issued upon either of the following:

9 **(1)** The effectiveness under this Part and under Article 10 of this Chapter of an
10 amendment to the articles of incorporation authorizing, designating, or
11 creating the shares.

12 **(2)** The effectiveness of any other corporate action under this Part ratifying the
13 authorization, designation, or creation of the shares.

14 **"§ 55-1-62. Ratification of defective corporate actions.**

15 **(a)** Except as otherwise provided in subsection (b) of this section, the board of directors
16 shall ratify a defective corporate action by taking action in accordance with G.S. 55-1-63 that
17 states all of the following:

18 **(1)** The defective corporate action to be ratified and, if the defective corporate
19 action involved the issuance of putative shares, the number and type of
20 putative shares purportedly issued.

21 **(2)** The date of the defective corporate action.

22 **(3)** The nature of the failure of authorization with respect to the defective
23 corporate action to be ratified.

24 **(4)** That the board of directors approves the ratification of the defective
25 corporate action.

26 **(b)** In the event that a defective corporate action to be ratified relates to the election of
27 the initial board of directors of the corporation under G.S. 55-2-05(a)(2), a majority of the
28 persons who, at the time of the ratification, are exercising the powers of directors may take an
29 action that states all of the following:

30 **(1)** The name of the person or persons who first took action in the name of the
31 corporation as the initial board of directors of the corporation.

32 **(2)** The earlier of the date on which the person or persons identified under
33 subdivision (1) of this subsection first took the action or were purported to
34 have been elected as the initial board of directors.

35 **(3)** That the ratification of the election of the person or persons identified under
36 subdivision (1) of this subsection as the initial board of directors is
37 approved.

38 **(c)** If any provision of this Chapter, the articles of incorporation or bylaws, any
39 corporate resolution, or any plan or agreement to which the corporation is a party in effect at
40 the time action under subsection (a) of this section is taken, requires shareholder approval or
41 would have required shareholder approval at the date of the occurrence of the defective
42 corporate action, the ratification of the defective corporate action approved in the action taken
43 by the directors under subsection (a) of this section shall be submitted to the shareholders for
44 approval in accordance with G.S. 55-1-63.

45 **(d)** Unless otherwise provided in the action taken by the board of directors under
46 subsection (a) of this section, after the action by the board of directors has been taken and, if
47 required, approved by the shareholders, the board of directors may abandon the ratification at
48 any time prior to the validation effective time without further action of the shareholders.

49 **"§ 55-1-63. Action on ratification.**

1 (a) The quorum and voting requirements applicable to a ratifying action by the board of
2 directors under G.S. 55-1-62(a) are the quorum and voting requirements applicable to the
3 corporate action proposed to be ratified at the time the ratifying action is taken.

4 (b) If the ratification of the defective corporate action requires approval by the
5 shareholders under G.S. 55-1-62(c), and, if the approval is to be given at a meeting, the
6 corporation shall notify each holder of valid and putative shares, whether or not entitled to vote,
7 as of the record date for notice of the meeting and as of the date of the occurrence of the
8 defective corporate action, provided that notice shall not be required to be given to holders of
9 valid or putative shares whose identities or addresses for notice cannot be determined from the
10 records of the corporation. The notice shall state that the purpose, or one of the purposes, of the
11 meeting is to consider ratification of a defective corporate action and shall be accompanied by
12 (i) a copy of the action taken by the board of directors in accordance with G.S. 55-1-62(a) or
13 (ii) the information required by subdivisions (1) through (4) of subsection (a) of G.S. 55-1-62.
14 The notice shall also include a statement that any claim that the ratification of the defective
15 corporate action and any putative shares issued as a result of the defective corporate action
16 should not be effective, or should be effective only on certain conditions, shall be brought
17 within 120 days from the applicable validation effective time.

18 (c) Except as provided in subsection (d) of this section with respect to the voting
19 requirements to ratify the election of a director, the quorum and voting requirements applicable
20 to the approval by the shareholders required by G.S. 55-1-62(c) are the quorum and voting
21 requirements applicable to the corporate action proposed to be ratified at the time of the
22 shareholder approval.

23 (d) The approval by shareholders to ratify the election of a director requires that the
24 votes cast within the voting group favoring the ratification of the election exceed the votes cast
25 opposing the ratification of the election at a meeting at which a quorum is present.

26 (e) Putative shares on the record date for determining the shareholders entitled to vote
27 on any matter submitted to shareholders under G.S. 55-1-62(c), and without giving effect to
28 any ratification of putative shares that becomes effective as a result of the vote, shall neither be
29 entitled to vote nor counted for quorum purposes in any vote to approve the ratification of any
30 defective corporate action.

31 (f) If the approval under this section of putative shares would result in an overissue, in
32 addition to the approval required by G.S. 55-1-62, approval of an amendment to the articles of
33 incorporation under Article 10 of this Chapter to increase the number of shares of an authorized
34 class or series, or to authorize the creation of a class or series of shares so there would be no
35 overissue, shall also be required.

36 **"§ 55-1-64. Notice requirements.**

37 (a) Unless shareholder approval is required under G.S. 55-1-62(c), prompt notice of an
38 action taken under G.S. 55-1-62 shall be given to each holder of valid and putative shares,
39 whether or not entitled to vote, as of (i) the date of the action by the board of directors and (ii)
40 the date of the defective corporate action ratified, provided that notice shall not be required to
41 be given to holders of valid and putative shares whose identities or addresses for notice cannot
42 be determined from the records of the corporation.

43 (b) The notice required under subsection (a) of this section shall contain (i) a copy of
44 the action taken by the board of directors in accordance with subsection (a) or (b) of
45 G.S. 55-1-62 or (ii) the information required by subdivisions (1) through (4) of subsection (a)
46 of G.S. 55-1-62 or subdivisions (1) through (3) of subsection (b) of G.S. 55-1-62, as applicable.
47 The notice shall also include a statement that any claim that the ratification of the defective
48 corporate action and any putative shares issued as a result of the defective corporate action
49 should not be effective, or should be effective only on certain conditions, shall be brought
50 within 120 days from the applicable validation effective time.

1 (c) No notice under this section is required with respect to any action required to be
2 submitted to shareholders for approval under G.S. 55-1-62(c) if notice is given in accordance
3 with G.S. 55-1-63(b).

4 (d) A notice required by this section may be given in any manner permitted by
5 G.S. 55-1-41 and, for any public corporation, may be given by means of a filing or furnishing
6 of the notice with the Securities and Exchange Commission which becomes publicly accessible
7 on the Web site of the Securities and Exchange Commission approximately contemporaneously
8 with the filing or furnishing.

9 **"§ 55-1-65. Effect of ratification.**

10 Ratification in accordance with this Part shall have the following effects from and after the
11 validation effective time, and without regard to the 120-day period during which a claim may
12 be brought under G.S. 55-1-67:

13 (1) Each defective corporate action ratified in accordance with G.S. 55-1-62 is
14 not void or voidable as a result of the failure of authorization identified in
15 the action taken under subsection (a) or (b) of G.S. 55-1-62 and is a valid
16 corporate action effective as of the date of the defective corporate action.

17 (2) The issuance of each putative share or fraction of a putative share
18 purportedly issued pursuant to a defective corporate action identified in the
19 action taken under G.S. 55-1-62 is not void or voidable, and the putative
20 share or fraction of the putative share is an identical share or fraction of a
21 valid share as of the time it was purportedly issued.

22 (3) Any corporate action taken subsequent to the defective corporate action
23 ratified in accordance with this Part in reliance on the defective corporate
24 action having been validly effected and any subsequent defective corporate
25 action resulting directly or indirectly from the original defective corporate
26 action shall be valid as of the time taken.

27 **"§ 55-1-66. Filings.**

28 (a) If the defective corporate action ratified under this Part would have required under
29 any other section of this Chapter a filing in accordance with this Chapter, then, whether or not a
30 filing was previously made in respect of the defective corporate action and in lieu of a filing
31 otherwise required by this Chapter, the corporation shall file articles of validation in accordance
32 with this section, and the articles of validation shall serve to amend or substitute for any other
33 filing with respect to the defective corporate action required by this Chapter.

34 (b) The articles of validation shall set forth all of the following:

35 (1) The defective corporate action that is the subject of the articles of validation,
36 including, in the case of any defective corporate action involving the
37 issuance of putative shares, the number and type of putative shares issued
38 and the date or dates upon which the putative shares were purported to have
39 been issued.

40 (2) The date of the defective corporate action.

41 (3) The nature of the failure of authorization in respect of the defective
42 corporate action.

43 (4) A statement that the defective corporate action was ratified in accordance
44 with G.S. 55-1-62, including the date on which the board of directors ratified
45 the defective corporate action and the date, if any, on which the shareholders
46 approved the ratification of the defective corporate action.

47 (5) The information required by subsection (c) of this section.

48 (c) The articles of validation shall also contain all of the following information that is
49 applicable:

50 (1) If a filing was previously made in respect of the defective corporate action
51 and no changes to the filing are required to give effect to the ratification of

1 the defective corporate action in accordance with G.S. 55-1-62, the articles
2 of validation shall set forth (i) the name, title, and filing date of the filing
3 previously made and any articles of correction thereto and (ii) a statement
4 that a copy of the filing previously made, together with any articles of
5 correction thereto, is attached as an exhibit to the articles of validation.

6 (2) If a filing was previously made in respect of the defective corporate action
7 and the filing requires any change to give effect to the ratification of the
8 defective corporate action in accordance with G.S. 55-1-62, the articles of
9 validation shall set forth (i) the name, title, and filing date of the filing
10 previously made and any articles of correction thereto, (ii) a statement that a
11 filing containing all of the information required to be included under the
12 applicable section or sections of this Chapter to give effect to the defective
13 corporate action is attached as an exhibit to the articles of validation, and
14 (iii) the date and time that the filing is deemed to have become effective.

15 (3) If a filing was not previously made in respect of the defective corporate
16 action and the defective corporate action ratified under G.S. 55-1-62 would
17 have required a filing under any other section of this Chapter, the articles of
18 validation shall set forth (i) a statement that a filing containing all of the
19 information required to be included under the applicable section or sections
20 of this Chapter to give effect to the defective corporate action is attached as
21 an exhibit to the articles of validation and (ii) the date and time that the filing
22 is deemed to have become effective.

23 **§ 55-1-67. Judicial proceedings regarding validity of corporate actions.**

24 (a) Upon application to the Superior Court Division of the General Court of Justice by
25 the corporation, any successor entity to the corporation, a director of the corporation, any
26 shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the
27 corporation, including any shareholder, beneficial shareholder, or unrestricted voting trust
28 beneficial owner as of the date of the defective corporate action ratified under G.S. 55-1-62, or
29 any other person claiming to be substantially and adversely affected by a ratification under
30 G.S. 55-1-62, the appropriate court of the county where the corporation's principal office, or, if
31 none, its registered office, in this State is located, or, if the legal action is designated a
32 mandatory complex business case pursuant to G.S. 7A-45.4, the Business Court, may do all of
33 the following:

34 (1) Determine the validity and effectiveness of any corporate action or defective
35 corporate action.

36 (2) Determine the validity and effectiveness of any ratification under
37 G.S. 55-1-62.

38 (3) Determine the validity of any putative shares.

39 (b) In connection with an action under this section, the court may make findings or
40 orders and take into account any factors or considerations that it deems proper under the
41 circumstances.

42 (c) Service of process of the application under subsection (a) of this section on the
43 corporation may be made in any manner provided by State law or by rule of the applicable
44 court for service on the corporation, and no other party need be joined in order for the court to
45 adjudicate the matter. In an action filed by the corporation, the court may require that notice of
46 the action be provided to other persons specified by the court and permit the other persons to
47 intervene in the action.

48 (d) Notwithstanding any other provision of this section or otherwise under applicable
49 law, any action asserting that the ratification of any defective corporate action and any putative
50 shares issued as a result of the defective corporate action should not be effective, or should be

1 effective only on certain conditions, shall be brought within 120 days of the validation effective
2 time."

3 **SECTION 4.** G.S. 55-7-25 is amended by adding a new subsection to read:

4 "(f) Whenever a provision of this Chapter provides for voting by one or more series as
5 separate voting groups, unless otherwise provided in this Chapter, the requirement provided in
6 G.S. 55-10-04(c) for amendments of articles of incorporation apply to that provision."

7 **SECTION 5.** G.S. 55-7-30 reads as rewritten:

8 **"§ 55-7-30. Voting trusts.**

9 ...

10 (b) A voting trust becomes effective on the date the first shares subject to the trust are
11 registered in the trustee's name. ~~A voting trust is valid for not more than 10 years after its~~
12 ~~effective date unless extended under subsection (e).~~

13 (e) ~~All or some of the parties to a voting trust may extend it for additional terms of not~~
14 ~~more than 10 years each by signing an extension agreement and obtaining the voting trustee's~~
15 ~~written consent to the extension. An extension is valid for not more than 10 years from the date~~
16 ~~the first shareholder signs the extension agreement. The voting trustee must deliver copies of~~
17 ~~the extension agreement and list of beneficial owners to the corporation's principal office. An~~
18 ~~extension agreement binds only those parties signing it.~~

19 (d) Any limits on the duration of a voting trust shall be as set forth in the voting trust. A
20 voting trust that became effective prior to October 1, 2017, is valid for not more than 10 years
21 after its effective date unless the voting trust is amended to provide otherwise by agreement of
22 the parties to the voting trust. An amendment to a voting trust under this subsection shall bind
23 only those parties signing it. The voting trustee shall deliver copies of the amendment and a list
24 of beneficial owners signing it to the corporation's principal office."

25 **SECTION 6.** G.S. 55-7-31 reads as rewritten:

26 **"§ 55-7-31. Shareholders' agreements.**

27 (a) An agreement between two or more shareholders, if in writing and signed by the
28 parties thereto, may provide that in the exercise of any voting rights of shares held by the
29 parties, including any vote with respect to directors, ~~such~~the shares shall be voted as provided
30 by the agreement, or as the parties may agree, or as determined in accordance with any
31 procedure (including arbitration) specified in the agreement. ~~Such agreement shall be valid as~~
32 ~~between the parties thereto for not more than 10 years from the date of its execution. A voting~~
33 ~~agreement created under this section may be extended or renewed in like manner as a voting~~
34 ~~trust may be extended or renewed as provided by G.S. 55-7-30 (e), but~~subsection is not
35 ~~otherwise~~ subject to the provisions of ~~G.S. 55-7-30.~~G.S. 55-7-30 and is specifically
36 enforceable.

37 (b) ~~Except in the case of a public corporation, no written agreement to which all of the~~
38 ~~shareholders have actually assented, whether embodied in the articles of incorporation or~~
39 ~~bylaws or in any side agreement in writing and signed by all the parties thereto, and which~~
40 ~~relates to any phase of the affairs of the corporation, whether to the management of its business~~
41 ~~or division of its profits or otherwise, shall be invalid as between the parties thereto, on the~~
42 ~~ground that it is an attempt by the parties thereto to treat the corporation as if it were a~~
43 ~~partnership or to arrange their relationships in a manner that would be appropriate between~~
44 ~~partners. A transferee of shares covered by such agreement who acquires them with knowledge~~
45 ~~thereof is bound by its provisions.~~Except for public corporations, an agreement among the
46 shareholders of a corporation that complies with this section and does any or all of the
47 following is effective among the shareholders and the corporation even though it is inconsistent
48 with one or more other provisions of this Chapter:

49 (1) Eliminates the board of directors or restricts the discretion or powers of the
50 board of directors.

- 1 (2) Governs the authorization or making of distributions, whether or not in
2 proportion to ownership of shares, subject to the limitations in G.S. 55-6-40.
3 (3) Establishes who shall be directors or officers of the corporation, or their
4 terms of office or manner of selection or removal.
5 (4) Governs, in general or in regard to specific matters, the exercise or division
6 of voting power by or between the shareholders and directors or by among
7 any of them, including use of weighted voting rights or director proxies.
8 (5) Establishes the terms and conditions of any agreement for the transfer or use
9 of property or the provision of services between or among the corporation
10 and any shareholder, director, officer, or employee of the corporation.
11 (6) Transfers to one or more shareholders or other persons all or part of the
12 authority to exercise the corporate powers or to manage the business and
13 affairs of the corporation, including the resolution of any issue about which
14 there exists a deadlock among directors or shareholders.
15 (7) Requires dissolution of the corporation at the request of one or more of the
16 shareholders or upon the occurrence of a specified event or contingency.
17 (8) Otherwise governs the exercise of the corporate powers or the management
18 of the business and affairs of the corporation or the relationship between or
19 among the shareholders, the directors, and the corporation and is not
20 contrary to public policy.

21 (c) ~~A written agreement between all or less than all of the shareholders, whether solely~~
22 ~~between themselves or between one or more of them and a party who is not a shareholder, is~~
23 ~~not invalid as between the parties thereto on the ground that it so relates to the conduct of the~~
24 ~~affairs of the corporation as to interfere with the discretion of the board of directors. The effect~~
25 ~~of any such agreement shall be to relieve the directors and impose upon the shareholders who~~
26 ~~are parties to the agreement the liability for managerial acts or omissions which is imposed on~~
27 ~~directors to the extent and so long as the discretion or powers of the board in its management of~~
28 ~~corporate affairs is controlled by such agreement.~~

29 (d) Both of the following requirements apply to an agreement authorized by subsection
30 (b) of this section:

- 31 (1) The agreement shall be set forth (i) in the articles of incorporation or bylaws
32 and approved by all persons who are shareholders at the time of the
33 agreement or (ii) in a written document that is signed by all persons who are
34 shareholders at the time of the agreement and is made known to the
35 corporation.
36 (2) The agreement is subject to amendment only by all persons who are
37 shareholders at the time of the amendment unless the agreement provides
38 otherwise.

39 (e) The existence of an agreement authorized by subsection (b) of this section shall be
40 noted conspicuously on the front or back of each certificate for outstanding shares or on the
41 information statement required by G.S. 55-6-26(b). If, at the time of the agreement, the
42 corporation has shares outstanding represented by certificates, the corporation shall recall the
43 outstanding certificates and issue substitute certificates that comply with this subsection. The
44 failure to note the existence of the agreement on the certificate or information statement shall
45 not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of
46 shares who, at the time of purchase, did not have knowledge of the existence of the agreement
47 is entitled to rescission of the purchase. A purchaser is deemed to have knowledge of the
48 existence of the agreement if its existence is noted on the certificate or information statement
49 for the shares in compliance with this subsection and, if the shares are not represented by a
50 certificate, the information statement is delivered to the purchaser at or prior to the time of
51 purchase of the shares. An action to enforce the right of rescission authorized by this subsection

1 shall be commenced within the earlier of 90 days after discovery of the existence of the
2 agreement or two years after the time of purchase of the shares.

3 (f) An agreement authorized by subsection (b) of this section shall cease to be effective
4 when the corporation becomes a public corporation. If the agreement ceases to be effective for
5 any reason, the board of directors may, if the agreement is contained or referred to in the
6 corporation's articles of incorporation or bylaws, adopt an amendment to the articles of
7 incorporation or bylaws, without shareholder action, to delete the agreement and any references
8 to it.

9 (g) The existence or performance of an agreement authorized by subsection (b) of this
10 section shall not be a ground for imposing personal liability on any shareholder for the acts or
11 debts of the corporation even if the agreement or its performance treats the corporation as if it
12 were a partnership or results in failure to observe the corporate formalities otherwise applicable
13 to the matters governed by the agreement.

14 (h) Incorporators or subscribers for shares may act as shareholders with respect to an
15 agreement authorized by subsection (b) of this section if no shares have been issued when the
16 agreement is made.

17 (i) A written agreement between all or less than all of the shareholders, whether solely
18 between themselves or between one or more of them and a party who is not a shareholder, is
19 not invalid as between the parties thereto on the ground that it relates to the conduct of the
20 affairs of the corporation so as to limit the discretion or powers of the board of directors. The
21 effect of the agreement is to relieve the directors of, and impose upon the person or persons in
22 whom the discretion or powers are vested, liability for managerial acts or omissions that are
23 imposed on directors to the extent and so long as the discretion or powers of the board of
24 directors in its management of corporate affairs is controlled by the agreement.

25 (j) Any limits on the duration of any agreement authorized by this section shall be set
26 forth in the agreement. A voting agreement authorized by subsection (a) of this section that
27 became effective prior to October 1, 2017, is valid as between the parties thereto for not more
28 than 10 years after its effective date or, if later, the effective date of the most recent extension
29 or renewal of the voting agreement, unless it is amended after October 1, 2017, to provide
30 otherwise by agreement of the parties thereto. An amendment to a voting agreement under this
31 subsection shall bind only those parties signing it."

32 **SECTION 7.** G.S. 55-8-11 reads as rewritten:

33 **"§ 55-8-11. Compensation of directors.**

34 Unless the articles of incorporation or bylaws provide otherwise, the board of ~~directors~~
35 ~~directors, without regard to personal interest, may fix the compensation of ~~directors~~ directors~~
36 ~~for services in any capacity. The compensation of directors established pursuant to this section~~
37 ~~is presumed to be fair to the corporation unless proven not to be fair to the corporation by a~~
38 ~~preponderance of the evidence."~~

39 **SECTION 8.** G.S. 55-8-24(d) reads as rewritten:

40 "(d) A director who is present at a meeting of the board of directors or a committee or
41 subcommittee of the board of directors when corporate action is taken is deemed to have
42 assented to the action taken ~~unless; unless any of the following requirements are met:~~

- 43 (1) ~~He~~The director objects at the beginning of the meeting (or promptly upon
44 ~~his~~the director's arrival) to holding it or transacting business at the
45 ~~meeting;~~meeting.
- 46 (2) ~~His~~The director's dissent or abstention from the action taken is entered in the
47 minutes of the ~~meeting;~~ ~~or~~meeting.
- 48 (3) ~~He~~The director files written notice of ~~his~~the director's dissent or abstention
49 with the presiding officer of the meeting before its adjournment or with the
50 corporation immediately after adjournment of the meeting. The right of

1 dissent or abstention is not available to a director who votes in favor of the
2 action taken."

3 **SECTION 9.** G.S. 55-8-25 reads as rewritten:

4 "**§ 55-8-25. Committees.**

5 (a) Unless this Chapter, the articles of incorporation, or the bylaws provide otherwise, a
6 board of directors may create one or more committees and appoint one or more members of the
7 board of directors to serve on ~~any such~~the committee. Unless otherwise provided in the articles
8 of incorporation, the bylaws, or the resolution of the board of directors designating the
9 committee, a committee, by action of a majority of its members then in office when the action
10 is taken, may create one or more subcommittees consisting of one or more members of the
11 committee and delegate to the one or more subcommittees any or all of the powers and
12 authority of the committee.

13 (b) Unless this Chapter provides otherwise, the creation of a committee and
14 appointment of members to it ~~must~~shall be approved by the greater ~~of~~of either of the
15 following:

16 (1) A majority of all the directors in office when the action is ~~taken; or~~taken.

17 (2) The number of directors required by the articles of incorporation or bylaws
18 to take action under G.S. 55-8-24.

19 ...

20 (c) G.S. 55-8-20 through G.S. 55-8-24 apply both to committees and subcommittees of
21 the board of directors and to their members.

22 ...

23 (f) The creation of, delegation of authority to, or action by a committee or
24 subcommittee does not alone constitute compliance by a director with the standards of conduct
25 described in G.S. 55-8-30.

26 (g) The board of directors may appoint one or more directors as alternate members of
27 any committee, who may replace any absent or disqualified member at any meeting of the
28 committee, or a subcommittee of the committee, during the member's absence or
29 disqualification."

30 **SECTION 10.** G.S. 55-8-30 reads as rewritten:

31 "**§ 55-8-30. General standards for directors.**

32 (a) A director shall discharge ~~his~~the director's duties as a director, including ~~his~~the
33 director's duties as a member of a ~~committee;~~committee or subcommittee, in accordance with
34 all of the following:

35 (1) In good ~~faith;~~faith.

36 (2) With the care an ordinarily prudent person in a like position would exercise
37 under similar ~~circumstances; and~~circumstances.

38 (3) In a manner ~~he~~the director reasonably believes to be in the best interests of
39 the corporation.

40 (b) In discharging ~~his~~the ~~duties~~the duties of a director's office, a director is entitled to rely
41 on information, opinions, reports, or statements, including financial statements and other
42 financial data, if prepared or presented ~~by;~~by any of the following:

43 (1) One or more officers or employees of the corporation whom the director
44 reasonably believes to be reliable and competent in the matters
45 ~~presented;~~presented.

46 (2) Legal counsel, public accountants, or other persons as to matters the director
47 reasonably believes are within their professional or expert ~~competence;~~
48 ~~or~~competence.

49 (3) A committee or subcommittee of the board of directors of which ~~he~~the
50 director is not a member if the director reasonably believes the committee or
51 subcommittee merits confidence.

1 (c) A director is not entitled to the benefit of subsection (b) of this section if ~~the~~
 2 director has actual knowledge concerning the matter in question that makes reliance otherwise
 3 permitted by subsection (b) of this section unwarranted.

4 (d) A director is not liable for (i) any action taken as a director, or any failure to take
 5 any action, if ~~the~~ director performed the duties of ~~his~~ the director's office in compliance with
 6 this section or (ii) any failure to offer the corporation the right to have or participate in a
 7 business opportunity prior to the pursuit or taking of the opportunity by the director or other
 8 person if the corporation's articles of incorporation include a provision authorized by
 9 G.S. 55-2-02(b)(4) and the procedures and approvals required by the provision, if any, were
 10 complied with or obtained prior to the pursuit or taking of the opportunity by the director or
 11 other person. The duties of a director weighing a change of control situation shall not be any
 12 different, nor the standard of care any higher, than otherwise provided in this section."

13 **SECTION 11.** G.S. 55-8-31 reads as rewritten:

14 "**§ 55-8-31. Director conflict of interest.**

15 (a) A conflict of interest transaction is a transaction with the corporation in which a
 16 director of the corporation has a direct or indirect interest. A conflict of interest transaction is
 17 not voidable by the corporation solely because of the director's interest in the transaction if any
 18 one of the following is true:

19 (1) The material facts of the transaction and the director's interest were disclosed
 20 or known to the board of directors or a committee or subcommittee of the
 21 board of directors and the board of ~~directors or committee~~ directors, or the
 22 committee or subcommittee of the board of directors, authorized, approved,
 23 or ratified the ~~transaction;~~ transaction.

24 (2) The material facts of the transaction and the director's interest were disclosed
 25 or known to the shareholders entitled to vote and they authorized, approved,
 26 or ratified the ~~transaction;~~ or transaction.

27 (3) The transaction was fair to the corporation.

28 (b) For purposes of this section, a director of the corporation has an indirect interest in a
 29 transaction ~~if~~ if either of the following is true:

30 (1) Another entity in which ~~the~~ director has a material financial interest or in
 31 which ~~the~~ director is a general partner is a party to the ~~transaction;~~
 32 ~~or~~ transaction.

33 (2) Another entity of which ~~the~~ director is a director, officer, or trustee is a
 34 party to the transaction and the transaction is or should be considered by the
 35 board of directors of the corporation.

36 (c) For purposes of ~~subsection~~ subdivision (a)(1) of this section, a conflict of interest
 37 transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of
 38 the directors on the board of directors (or on the committee or subcommittee) who have no
 39 direct or indirect interest in the transaction. If a majority of the directors who have no direct or
 40 indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum
 41 is present for the purpose of taking action under this section. The presence of, or a vote cast by,
 42 a director with a direct or indirect interest in the transaction does not affect the validity of any
 43 action taken under ~~subsection~~ subdivision (a)(1) of this section if the transaction is otherwise
 44 authorized, approved, or ratified as provided in that ~~subsection.~~ subdivision.

45 "...."

46 **SECTION 12.** G.S. 55-8-42(d) reads as rewritten:

47 "(d) An officer is not liable for (i) any action taken as an officer, or any failure to take
 48 any action, if ~~the~~ officer performed the duties of ~~his~~ the officer's office in compliance with
 49 this section or (ii) any failure to offer the corporation the right to have or participate in a
 50 business opportunity prior to the pursuit or taking of the opportunity by the officer or other
 51 person if the corporation's articles of incorporation include a provision authorized by

1 G.S. 55-2-02(b)(4) and the procedures and approvals required by the provision, if any, were
2 complied with or obtained prior to the pursuit or taking of the opportunity by the officer or
3 other person."

4 **SECTION 13.** G.S. 55-8-58 reads as rewritten:

5 **"§ 55-8-58. Application of Part.**

6 (a) ~~If~~Subject to subsection (d) of this section, if the articles of incorporation limit
7 indemnification or advance for expenses, indemnification and advance for expenses are valid
8 only to the extent consistent with the articles.

9 (b) This Part does not limit a corporation's power to pay or reimburse expenses incurred
10 by a director in connection with ~~his~~the director's appearance as a witness in a proceeding at a
11 time when ~~he~~the director has not been made a named defendant or respondent to the
12 proceeding.

13 ...

14 (d) A right of indemnification, or to advances for expenses, created by this Part or under
15 G.S. 55-8-57(a) and in effect at the time of an act or omission, shall not be eliminated or
16 impaired with respect to the act or omission by an amendment of the articles of incorporation or
17 bylaws or a resolution of the directors or shareholders, adopted after the occurrence of the act
18 or omission, unless, in the case of a right created under G.S. 55-8-57(a), the provision creating
19 the right and in effect at the time of the act or omission explicitly authorizes the elimination or
20 impairment of the right after the act or omission has occurred."

21 **SECTION 14.** G.S. 55-10-03(b) reads as rewritten:

22 "(b) Except as provided in ~~G.S. 55-10-02, G.S. 55-7-31(f), 55-10-02, 55-10-07, and~~
23 55-14A-01, after adopting the proposed amendment the board of directors shall submit the
24 amendment to the shareholders for their approval. The board of directors shall also transmit to
25 the shareholders a recommendation that the shareholders approve the amendment, unless one of
26 the following circumstances exist, in which event the board of directors shall communicate the
27 basis for not recommending approval of the amendment to the shareholders at the time it
28 submits the amendment to the shareholders:

29"

30 **SECTION 15.** G.S. 55-10-20(a) reads as rewritten:

31 "(a) A corporation's board of directors may amend or repeal the corporation's bylaws,
32 except to the extent otherwise provided in the articles of incorporation or a bylaw adopted by
33 the shareholders or this Chapter, and except that a bylaw adopted, amended or repealed by the
34 shareholders may not be readopted, amended or repealed by the board of directors if neither the
35 articles of incorporation nor a bylaw adopted by the shareholders authorizes the board of
36 directors to adopt, amend or repeal that particular bylaw or the bylaws generally. The
37 limitations set forth in this subsection on the ability of a corporation's board of directors to
38 amend or repeal the corporation's bylaws shall not apply to any amendment to the extent that it
39 is effected pursuant to G.S. 55-7-31(f)."

40 **SECTION 16.** G.S. 55-11-01(b) reads as rewritten:

41 "(b) The plan of merger ~~must~~shall set forth all of the following:

- 42 (1) The name of each corporation planning to merge and the name of the
43 surviving corporation into which each other corporation plans to
44 ~~merge;~~merge.
- 45 (2) The terms and conditions of the ~~merger;~~ and merger.
- 46 (3) The manner and basis of converting the shares of each corporation into
47 shares, obligations, or other securities of the surviving or any other
48 ~~corporation~~corporation, or into cash or other property in whole or ~~part~~part,
49 or of cancelling the shares."

50 **SECTION 17.** G.S. 55-11-03 reads as rewritten:

51 **"§ 55-11-03. Action on plan.**

1 (a) After adopting a plan of merger or share exchange, the board of directors of each
2 corporation party to the merger, and the board of directors of the corporation whose shares will
3 be acquired in the share exchange, shall submit the plan of merger (except as provided in
4 ~~subsection (g))~~ subsections (g) and (j) of this section and in G.S. 55-11-04) or share exchange
5 for approval by its shareholders.

6 (b) The following requirements shall be met for a plan of merger or share exchange to
7 be approved:

8 (1) The board of directors shall recommend ~~to that~~ the shareholders ~~that approve~~
9 the plan of merger or share exchange ~~be approved, or, in the case of an offer~~
10 referred to in subdivision (2) of subsection (j) of this section, that the
11 shareholders tender their shares to the offeror in response to the offer, unless
12 one of the following circumstances exist, in which event the board of
13 directors shall communicate to the shareholders the basis for not
14 recommending approval of that the shareholders approve the plan of merger
15 or share exchange to the shareholders or tender their shares to the offeror in
16 response to the offer at the time it submits to the shareholders the plan of
17 merger or share exchange to the shareholders; or communicates with the
18 shareholders regarding an offer referred to in subdivision (2) of subsection
19 (j) of this section:

20 a. The board of directors determines that, because of a conflict of
21 interest or other special circumstances, it should not make a
22 recommendation that the shareholders approve the plan of merger or
23 share ~~exchange~~ exchange or, in the case of an offer referred to in
24 subdivision (2) of subsection (j) of this section, that the shareholders
25 tender their shares to the offeror in response to the offer.

26 b. G.S. 55-8-26 applies.

27 ...

28 (j) Unless the articles of incorporation otherwise provide, approval by the corporation's
29 shareholders of a plan of merger or share exchange is not required if all of the following
30 requirements are met:

31 (1) The plan of merger or share exchange expressly (i) permits or requires the
32 merger or share exchange to be effected under this subsection and (ii)
33 provides that, if the merger or share exchange is to be effected under this
34 subsection, the merger or share exchange shall be effected as soon as
35 practicable following the satisfaction of the requirement set forth in
36 subdivision (6) of this subsection.

37 (2) Another party to the merger or share exchange, or a parent of another party
38 to the merger or share exchange, makes an offer to purchase, on the terms
39 provided in the plan of merger or share exchange, any and all of the
40 outstanding shares of the corporation that, absent this subsection, would be
41 entitled to vote on the plan of merger or share exchange, except that the offer
42 may exclude shares of the corporation that are owned at the commencement
43 of the offer by the corporation, the offeror, or any parent of the offeror, or by
44 any wholly owned subsidiary of the corporation, the offeror, or any parent of
45 the offeror.

46 (3) The offer discloses that the plan of merger or share exchange provides that
47 the merger or share exchange shall be effected as soon as practicable
48 following the satisfaction of the requirement set forth in subdivision (6) of
49 this subsection and that the shares of the corporation that are not tendered in
50 response to the offer shall be treated as set forth in subdivision (8) of this
51 subsection.

- 1 (4) The offer remains open for at least 10 days.
2 (5) The offeror purchases all shares properly tendered in response to the offer
3 and not properly withdrawn.
4 (6) Any or all of the following types of shares are collectively entitled to cast at
5 least the minimum number of votes on the merger or share exchange that,
6 absent this subsection, would be required by Articles 9 and 11 of this
7 Chapter and by the articles of incorporation of the corporation for the
8 approval of the merger or share exchange by the shareholders and by any
9 other voting group entitled to vote on the merger or share exchange at a
10 meeting at which all shares entitled to vote on the approval were present and
11 voted:
12 a. Shares purchased by the offeror in accordance with the offer.
13 b. Shares otherwise owned by the offeror or by any parent or wholly
14 owned subsidiary of the offeror.
15 c. Shares subject to an agreement to be transferred, contributed, or
16 delivered to the offeror, any parent of the offeror, or any wholly
17 owned subsidiary of the offeror in exchange for stock or other equity
18 interests in the offeror, parent, or subsidiary.
19 (7) The offeror or a wholly owned subsidiary of the offeror merges with or into,
20 or effects a share exchange in which it acquires shares of, the corporation.
21 (8) Each outstanding share of each class or series of shares of the corporation
22 that the offeror is offering to purchase in accordance with the offer, and that
23 is not purchased in accordance with the offer, is to be converted in the
24 merger into, or into the right to receive, or is to be exchanged in the share
25 exchange for, or for the right to receive, the same amount and kind of
26 securities, interests, obligations, rights, cash, or other property to be paid or
27 exchanged in accordance with the offer for each share of that class or series
28 of shares that is tendered in response to the offer, except that shares of the
29 corporation that are owned by the corporation or that are described in
30 sub-subdivisions b. and c. of subdivision (6) of this subsection need not be
31 converted into or exchanged for the consideration described in this
32 subdivision.
33 (k) The following definitions apply in subsection (j) of this section:
34 (1) Offer. – The offer referred to in subdivision (2) of subsection (j) of this
35 section.
36 (2) Offeror. – The person making the offer.
37 (3) Parent. – A person that owns, directly or indirectly, through one or more
38 wholly owned subsidiaries, all of the outstanding shares of or interests in an
39 entity.
40 (4) Purchased. – Shares tendered in response to an offer are deemed to have
41 been purchased in accordance with the offer at the earliest time as of which
42 (i) the offeror has irrevocably accepted those shares for payment and (ii)
43 either of the following has occurred:
44 a. In the case of shares represented by certificates, the offeror, or the
45 offeror's designated depository or other agent, has physically
46 received the certificates representing those shares.
47 b. In the case of shares without certificates, those shares have been
48 transferred into the account of the offeror or its designated depository
49 or other agent, or an agent's message relating to those shares has been
50 received by the offeror or its designated depository or other agent.

1 (5) Wholly owned subsidiary of a person. – An entity of or in which that person
2 owns, directly or indirectly, through one or more wholly owned subsidiaries,
3 all of the outstanding shares or other interests."

4 **SECTION 18.** The title of G.S. 55-11-04 reads as rewritten:

5 "**§ 55-11-04. Merger between parent corporation and subsidiary or between subsidiaries.**"

6 **SECTION 19.** G.S. 55-11-06(a) reads as rewritten:

7 (a) When a merger pursuant to G.S. 55-11-01, 55-11-04, 55-11-07, or 55-11-09, or
8 ~~55-11-11~~55-11-20 takes effect:

9 "

10 **SECTION 20.** G.S. 55-11-10(c) reads as rewritten:

11 (c) Each merging domestic corporation and each other merging business entity shall
12 approve a written plan of merger ~~containing~~containing all of the following:

13 (1) For each merging business entity, its name, type of business entity, and the
14 state or country whose laws govern its organization and internal
15 ~~affairs~~affairs.

16 (2) The name of the merging business entity that shall survive the ~~merger~~;
17 merger and, if the surviving business entity is not authorized to transact
18 business or conduct affairs in this State, a designation of its mailing address
19 and a commitment to file with the Secretary of State a statement of any
20 subsequent change in its mailing address.

21 (3) The terms and conditions of the ~~merger~~merger.

22 (4) The manner and basis ~~for~~of converting the interests in each merging
23 business entity into interests, obligations, or securities of the surviving
24 business ~~entity~~entity, or into cash or other property in whole or in ~~part~~;
25 ~~and~~part, or of cancelling the interests.

26 "

27 **SECTION 21.** Subsections (e) and (e1) of G.S. 55-11-10 are repealed.

28 **SECTION 22.** G.S. 55-11-11 is recodified as G.S. 55-11-20.

29 **SECTION 23.** Article 11 of Chapter 55 of the General Statutes is amended by
30 adding two new sections to read:

31 "**§ 55-11-12. Merger between parent unincorporated entity and subsidiary corporation or**
32 **corporations.**

33 (a) Subject to the other provisions of this section and Article 9 of this Chapter, a parent
34 unincorporated entity owning shares of a domestic subsidiary corporation that carry at least
35 ninety percent (90%) of the voting power of each class and series of the outstanding shares of
36 the subsidiary corporation and that have the power to vote in the election of directors at the
37 time of a merger under this section may merge the subsidiary corporation or corporations into
38 itself, or merge itself and one or more subsidiary corporations into another subsidiary
39 corporation, without approval of the board of directors or shareholders of the subsidiary
40 corporation or corporations, unless the articles of incorporation for the subsidiary corporation
41 or corporations require approval of the shareholders of the subsidiary corporation or
42 corporations, if both of the following requirements are met:

43 (1) The merger is permitted by the laws of the state or country governing the
44 organization and internal affairs of each merging business entity.

45 (2) Each merging business entity complies with the requirements of this section
46 and, to the extent applicable, the laws referred to in subdivision (1) of this
47 subsection.

48 (b) If any shareholder of the domestic subsidiary corporation, other than the parent
49 unincorporated entity, has or will have personal liability for any existing or future obligation of
50 the surviving business entity solely as a result of holding an interest in the surviving business

1 entity, then the plan of merger under subsection (a) of this section shall require the affirmative
2 approval, by vote or written consent, of that shareholder.

3 (c) If the parent unincorporated entity does not own all the outstanding stock of the
4 subsidiary corporation, the surviving business entity shall, within 10 days after the effective
5 date of the merger, notify each shareholder of the subsidiary corporation as of the effective date
6 of the merger, that the merger has become effective.

7 (d) The surviving business entity shall deliver articles of merger to the Secretary of
8 State for filing. The articles of merger shall set forth all of the following:

9 (1) For each merging business entity, its name, type of business entity, and the
10 state or country whose laws govern its organization and internal affairs.

11 (2) The terms and conditions of the merger.

12 (3) The manner and basis of converting the interests in each merging business
13 entity into interests, obligations, or securities of the surviving business
14 entity, or into cash or other property in whole or in part, or of cancelling the
15 interests.

16 (4) The name of the merging business entity that shall survive the merger and, if
17 the surviving business entity is not authorized to transact business or conduct
18 affairs in this State, a designation of its mailing address and a commitment to
19 file with the Secretary of State a statement of any subsequent change in its
20 mailing address.

21 (5) If the surviving business entity is a domestic corporation, any amendment to
22 its articles of incorporation as provided in a plan of merger or board
23 resolution.

24 (e) The provisions of the articles of merger may be made dependent on facts objectively
25 ascertainable outside the articles of merger if the articles of merger set forth the manner in
26 which the facts will operate upon the affected provisions. The facts may include any of the
27 following:

28 (1) Statistical or market indices, market prices of any security or group of
29 securities, interest rates, currency exchange rates, or similar economic or
30 financial data.

31 (2) A determination or action by the corporation or by any other person, group,
32 or body.

33 (3) The terms of, or actions taken under, an agreement to which the corporation
34 is a party, or any other agreement or document.

35 (f) A merger takes effect when the articles of merger become effective.

36 **"§ 55-11-13. Effect of merger with unincorporated entity.**

37 (a) Upon taking effect, a merger pursuant to G.S. 55-11-10 or 55-11-12 shall have all of
38 the following effects:

39 (1) Each other merging business entity merges into the surviving business
40 entity, and the separate existence of each merging business entity, except the
41 surviving business entity, ceases.

42 (2) The title to all real estate and other property owned by each merging
43 business entity is vested in the surviving business entity without reversion or
44 impairment.

45 (3) The surviving business entity has all liabilities of each merging business
46 entity.

47 (4) A proceeding pending by or against any merging business entity may be
48 continued as if the merger did not occur, or the surviving business entity
49 may be substituted in the proceeding for a merging business entity whose
50 separate existence ceases in the merger.

1 (5) If a domestic corporation is the surviving business entity, its articles of
2 incorporation shall be amended to the extent provided in the articles of
3 merger.

4 (6) The interests in each merging business entity that are to be converted into
5 interests, obligations, or securities of the surviving business entity, or into
6 the right to receive cash or other property, are thereupon so converted, and
7 the former holders of the interests are entitled only to the rights provided to
8 them in the plan of merger, resolution, or, in the case of former holders of
9 shares in a domestic corporation, any rights they may have under Article 13
10 of this Chapter.

11 (7) If the surviving business entity is not a domestic corporation, the surviving
12 business entity is deemed to agree that it will promptly pay to the
13 shareholders of any merging domestic corporation exercising appraisal rights
14 the amount, if any, to which they are entitled under Article 13 of this
15 Chapter and otherwise to comply with the requirements of Article 13 of this
16 Chapter as if it were a surviving domestic corporation in the merger.

17 (b) The merger shall not affect the liability or absence of liability of any holder of an
18 interest in a merging business entity for any acts, omissions, or obligations of any merging
19 business entity made or incurred prior to the effectiveness of the merger. The cessation of
20 separate existence of a merging business entity in the merger shall not constitute a dissolution
21 or termination of the merging business entity.

22 (c) If the surviving business entity is not a domestic limited liability company, a
23 domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership,
24 when the merger takes effect the surviving business entity is deemed to have done both of the
25 following:

26 (1) Agreed that it may be served with process in this State in any proceeding for
27 enforcement of (i) any obligation of any merging domestic limited liability
28 company, domestic corporation, domestic nonprofit corporation, domestic
29 limited partnership, or other partnership as defined in G.S. 59-36 that is
30 formed under the laws of this State, (ii) the appraisal rights of shareholders
31 of any merging domestic corporation under Article 13 of this Chapter, and
32 (iii) any obligation of the surviving business entity arising from the merger.

33 (2) Appointed the Secretary of State as its agent for service of process in the
34 proceeding. Service on the Secretary of State of process shall be made by
35 delivering to and leaving with the Secretary of State, or with any clerk
36 authorized by the Secretary of State to accept service of process, duplicate
37 copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt
38 of service of process on behalf of a surviving business entity in the manner
39 provided for in this section, the Secretary of State shall immediately mail a
40 copy of the process by registered or certified mail, return receipt requested,
41 to the surviving business entity. If the surviving business entity is authorized
42 to transact business or conduct affairs in this State, the address for mailing
43 shall be its principal office designated in the latest document filed with the
44 Secretary of State that is authorized by law to designate the principal office
45 or, if there is no principal office on file, its registered office. If the surviving
46 business entity is not authorized to transact business or conduct affairs in this
47 State, the address for mailing shall be the mailing address designated
48 pursuant to G.S. 55-11-10(c)(2) or G.S. 55-11-12(d)(4)."

49 **SECTION 24.** 55-13-01(7) reads as rewritten:

50 "(7) Interested transaction. – A corporate action described in G.S. 55-13-02(a),
51 other than a merger pursuant to ~~G.S. 55-11-04,~~ G.S. 55-11-04 or

1 G.S. 55-11-12, involving an interested person and in which any of the shares
2 or assets of the corporation are being acquired or converted. As used in this
3 definition, the following definitions apply:

4"

5 **SECTION 25.** G.S. 55-13-02 reads as rewritten:

6 **"§ 55-13-02. Right to appraisal.**

7 (a) In addition to any rights granted under ~~Article 9, Article 9~~ of this Chapter, a
8 shareholder is entitled to appraisal rights and to obtain payment of the fair value of that
9 shareholder's shares, in the event of any of the following corporate actions:

10 (1) Consummation of a merger to which the corporation is a party if either (i)
11 shareholder approval is required for the merger by G.S. 55-11-03 ~~and the~~
12 ~~shareholder is entitled to vote on the merger, or would be required but for~~
13 the provisions of G.S. 55-11-03(j), except that appraisal rights shall not be
14 available to any shareholder of the corporation with respect to shares of any
15 class or series that remain outstanding after consummation of the merger or
16 (ii) the corporation is a subsidiary and the merger is governed by
17 ~~G.S. 55-11-04. G.S. 55-11-04 or G.S. 55-11-12.~~

18 (2) Consummation of a share exchange to which the corporation is a party as the
19 corporation whose shares will be ~~acquired if the shareholder is entitled to~~
20 ~~vote on the exchange, acquired~~, except that appraisal rights shall not be
21 available to any shareholder of the corporation with respect to any class or
22 series of shares of the corporation that is not exchanged.

23 (3) Consummation of a disposition of assets pursuant to ~~G.S. 55-12-02 if the~~
24 ~~shareholder is entitled to vote on the disposition.~~ G.S. 55-12-02.

25 ...

26 (b) Notwithstanding subsection (a) of this section, the availability of appraisal rights
27 under subdivisions (1), (2), (3), (4), (6), and (8) of subsection (a) of this section shall be limited
28 in accordance with the following provisions:

29 ...

30 (2) The applicability of subdivision (1) of this subsection shall be determined as
31 of (i) the record date fixed to determine the shareholders entitled to receive
32 notice of, and to vote at, the meeting of shareholders to act upon the
33 corporate action requiring appraisal rights or, in the case of an offer made
34 pursuant to G.S. 55-11-03(j), the date of the offer, or (ii) the day before the
35 effective date of ~~such~~the corporate action if there is no meeting of
36 ~~shareholders.~~ shareholders and no offer made pursuant to G.S. 55-11-03(j).

37 ...

38 (c) Notwithstanding any other provision of this section, the articles of incorporation as
39 originally filed or any amendment to the articles may limit or eliminate appraisal rights for any
40 class or series of preferred ~~shares.~~ Any shares with respect to any corporate action, except that
41 (i) no limitation or elimination shall be effective if the class or series does not have the right to
42 vote separately as a voting group, alone or as part of a group, on the corporate action or if the
43 corporate action is an amendment to the articles of incorporation that changes the corporation
44 into a nonprofit corporation or a cooperative organization, and (ii) any limitation or elimination
45 contained in an amendment to the articles of incorporation that limits or eliminates appraisal
46 rights for any shares that are outstanding immediately prior to the effective date of the
47 amendment. ~~amendment~~, or that the corporation is or may be required to issue or sell thereafter
48 pursuant to any conversion, exchange, or other right existing immediately before the effective
49 date of the amendment, ~~however~~, shall not apply to any corporate action that becomes effective
50 within one year of that date if the corporate action would otherwise afford appraisal rights.

1 (d) A shareholder holding shares of a class or series that were issued and outstanding as
2 of the effective date of this act but that did not as of that date entitle the shareholder to vote on
3 a corporate action described in subdivision (a)(1), (2), or (3) of this section shall be entitled to
4 appraisal rights, and to obtain payment of the fair value of the shareholder's shares of such class
5 or series, to the same extent as if such shares did entitle the shareholder to vote on such
6 corporate action."

7 **SECTION 26.** G.S. 55-13-20 reads as rewritten:

8 "**§ 55-13-20. Notice of appraisal rights.**

9 (a) If any corporate action specified in G.S. 55-13-02(a) is to be submitted to a vote at a
10 shareholders' ~~meeting,~~ meeting, or where no approval of the action is required pursuant to
11 G.S. 55-11-03(j), the meeting notice or, if applicable, the offer made pursuant to
12 G.S. 55-11-03(j), ~~must~~ shall state that the corporation has concluded that shareholders are, are
13 not, or may be entitled to assert appraisal rights under this Article. If the corporation concludes
14 that appraisal rights are or may be available, a copy of this Article ~~must~~ shall accompany the
15 meeting notice or offer sent to those record shareholders entitled to exercise appraisal rights.

16 (b) In a merger pursuant to ~~G.S. 55-11-04,~~ G.S. 55-11-04 or G.S. 55-11-12, the parent
17 corporation ~~must~~ shall notify in writing all record shareholders of the subsidiary who are
18 entitled to assert appraisal rights that the corporate action became effective. ~~In the case of any~~
19 ~~other corporate action specified in G.S. 55-13-02(a) with respect to which shareholders of a~~
20 ~~class or series do not have the right to vote, but with respect to which those shareholders are~~
21 ~~entitled to assert appraisal rights, the corporation must notify in writing all record shareholders~~
22 ~~of such class or series that the corporate action became effective.~~ Notice required under this
23 subsection ~~must~~ shall be sent within 10 days after the corporate action became effective and
24 include the materials described in G.S. 55-13-22.

25 ...

26 (d) If any corporate action described in G.S. 55-13-02(a) is proposed, or a merger
27 pursuant to G.S. 55-11-04 or G.S. 55-11-12 is effected, then the notice or offer referred to in
28 subsection (a) or (c) of this section, if the corporation concludes that appraisal rights are or may
29 be available, and the notice referred to in subsection (b) of this section, shall be
30 accompanied by both of the following:

31 ...

32 (e) The right to receive the information described in ~~this subsection (d) of this section~~
33 may be waived in writing by a shareholder before or after the corporate action."

34 **SECTION 27.** G.S. 55-13-21 reads as rewritten:

35 "**§ 55-13-21. Notice of intent to demand payment and consequences of voting or**
36 **consenting.**

37 (a) If a corporate action specified in G.S. 55-13-02(a) is submitted to a vote at a
38 shareholders' meeting, a shareholder ~~who is entitled to vote on the corporate action and who~~
39 wishes to assert appraisal rights with respect to any class or series of shares must do the
40 following:

41 ...

42 (b) If a corporate action specified in G.S. 55-13-02(a) is to be approved by less than
43 unanimous written consent, a shareholder ~~who is entitled to vote on the corporate action and~~
44 who wishes to assert appraisal rights with respect to any class or series of ~~shares~~ shares must
45 satisfy both of the following requirements:

46 (1) The shareholder must deliver to the corporation, before the proposed action
47 becomes effective, written notice of the shareholder's intent to demand
48 payment if the proposed action is effectuated, except that the written notice
49 is not required if the notice required by G.S. 55-13-02(c) is given less than
50 25 days prior to the date the proposed action is effectuated.

(2) ~~must~~ The shareholder must not execute a consent in favor of the proposed action with respect to that class or series of shares.

(b1) If a corporate action specified in G.S. 55-13-02(a) does not require shareholder approval pursuant to G.S. 55-11-03(j), a shareholder who wishes to assert appraisal rights with respect to any class or series of shares must satisfy both of the following requirements:

(1) The shareholder must deliver to the corporation, before the shares are purchased pursuant to the offer made consistent with subdivision (2) of subsection (j) of G.S. 55-11-03, written notice of the shareholder's intent to demand payment if the proposed action is effectuated.

(2) The shareholder must not tender, or cause or permit to be tendered, any shares of the class or series in response to the offer.

(c) A shareholder who fails to satisfy the requirements of subsection (a) ~~or (b)~~(a), (b), or (b1) of this section is not entitled to payment under this Article."

SECTION 28. G.S. 55-13-22(a) reads as rewritten:

"(a) If a corporate action requiring appraisal rights under G.S. 55-13-02(a) becomes effective, the corporation must deliver a written appraisal notice and form required by subdivision (b)(1) of this section to all shareholders who satisfied the requirements of G.S. 55-13-21. In the case of a merger under ~~G.S. 55-11-04,~~ G.S. 55-11-04 or G.S. 55-11-12, the parent corporation must deliver a written appraisal notice and form to all record shareholders of the subsidiary who may be entitled to assert appraisal rights. ~~In the case of any other corporate action specified in G.S. 55-13-02(a) that becomes effective and with respect to which shareholders of a class or series do not have the right to vote but with respect to which such shareholders are entitled to assert appraisal rights, the corporation must deliver a written appraisal notice and form to all record shareholders of such class or series who may be entitled to assert appraisal rights.~~"

SECTION 29. G.S. 55A-11-09(c) reads as rewritten:

"(c) Each merging domestic nonprofit corporation and each other merging business entity shall approve a written plan of merger ~~containing;~~ containing all of the following:

- (1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal ~~affairs;~~ affairs.
- (2) The name of the merging business entity that shall survive the ~~merger;~~ merger.
- (3) The terms and conditions of the ~~merger;~~ merger.
- (4) The manner and basis ~~for~~ of converting the interests in each merging business entity into interests, obligations, or securities of the surviving business ~~entity;~~ entity, or into cash or other property in whole or in ~~part;~~ and part, or of cancelling the interests.

...."

SECTION 30. G.S. 57D-9-41(a) reads as rewritten:

"(a) Each merging entity must approve a written plan of merger ~~the~~ all of the following:

...

- (4) The manner and basis ~~for~~ of converting the interests in each merging entity into interests, obligations, or securities of the surviving ~~entity;~~ entity, or into cash or other property or any combination ~~thereof;~~ thereof, or of cancelling the interests.

...."

SECTION 31. G.S. 59-73.31(a) reads as rewritten:

"(a) Each merging domestic partnership and each other merging business entity shall approve a written plan of merger ~~containing;~~ containing all of the following:

- 1 (1) For each merging business entity, its name, type of business entity, and the
2 state or country whose laws govern its organization and internal
3 ~~affairs;~~affairs.
4 (2) The name of the merging business entity that shall survive the
5 ~~merger;~~merger.
6 (3) The terms and conditions of the ~~merger;~~ and merger.
7 (4) The manner and basis ~~for~~ of converting the interests in each merging
8 business entity into interests, obligations, or securities of the surviving
9 business ~~entity~~entity, or into cash or other property in whole or in ~~part~~part,
10 or of cancelling the interests."

11 **SECTION 32.** G.S. 59-1071(a) reads as rewritten:

12 "(a) Each merging domestic limited partnership and each other merging business entity
13 shall approve a written plan of merger ~~containing~~containing all of the following:

- 14 (1) For each merging business entity, its name, type of business entity, and the
15 state or country whose laws govern its organization and internal
16 ~~affairs;~~affairs.
17 (2) The name of the merging business entity that shall survive the
18 ~~merger;~~merger.
19 (3) The terms and conditions of the ~~merger;~~ merger.
20 (4) The manner and basis ~~for~~ of converting the interests in each merging
21 business entity into interests, obligations, or securities of the surviving
22 business ~~entity~~entity, or into cash or other property in whole or in ~~part~~part,
23 ~~and~~part, or of cancelling the interests.
24 (5) If the surviving business entity is a domestic limited partnership, any
25 amendments to its certificate of limited partnership that are to be made in
26 connection with the merger."

27 **SECTION 33.** The Revisor of Statutes may cause to be printed all relevant
28 portions of the Official Comments to the Model Business Corporation Act and all explanatory
29 comments of the drafters of this act as the Revisor deems appropriate.

30 **SECTION 34.** This act becomes effective October 1, 2017.