



[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):

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

3           (f) If any corporation shall be authorized to issue more than 1 class of stock or more than 1 series of any  
4 class, the powers, designations, preferences and relative, participating, optional, or other special rights of each class  
5 of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be  
6 set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent  
7 such class or series of stock, provided that, except as otherwise provided in § 202 of this title, in lieu of the  
8 foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue  
9 to represent such class or series of stock, a statement that the corporation will furnish without charge to each  
10 stockholder who so requests the powers, designations, preferences and relative, participating, optional, or other  
11 special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such  
12 preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, ~~the~~  
13 ~~corporation shall send to the registered owner thereof~~ shall be given a written notice, in writing or by electronic  
14 transmission, containing the information required to be set forth or stated on certificates pursuant to this section or §  
15 156, § 202(a) ~~or~~ § 218(a) or § 364 of this title or with respect to this section a statement that the corporation will  
16 furnish without charge to each stockholder who so requests the powers, designations, preferences and relative  
17 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  
74 mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any  
75 stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a  
76 reasonably accessible electronic network, provided that the information required to gain access to such list is

77 provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of  
78 the corporation. In the event that the corporation determines to make the list available on an electronic network, the  
79 corporation may take reasonable steps to ensure that such information is available only to stockholders of the  
80 corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be  
81 produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any  
82 stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list  
83 shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably  
84 accessible electronic network, and the information required to access such list shall be provided with the notice of  
85 the meeting.

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

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

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

96 § 224. Form of records.

97 Any records ~~maintained~~ administered by ~~or~~ on behalf of the corporation in the regular course of its  
98 business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in  
99 the form of, any information storage device, ~~or~~ method, or one or more electronic networks or databases (including  
100 one or more distributed electronic networks or databases), provided that the records so kept can be converted into  
101 clearly legible paper form within a reasonable time. ~~Any corporation shall so, and, with respect to the stock ledger,~~  
102 that the records so kept (i) can be used to prepare the list of stockholders specified in § 219 and § 220 of this title,  
103 (ii) record the information specified in § 156, § 159, § 217(a) and § 218 of this title, and (iii) record transfers of  
104 stock as governed by Article 8 of subtitle I of Title 6. Any corporation shall convert any records so kept into clearly

105 legible paper form upon the request of any person entitled to inspect such records pursuant to any provision of this  
106 chapter. When records are kept in such manner, a clearly legible paper form ~~produced~~prepared from or by means of  
107 the information storage device ~~or method shall be,~~ method, or one or more electronic networks or databases  
108 (including one or more distributed electronic networks or databases) shall be valid and admissible in evidence, and  
109 accepted for all other purposes, to the same extent as an original paper record of the same information would have  
110 been, provided the paper form accurately portrays the record.

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

113 ~~(c) Every written consent shall bear the date of signature of each stockholder or member who signs the~~  
114 ~~consent, and no~~ No written consent shall be effective to take the corporate action referred to therein unless, ~~within~~  
115 ~~60 days of the earliest dated consent delivered in the manner required by this section to the corporation,~~ written  
116 consents signed by a sufficient number of holders or members to take action are delivered to the corporation ~~by~~  
117 ~~delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation~~  
118 ~~having custody of the book in which proceedings of meetings of stockholders or members are recorded in the~~  
119 manner required by this section within 60 days of the first date on which a written consent is so delivered to the  
120 corporation. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail,  
121 ~~return receipt requested.~~ Any person executing a consent may provide, whether through instruction to an agent or  
122 otherwise, that such a consent will be effective at a future time (including a time determined upon the happening of  
123 an event), no later than 60 days after such instruction is given or such provision is made, ~~and, for the purposes of this~~  
124 ~~section,~~ if evidence of such instruction or provision is provided to the corporation, ~~such later effective time shall~~  
125 ~~serve as the date of signature.~~ Unless otherwise provided, any such consent shall be revocable prior to its becoming  
126 effective.

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

129 (d)(1) A telegram, cablegram or other electronic transmission consenting to an action to be taken and  
130 transmitted by a stockholder, member or proxyholder, or by a person or persons authorized to act for a  
131 stockholder, member or proxyholder, shall be deemed to be written, and signed ~~and dated~~ for the purposes  
132 of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is

133 delivered with information from which the corporation can determine (A) that the telegram, cablegram or  
134 other electronic transmission was transmitted by the stockholder, member or proxyholder or by a person or  
135 persons authorized to act for the stockholder, member or proxyholder and (B) the date on which such  
136 stockholder, member or proxyholder or authorized person or persons transmitted such telegram, cablegram  
137 or electronic transmission. ~~The date on which such telegram, cablegram or electronic transmission is~~  
138 ~~transmitted shall be deemed to be the date on which such consent was signed.~~ No consent given by  
139 telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such  
140 consent is reproduced in paper form and until such paper form shall be delivered to the corporation by  
141 delivery to its registered office in this State, its principal place of business or an officer or agent of the  
142 corporation having custody of the book in which proceedings of meetings of stockholders or members are  
143 recorded. Delivery made to a corporation's registered office shall be made by hand or by certified or  
144 registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents  
145 given by telegram, cablegram or other electronic transmission, may be otherwise delivered to the principal  
146 place of business of the corporation or to an officer or agent of the corporation having custody of the book  
147 in which proceedings of meetings of stockholders or members are recorded if, to the extent and in the  
148 manner provided by resolution of the board of directors or governing body of the corporation.

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

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

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

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

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

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

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

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

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

183 (c) The agreement required by subsection (b) of this section shall be submitted to the stockholders of each  
184 constituent corporation at an annual or special meeting for the purpose of acting on the agreement. Due notice of the  
185 time, place and purpose of the meeting shall be mailed to each holder of stock, whether voting or nonvoting, of the  
186 corporation at the stockholder’s address as it appears on the records of the corporation, at least 20 days prior to the  
187 date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof. At the meeting, the

188 agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of  
189 the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified  
190 on the agreement by the secretary or assistant secretary of the corporation, provided that such certification on the  
191 agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement. If  
192 the agreement shall be so adopted and certified by each constituent corporation, it shall then be filed and shall  
193 become effective, in accordance with § 103 of this title. In lieu of filing the agreement of merger or consolidation  
194 required by this section, the surviving or resulting corporation may file a certificate of merger or consolidation,  
195 executed in accordance with § 103 of this title, which states:

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

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

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



216 (a) Any 1 or more corporations of this State may merge or consolidate with 1 or more ~~other corporations of~~  
217 ~~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~~  
218 ~~of the District permit a corporation of such jurisdiction to merge or consolidate with a corporation of another~~  
219 ~~jurisdiction~~ foreign corporations, unless the laws of the jurisdiction or jurisdictions under which such foreign  
220 corporation or corporations are organized prohibit such merger or consolidation. The constituent corporations may  
221 merge into a single surviving corporation, which may be any 1 of the constituent corporations, or they may  
222 consolidate into a new resulting corporation formed by the consolidation, which may be a corporation of the ~~state~~  
223 jurisdiction of incorporation-organization of any 1 of the constituent corporations, pursuant to an agreement of  
224 merger or consolidation, as the case may be, complying and approved in accordance with this section. ~~In addition,~~  
225 ~~any 1 or more corporations existing under the laws of this State may merge or consolidate with 1 or more~~  
226 ~~corporations organized under the laws of any jurisdiction other than 1 of the United States if the laws under which~~  
227 ~~the other corporation or corporations are organized permit a corporation of such jurisdiction to merge or consolidate~~  
228 ~~with a corporation of another jurisdiction.~~

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

- 231 (1) The terms and conditions of the merger or consolidation;
- 232 (2) The mode of carrying the same into effect;
- 233 (3) In the case of a merger in which the surviving corporation is a corporation of this State, such  
234 amendments or changes in the certificate of incorporation of the surviving corporation as are  
235 desired to be effected by the merger (which amendments or changes may amend and restate the  
236 certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments  
237 or changes are desired, a statement that the certificate of incorporation of the surviving corporation  
238 shall be its certificate of incorporation;
- 239 (4) In the case of a consolidation in which the resulting corporation is a corporation of this State,  
240 that the certificate of incorporation of the resulting corporation shall be as is set forth in an  
241 attachment to the agreement;
- 242 ~~(3)~~(5) The manner, if any, of converting the shares of each of the constituent corporations into  
243 shares or other securities of the corporation surviving or resulting from the merger or

244 consolidation, or of cancelling some or all of such shares, and, if any shares of any of the  
245 constituent corporations are not to remain outstanding, to be converted solely into shares or other  
246 securities of the surviving or resulting corporation or to be cancelled, the cash, property, rights or  
247 securities of any other corporation or entity which the holders of such shares are to receive in  
248 exchange for, or upon conversion of, such shares and the surrender of any certificates evidencing  
249 them, which cash, property, rights or securities of any other corporation or entity may be in  
250 addition to or in lieu of the shares or other securities of the surviving or resulting corporation;  
251 ~~(4)(6)~~ Such other details or provisions as are deemed desirable, including, without limiting the  
252 generality of the foregoing, a provision for the payment of cash in lieu of the issuance or  
253 recognition of fractional shares, rights or other securities of the surviving or resulting corporation  
254 or of any other corporation or entity the shares, rights or other securities of which are to be  
255 received in the merger or consolidation, or for some other arrangement with respect thereto,  
256 consistent with § 155 of this title; and  
257 ~~(5)(7)~~ Such other provisions or facts as shall be required to be set forth in ~~certificates of~~  
258 ~~incorporation by the laws of the state which are stated in the agreement to be the laws that shall~~  
259 ~~govern the~~ an agreement of merger or consolidation (including any provision for amendment of the  
260 certificate of incorporation (or equivalent document) of a surviving or resulting foreign  
261 corporation and that can be stated in the case of a merger or consolidation) by the laws of each  
262 jurisdiction under which any of the foreign corporations are organized.

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

268 (c) The agreement shall be adopted, approved, certified, executed and acknowledged by each of the  
269 constituent corporations in accordance with the laws under which it is ~~formed~~ organized, and, in the case of a  
270 ~~Delaware~~ corporation of this State, in the same manner as is provided in § 251 of this title. The agreement shall be  
271 filed and shall become effective for all purposes of the laws of this State when and as provided in § 251 of this title

272 with respect to the merger or consolidation of corporations of this State. In lieu of filing the agreement of merger or  
273 consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in  
274 accordance with § 103 of this title, which states:

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

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

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

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

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

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

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

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

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

298 (d) If the corporation surviving or resulting from the merger or consolidation is ~~to be governed by the laws~~  
299 ~~of the District of Columbia or any state or jurisdiction other than this State~~ a foreign corporation, it shall agree that it

300 may be served with process in this State in any proceeding for enforcement of any obligation of any constituent  
301 corporation of this State, as well as for enforcement of any obligation of the surviving or resulting corporation  
302 arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any  
303 stockholders as determined in appraisal proceedings pursuant to § 262 of this title, and shall irrevocably appoint the  
304 Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the  
305 address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the  
306 Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary  
307 of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the  
308 Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in  
309 accordance with this subsection, the Secretary of State shall forthwith notify such surviving or resulting corporation  
310 thereof by letter, directed to such surviving or resulting corporation at its address so specified, unless such surviving  
311 or resulting corporation shall have designated in writing to the Secretary of State a different address for such  
312 purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or  
313 courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the  
314 signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the  
315 Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve  
316 process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to  
317 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  
318 part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an  
319 alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket  
320 number and nature of the proceeding in which process has been served, the fact that service has been effected  
321 pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State  
322 shall not be required to retain such information longer than 5 years from receipt of the service of process.

323 (e) Section 251(d) of this title shall apply to any merger or consolidation under this section; § 251(e) of this  
324 title shall apply to a merger under this section in which the surviving corporation is a corporation of this State; and §  
325 251(f) and (h) of this title shall apply to any merger under this section.

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

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

329 (a) In any case in which: (1) at least 90% of the outstanding shares of each class of the stock of a  
330 corporation or corporations (other than a corporation which has in its certificate of incorporation the provision  
331 required by § 251(g)(7)(i) of this title), of which class there are outstanding shares that, absent this subsection,  
332 would be entitled to vote on such merger, is owned by another corporation and 1 of the corporations is a corporation  
333 of this State and the other or others are corporations of this State, or any other state or states, or the District of  
334 Columbia and the laws of the other state or states, or the District permit a corporation of such jurisdiction to merge  
335 with a corporation of another jurisdiction, the corporation having such stock ownership may either merge the other  
336 or a foreign corporation, and (2) 1 or more of such corporations is a corporation of this State, unless the laws of the  
337 jurisdiction or jurisdictions under which the foreign corporation or corporations are organized prohibit such merger,  
338 the parent corporation may either merge the subsidiary corporation or corporations into itself and assume all of its or  
339 their obligations, or merge itself, or itself and 1 or more of such other subsidiary corporations, into 1 of the ~~other~~  
340 subsidiary corporations by executing, acknowledging and filing, in accordance with § 103 of this title, a certificate  
341 of such ownership and merger setting forth a copy of the resolution of its board of directors to so merge and the date  
342 of the adoption; provided, however, that in case the parent corporation shall not own all the outstanding stock of all  
343 the subsidiary corporations, parties to a merger as aforesaid, the resolution of the board of directors of the parent  
344 corporation shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be  
345 issued, paid, delivered or granted by the surviving corporation upon surrender of each share of the subsidiary  
346 corporation or corporations not owned by the parent corporation, or the cancellation of some or all of such shares.  
347 Any of the terms of the resolution of the board of directors to so merge may be made dependent upon facts  
348 ascertainable outside of such resolution, provided that the manner in which such facts shall operate upon the terms  
349 of the resolution is clearly and expressly set forth in the resolution. The term “facts,” as used in the preceding  
350 sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any  
351 person or body, including the corporation. If the parent corporation be not the surviving corporation, the resolution  
352 shall include provision for the pro rata issuance of stock of the surviving corporation to the holders of the stock of  
353 the parent corporation on surrender of any certificates therefor, and the certificate of ownership and merger shall  
354 state that the proposed merger has been approved by a majority of the outstanding stock of the parent corporation  
355 entitled to vote thereon at a meeting duly called and held after 20 days’ notice of the purpose of the meeting mailed

356 to each such stockholder at the stockholder's address as it appears on the records of the corporation if the parent  
357 corporation is a corporation of this State or state that the proposed merger has been adopted, approved, certified,  
358 executed and acknowledged by the parent corporation in accordance with the laws under which it is organized if the  
359 parent corporation is ~~not a foreign corporation of this State~~. If the surviving corporation ~~exists under the laws of the~~  
360 ~~District of Columbia or any state or jurisdiction other than this State~~ is a foreign corporation:

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

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

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

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

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

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

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

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

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

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

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

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

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

- 407 (1) The terms and conditions of the merger or consolidation;
- 408 (2) The mode of carrying the same into effect;
- 409 (3) In the case of a merger in which the surviving entity is a corporation of this State, such  
410 amendments or changes in the certificate of incorporation of the surviving corporation as are  
411 desired to be effected by the merger (which amendments or changes may amend and restate the

412 certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments  
413 or changes are desired, a statement that the certificate of incorporation of the surviving corporation  
414 shall be its certificate of incorporation;

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

418 ~~(3)~~(5) The manner, if any, of converting the shares of stock of each stock corporation, the interest  
419 of members of each nonstock corporation, and the shares, membership or financial or beneficial  
420 interests in each of the joint-stock associations into shares or other securities of a stock corporation  
421 or membership interests of a nonstock corporation or into shares, memberships or financial or  
422 beneficial interests of the joint-stock association surviving or resulting from such merger or  
423 consolidation, or of cancelling some or all of such shares, memberships or financial or beneficial  
424 interests, and, if any shares of any such stock corporation, any membership interests of any such  
425 nonstock corporation or any shares, memberships or financial or beneficial interests in any such  
426 joint-stock association are not to remain outstanding, to be converted solely into shares or other  
427 securities of the stock corporation or membership interests of the nonstock corporation or into  
428 shares, memberships or financial or beneficial interests of the joint-stock association surviving or  
429 resulting from such merger or consolidation or to be cancelled, the cash, property, rights or  
430 securities of any other corporation or entity which the holders of shares of any such stock  
431 corporation, membership interests of any such nonstock corporation, or shares, memberships or  
432 financial or beneficial interests of any such joint-stock association are to receive in exchange for,  
433 or upon conversion of such shares, membership interests or shares, memberships or financial or  
434 beneficial interests, and the surrender of any certificates evidencing them, which cash, property,  
435 rights or securities of any other corporation or entity may be in addition to or in lieu of shares or  
436 other securities of the stock corporation or membership interests of the nonstock corporation or  
437 shares, memberships or financial or beneficial interests of the joint-stock association surviving or  
438 resulting from such merger or consolidation;~~and~~



439 ~~(4)~~(6) Such other details or provisions as are deemed desirable, including, without limiting the  
440 generality of the foregoing, a provision for the payment of cash in lieu of the issuance or  
441 recognition of fractional shares where, rights, other securities or interests of the surviving or  
442 resulting entity is a corporation or of fractional shares, rights, other securities or interests of any  
443 other corporation or entity the securities of which are to be received in the merger or  
444 consolidation, or for some other arrangement with respect thereto, consistent with § 155 of this  
445 title; and

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

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

458 (d) The agreement required by subsection (c) of this section shall be adopted, approved, certified, executed  
459 and acknowledged by each of the stock or nonstock corporations in the same manner as is provided in § 251 or §  
460 255 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;
- 516 (3) ~~Such other provisions or facts required or permitted by this chapter to be stated in a certificate~~  
517 ~~of incorporation for nonstock corporations as can be stated in the case of a merger or~~  
518 ~~consolidation, stated in such altered form as the circumstances of the case require; In the case of a~~  
519 merger, such amendments or changes in the certificate of incorporation of the surviving  
520 corporation as are desired to be effected by the merger (which amendments or changes may amend  
521 and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no

522 such amendments or changes are desired, a statement that the certificate of incorporation of the  
523 surviving corporation shall be its certificate of incorporation;

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

526 ~~(4)~~(5) The manner, if any, of converting the memberships or membership interests of each of the  
527 constituent corporations into memberships or membership interests of the corporation surviving or  
528 resulting from the merger or consolidation, or of cancelling some or all of such memberships or  
529 membership interests, and, if any memberships or membership interests of any of the constituent  
530 corporations are not to remain outstanding, to be converted solely into memberships or  
531 membership interests of the surviving or resulting corporation or to be cancelled, the cash,  
532 property, rights or securities of any other corporation or entity which the holders of such  
533 memberships or membership interests are to receive in exchange for, or upon conversion of, such  
534 memberships or membership interests, which cash, property, rights or securities of any other  
535 corporation or entity may be in addition to or in lieu of memberships or membership interests of  
536 the surviving or resulting corporation; and

537 ~~(5)~~(6) Such other details or provisions as are deemed desirable, including, without limiting the  
538 generality of the foregoing, a provision for the payment of cash in lieu of the issuance or  
539 recognition of fractional shares, rights or other securities of any other corporation or entity the  
540 shares, rights or other securities of which are to be received in the merger or consolidation, or for  
541 some other arrangement with respect thereto, consistent with § 155 of this title.

542 The agreement so adopted shall be executed and acknowledged in accordance with § 103 of this title. Any  
543 of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of  
544 such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is  
545 clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as used in the  
546 preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action  
547 by any person or body, including the corporation.

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

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

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

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

- 568 (1) The terms and conditions of the merger or consolidation;
- 569 (2) The mode of carrying the same into effect;
- 570 (3) In the case of a merger in which the surviving corporation is a corporation of this State, such  
571 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  
600 consolidation each jurisdiction under which any of the foreign nonstock corporations are  
601 organized.

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

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

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

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

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

618 (d) If the corporation surviving or resulting from the merger or consolidation is ~~to be governed by the laws~~  
619 ~~of any state other than this State~~a foreign nonstock corporation, it shall agree that it may be served with process in  
620 this State in any proceeding for enforcement of any obligation of any constituent corporation of this State, as well as  
621 for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation  
622 and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any suit or other  
623 proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State.  
624 Process may be served upon the Secretary of State under this subsection by means of electronic transmission but  
625 only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations  
626 with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service  
627 upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such  
628 surviving or resulting corporation thereof by letter, directed to such corporation at its address so specified, unless  
629 such surviving or resulting corporation shall have designated in writing to the Secretary of State a different address  
630 for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail  
631 or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by

632 the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served upon the  
633 Secretary of State. It shall be the duty of the plaintiff in the event of such service to serve process and any other  
634 papers in duplicate, to notify the Secretary of State that service is being made pursuant to this subsection, and to pay  
635 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  
636 proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any  
637 such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the  
638 proceeding in which process has been served upon the Secretary of State, the fact that service has been effected  
639 pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary  
640 of State shall not be required to retain such information for a period longer than 5 years from receipt of the service  
641 of process.

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

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

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

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

- 656 (1) The terms and conditions of the merger or consolidation;
- 657 (2) The mode of carrying the same into effect;
- 658 (3) ~~Such other provisions or facts required or permitted by this chapter to be stated in a certificate~~  
659 ~~of incorporation as can be stated in the case of a merger or consolidation, stated in such altered~~



660 ~~form as the circumstances of the case require; In the case of a merger, such amendments or~~  
661 ~~changes in the certificate of incorporation of the surviving corporation as are desired to be effected~~  
662 ~~by the merger (which amendments or changes may amend and restate the certificate of~~  
663 ~~incorporation of the surviving corporation in its entirety), or, if no such amendments or changes~~  
664 ~~are desired, a statement that the certificate of incorporation of the surviving corporation shall be its~~  
665 ~~certificate of incorporation;~~

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

668 ~~(4)(5)~~ The manner, if any, of converting the shares of stock of a stock corporation and the  
669 memberships or membership interests of a nonstock corporation into shares or other securities of a  
670 stock corporation or memberships or membership interests of a nonstock corporation surviving or  
671 resulting from such merger or consolidation or of cancelling some or all of such shares or  
672 memberships or membership interests, and, if any shares of any such stock corporation or  
673 memberships or membership interests of any such nonstock corporation are not to remain  
674 outstanding, to be converted solely into shares or other securities of the stock corporation or  
675 memberships or membership interests of the nonstock corporation surviving or resulting from  
676 such merger or consolidation or to be cancelled, the cash, property, rights or securities of any other  
677 corporation or entity which the holders of shares of any such stock corporation or memberships or  
678 membership interests of any such nonstock corporation are to receive in exchange for, or upon  
679 conversion of such shares or memberships or membership interests, and the surrender of any  
680 certificates evidencing them, which cash, property, rights or securities of any other corporation or  
681 entity may be in addition to or in lieu of shares or other securities of any stock corporation or  
682 memberships or membership interests of any nonstock corporation surviving or resulting from  
683 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:

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

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

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

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

733 (b) The method and procedure to be followed by the constituent corporations so merging or consolidating  
734 shall be as prescribed in § 257 of this title in the case of Delaware corporations. The agreement of merger or  
735 consolidation shall be as provided in § 257 of this title and also set forth such other matters or provisions or facts as  
736 ~~shall then~~ be required to be set forth in certificates an agreement of merger or consolidation (including any provision  
737 for amendment of the certificate of incorporation (or equivalent document) of a surviving foreign corporation) by  
738 the laws of the state jurisdiction or jurisdictions which are stated in the agreement to be the laws under which shall  
739 ~~govern the surviving or resulting the foreign corporation and that can be stated in the case of a merger or~~  
740 ~~consolidation~~ or corporations are organized. The agreement, in the case of foreign corporations, shall be adopted,  
741 approved, certified, executed and acknowledged ~~by each of the constituent foreign corporations~~ in accordance with  
742 the laws under which each is ~~formed~~ organized.

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

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

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

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

762 (a) Any 1 or more corporations of this State may merge or consolidate with 1 or more partnerships  
763 (whether general (including a limited liability partnership) or limited (including a limited liability limited  
764 partnership)), ~~of this State or of any other state or states of the United States, or of the District of Columbia, unless~~  
765 ~~the laws of such other state or states or the District of Columbia forbid~~ unless the laws of the jurisdiction or  
766 jurisdictions under which such partnership or partnerships are formed prohibit such merger or consolidation. Such  
767 corporation or corporations and such 1 or more partnerships may merge with or into a surviving corporation, which  
768 may be any 1 of such corporations, or they may merge with or into a surviving partnership, which may be any 1 of  
769 such partnerships, or they may consolidate into a new resulting corporation, which corporation shall be a corporation  
770 of this State, or a partnership formed by the consolidation, which corporation shall be a corporation or partnership of

771 ~~this State or any other state of the United States, or the District of Columbia, which permits such merger or~~  
772 ~~consolidation~~, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in  
773 accordance with this section. The term “partnership” as used in this section includes any partnership (whether  
774 general (including a limited liability partnership) or limited (including a limited liability limited partnership))  
775 formed under the laws of this State or the laws of any other jurisdiction.

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

777 The agreement shall state:

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

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

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

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

789 ~~(3)~~(5) The manner, if any, of converting the shares of stock of each such corporation and the  
790 partnership interests of each such partnership into shares, partnership interests or other securities  
791 of the entity surviving or resulting from such merger or consolidation or of cancelling some or all  
792 of such shares or interests, and if any shares of any such corporation or any partnership interests of  
793 any such partnership are not to remain outstanding, to be converted solely into shares, partnership  
794 interests or other securities of the entity surviving or resulting from such merger or consolidation  
795 or to be cancelled, the cash, property, rights or securities of any other corporation or entity which  
796 the holders of such shares or partnership interests are to receive in exchange for, or upon  
797 conversion of such shares or partnership interests and the surrender of any certificates evidencing  
798 them, which cash, property, rights or securities of any other corporation or entity may be in

799 addition to or in lieu of shares, partnership interests or other securities of the entity surviving or  
800 resulting from such merger or consolidation;~~and~~

801 ~~(4)~~(6) Such other details or provisions as are deemed desirable, including, without limiting the  
802 generality of the foregoing, a provision for the payment of cash in lieu of the issuance or  
803 recognition of fractional shares, rights, other securities or interests of the surviving or resulting  
804 corporation or partnership; or of any other corporation or entity the shares, rights, other securities  
805 or interests of which are to be received in the merger or consolidation, or for some other  
806 arrangement with respect thereto, consistent with § 155 of this title; and

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

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

817 (c) The agreement required by subsection (b) of this section shall be adopted, approved, certified, executed  
818 and acknowledged by each of the corporations in the same manner as is provided in § 251 or § 255 of this title and,  
819 in the case of the partnerships, in accordance with their partnership agreements and in accordance with the laws of  
820 the ~~state~~ jurisdiction under which they are formed, ~~as the case may be~~. If the surviving or resulting entity is a  
821 partnership, in addition to any other approvals, each stockholder of a merging corporation who will become a  
822 general partner of the surviving or resulting partnership must approve the agreement of merger or consolidation. The  
823 agreement shall be filed and shall become effective for all purposes of the laws of this State when and as provided in  
824 § 251 or § 255 of this title with respect to the merger or consolidation of corporations of this State. In lieu of filing  
825 the agreement of merger or consolidation, the surviving or resulting corporation or partnership may file a certificate

826 of merger or consolidation, executed in accordance with § 103 of this title, if the surviving or resulting entity is a  
827 corporation, or by a general partner, if the surviving or resulting entity is a partnership, which states:

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

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

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

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

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

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

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

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

848 (d) If the entity surviving or resulting from the merger or consolidation is ~~to be governed by a partnership~~  
849 formed under the laws of the District of Columbia or any state a jurisdiction other than this State, it shall agree that it  
850 may be served with process in this State in any proceeding for enforcement of any obligation of any constituent  
851 corporation or partnership of this State, as well as for enforcement of any obligation of the surviving or resulting  
852 corporation or partnership arising from the merger or consolidation, including any suit or other proceeding to  
853 enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of this title, and shall

854 irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other  
855 proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State.  
856 Process may be served upon the Secretary of State under this subsection by means of electronic transmission but  
857 only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations  
858 with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service  
859 upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such  
860 surviving or resulting corporation or partnership thereof by letter, directed to such surviving or resulting corporation  
861 or partnership at its address so specified, unless such surviving or resulting corporation or partnership shall have  
862 designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed  
863 to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of  
864 mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter  
865 shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection.  
866 It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to  
867 notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of  
868 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  
869 plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting  
870 forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which  
871 process has been served upon the Secretary of State, the fact that service has been effected pursuant to this  
872 subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be  
873 required to retain such information longer than 5 years from receipt of the service of process.

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

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

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



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

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

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

- 898                   (1) The terms and conditions of the merger or consolidation;
- 899                   (2) The mode of carrying the same into effect;
- 900                   (3) In the case of a merger in which the surviving entity is a corporation of this State, such  
901 amendments or changes in the certificate of incorporation of the surviving corporation as are  
902 desired to be effected by the merger (which amendments or changes may amend and restate the  
903 certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments  
904 or changes are desired, a statement that the certificate of incorporation of the surviving corporation  
905 shall be its certificate of incorporation;
- 906                   (4) In the case of a consolidation in which the resulting entity is a corporation of this State, that the  
907 certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to  
908 the agreement;

909           ~~(3)~~(5) The manner, if any, of converting the shares of stock of each such corporation and the  
910           limited liability company interests of each such limited liability company into shares, limited  
911           liability company interests or other securities of the entity surviving or resulting from such merger  
912           or consolidation or of cancelling some or all of such shares or interests, and if any shares of any  
913           such corporation or any limited liability company interests of any such limited liability company  
914           are not to remain outstanding, to be converted solely into shares, limited liability company  
915           interests or other securities of the entity surviving or resulting from such merger or consolidation  
916           or to be cancelled, the cash, property, rights or securities of any other corporation or entity which  
917           the holders of such shares or limited liability company interests are to receive in exchange for, or  
918           upon conversion of such shares or limited liability company interests and the surrender of any  
919           certificates evidencing them, which cash, property, rights or securities of any other corporation or  
920           entity may be in addition to or in lieu of shares, limited liability company interests or other  
921           securities of the entity surviving or resulting from such merger or consolidation; ~~and~~

922           ~~(4)~~(6) Such other details or provisions as are deemed desirable, including, without limiting the  
923           generality of the foregoing, a provision for the payment of cash in lieu of the issuance or  
924           recognition of fractional shares, rights, other securities or interests of the surviving or resulting  
925           corporation or limited liability company; or of any other corporation or entity the shares, rights,  
926           other securities or interests of which are to be received in the merger or consolidation, or for some  
927           other arrangement with respect thereto, consistent with § 155 of this title; and

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

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

937 (c) The agreement required by subsection (b) of this section shall be adopted, approved, certified, executed  
938 and acknowledged by each of the corporations in the same manner as is provided in § 251 or § 255 of this title and,  
939 in the case of the limited liability companies, in accordance with their limited liability company agreements and in  
940 accordance with the laws of the state-jurisdiction under which they are formed,~~as the case may be~~. The agreement  
941 shall be filed and shall become effective for all purposes of the laws of this State when and as provided in § 251 or §  
942 255 of this title with respect to the merger or consolidation of corporations of this State. In lieu of filing the  
943 agreement of merger or consolidation, the surviving or resulting corporation or limited liability company may file a  
944 certificate of merger or consolidation, executed in accordance with § 103 of this title, if the surviving or resulting  
945 entity is a corporation, or by an authorized person, if the surviving or resulting entity is a limited liability company,  
946 which states:

- 947 (1) The name and ~~state of domicile~~ jurisdiction of formation or organization of each of the  
948 constituent entities;
- 949 (2) That an agreement of merger or consolidation has been approved, adopted, certified, executed  
950 and acknowledged by each of the constituent entities in accordance with this subsection;
- 951 (3) The name of the surviving or resulting corporation or limited liability company;
- 952 (4) In the case of a merger in which a corporation is the surviving entity, such amendments or  
953 changes in the certificate of incorporation of the surviving corporation as are desired to be effected  
954 by the merger (which amendments or changes may amend and restate the certificate of  
955 incorporation of the surviving corporation in its entirety), or, if no such amendments or changes  
956 are desired, a statement that the certificate of incorporation of the surviving corporation shall be its  
957 certificate of incorporation;
- 958 (5) In the case of a consolidation in which a corporation is the resulting entity, that the certificate  
959 of incorporation of the resulting corporation shall be as is set forth in an attachment to the  
960 certificate;
- 961 (6) That the executed agreement of consolidation or merger is on file at an office of the surviving  
962 or resulting corporation or limited liability company and the address thereof;

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

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

967 (d) If the entity surviving or resulting from the merger or consolidation is ~~to be governed by a limited~~  
968 liability company formed under the laws of the District of Columbia or any state a jurisdiction other than this State,  
969 it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of  
970 any constituent corporation or limited liability company of this State, as well as for enforcement of any obligation of  
971 the surviving or resulting corporation or limited liability company arising from the merger or consolidation,  
972 including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal  
973 proceedings pursuant to the provisions of § 262 of this title, and shall irrevocably appoint the Secretary of State as  
974 its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a  
975 copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State  
976 under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The  
977 Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of  
978 State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with  
979 this subsection, the Secretary of State shall forthwith notify such surviving or resulting corporation or limited  
980 liability company thereof by letter, directed to such surviving or resulting corporation or limited liability company at  
981 its address so specified, unless such surviving or resulting corporation or limited liability company shall have  
982 designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed  
983 to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of  
984 mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter  
985 shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection.  
986 It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to  
987 notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of  
988 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  
989 plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting  
990 forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which

991 process has been served upon the Secretary of State, the fact that service has been effected pursuant to this  
992 subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be  
993 required to retain such information longer than 5 years from receipt of the service of process.

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

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

1000 Section 33. Amend § 267(a), Title 8 of the Delaware Code, by making insertions as shown by underline  
1001 and deletions as shown by strike through as follows:

1002 (a) In any case in which: (1) at least 90% of the outstanding shares of each class of the stock of a  
1003 corporation or corporations (other than a corporation which has in its certificate of incorporation the provision  
1004 required by § 251(g)(7)(i) of this title), of which class there are outstanding shares that, absent this subsection,  
1005 would be entitled to vote on such merger, is owned by an entity, and (2) 1 or more of such corporations is a  
1006 corporation of this State, ~~and (3) any entity or corporation that is not an entity or corporation of this State is an entity~~  
1007 ~~or corporation of any other state or the District of Columbia, the laws of which do not forbid unless the laws of the~~  
1008 jurisdiction or jurisdictions under which such entity or such foreign corporations are formed or organized prohibit  
1009 such merger, the entity having such stock ownership may either merge the corporation or corporations into itself and  
1010 assume all of its or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other  
1011 corporations by (a) authorizing such merger in accordance with such entity's governing documents and the laws of  
1012 the jurisdiction under which such entity is formed or organized and (b) acknowledging and filing with the Secretary  
1013 of State, in accordance with § 103 of this title, a certificate of such ownership and merger certifying (i) that such  
1014 merger was authorized in accordance with such entity's governing documents and the laws of the jurisdiction under  
1015 which such entity is formed or organized, such certificate executed in accordance with such entity's governing  
1016 documents and in accordance with the laws of the jurisdiction under which such entity is formed or organized and  
1017 (ii) the type of entity of each constituent entity to the merger; provided, however, that in case the entity shall not  
1018 own all the outstanding stock of all the corporations, parties to a merger as aforesaid, (A) the certificate of

1019 ownership and merger shall state the terms and conditions of the merger, including the securities, cash, property, or  
1020 rights to be issued, paid, delivered or granted by the surviving constituent party upon surrender of each share of the  
1021 corporation or corporations not owned by the entity, or the cancellation of some or all of such shares and (B) such  
1022 terms and conditions of the merger may not result in a holder of stock in a corporation becoming a general partner in  
1023 a surviving entity that is a partnership (other than a limited liability partnership or a limited liability limited  
1024 partnership). Any of the terms of the merger may be made dependent upon facts ascertainable outside of the  
1025 certificate of ownership and merger, provided that the manner in which such facts shall operate upon the terms of  
1026 the merger is clearly and expressly set forth in the certificate of ownership and merger. The term “facts,” as used in  
1027 the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or  
1028 action by any person or body, including the entity. If the surviving constituent party ~~exists~~ is an entity formed or  
1029 organized under the laws of ~~the District of Columbia or any state or a jurisdiction~~ other than this State, (1) § 252(d)  
1030 of this title shall also apply to a merger under this section; if the surviving constituent party is the entity, the word  
1031 “corporation” where applicable, as used in § 252(d) of this title, shall be deemed to include an entity as defined  
1032 herein; and (2) the terms and conditions of the merger shall obligate the surviving constituent party to provide the  
1033 agreement, and take the actions, required by § 252(d) of this title.

1034 Section 34. Amend § 267(d), Title 8 of the Delaware Code, by making insertions as shown by underline  
1035 and deletions as shown by strike through as follows:

1036 ~~(d) A merger may be effected under this section although 1 or more of the constituent parties is a~~  
1037 ~~corporation organized under the laws of a jurisdiction other than 1 of the United States; provided that the laws of~~  
1038 ~~such jurisdiction do not forbid such merger.~~

1039 Section 35. Amend § 267(e), Title 8 of the Delaware Code, by making insertions as shown by underline  
1040 and deletions as shown by strike through as follows:

1041 ~~(e)~~(d) As used in this section only, the term:

- 1042 (1) “~~C~~constituent party” means an entity or corporation to be merged pursuant to this section;
- 1043 (2) “~~E~~entity” means a partnership (whether general (including a limited liability partnership) or  
1044 limited (including a limited liability limited partnership)), limited liability company, any  
1045 association of the kind commonly known as a joint-stock association or joint-stock company and  
1046 any unincorporated association, trust or enterprise having members or having outstanding shares

1047 of stock or other evidences of financial or beneficial interest therein, whether formed or organized  
1048 by agreement or under statutory authority or otherwise and whether formed or organized under the  
1049 laws of this State or the laws of any other jurisdiction; and

1050 (3) “~~G~~governing documents” means a partnership agreement, limited liability company agreement,  
1051 articles of association or any other instrument containing the provisions by which an entity is  
1052 formed or organized.

1053 Section 36. Amend § 364, Title 8 of the Delaware Code, by making insertions as shown by underline and  
1054 deletions as shown by strike through as follows:

1055 § 364 Stock certificates; notices regarding uncertificated stock.

1056 Any stock certificate issued by a public benefit corporation shall note conspicuously that the corporation is  
1057 a public benefit corporation formed pursuant to this subchapter. Any notice ~~sent~~given by a public benefit corporation  
1058 pursuant to § 151(f) of this title shall state conspicuously that the corporation is a public benefit corporation formed  
1059 pursuant to this subchapter.

1060 Section 37. Amend § 374, Title 8 of the Delaware Code, by making insertions as shown by underline and  
1061 deletions as shown by strike through as follows:

1062 § 374. Annual report.

1063 Annually ~~On~~ or before June 30 ~~in each year~~, a foreign corporation doing business in this State shall file a  
1064 report with the Secretary of State. The report shall be made ~~on behalf of~~ on a form designated by the Secretary of  
1065 State and shall be signed by the corporation’s ~~by its~~ president, secretary, treasurer or other proper officer duly  
1066 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  
1067 of directors shall not have been elected. The fact that an individual’s name is signed on a certification attached to a  
1068 corporate report shall be prima facie evidence that such individual is authorized to certify the report on behalf of the  
1069 corporation; however the official title or position of the individual signing the corporate report shall be designated.  
1070 The report shall ~~be on a calendar year basis and shall state the address (in accordance with § 131(e) of this title) of~~  
1071 ~~its registered office in this State; the name of its registered agent at such address upon whom service of process~~  
1072 ~~against the corporation may be served; the address (which shall include the street, number, city, state or foreign~~  
1073 ~~country) of the main or headquarters place of business of the corporation without this State; the names and addresses~~  
1074 ~~of all the directors and officers of the corporation and when the term of each expires; the date appointed for the next~~

1075 ~~annual meeting of the stockholders for the election of directors; the number of shares of each class of its capital~~  
1076 ~~stock which it is authorized to issue, if any, and the par value thereof when applicable; and the number of shares of~~  
1077 ~~each class of the capital stock actually issued, if any; the amount of capital invested in real estate and other property~~  
1078 ~~in this State, and the tax paid thereon; and, if exempt from taxation in this State for any cause, the specific facts~~  
1079 ~~entitling the corporation to such exemption from taxation.~~contain the following information:

- 1080 (1) The location of its registered office in this State, which shall include the street, number, city and postal  
1081 code;
- 1082 (2) The name of the agent upon whom service of process against the corporation may be served;
- 1083 (3) The location of the principal place of business of the corporation, which shall include the street,  
1084 number, city, state or foreign country; and
- 1085 (4) The names and addresses of all the directors as of the filing date of the report and the name and address  
1086 of the officer who signs the report.

1087 If any officer or director of a foreign corporation required to file an annual report with the Secretary of State shall  
1088 knowingly make any false statement in the report, such officer or director shall be guilty of perjury.

1089 Section 38. Amend § 502(a), Title 8 of the Delaware Code, by making insertions as shown by underline  
1090 and deletions as shown by strike through as follows:

1091 (a) Annually on or before March 1, every corporation now existing or hereafter incorporated under Chapter  
1092 1 of this title or which has accepted the Constitution of this State, shall make an annual franchise tax report to the  
1093 Secretary of State. The report shall be made on a form designated by the Secretary of State and shall be signed by  
1094 the corporation's president, secretary, treasurer or other proper officer duly authorized so to act, or by any of its  
1095 directors, or if filing an initial report by any incorporator in the event its board of directors shall not have been  
1096 elected. The fact that an individual's name is signed on the report shall be prima facie evidence that such individual  
1097 is authorized to certify the report on behalf of the corporation; however, the official title or position of the individual  
1098 signing the corporate report shall be designated. The report shall contain the following information:

- 1099 (1) The location of its registered office in this State, which shall include the street, number, city and postal  
1100 code~~stated with the degree of particularity required by § 102(a)(2) of this title;~~
- 1101 (2) The name of the agent upon whom service of process against the corporation may be served;



- 1102 (3) The location (~~city, town, street and number of same, if number there be~~) of the principal place of  
1103 business of the corporation, which shall include the street, number, city, state or foreign country;
- 1104 (4) The names and addresses of all the directors as of the filing date of the report and the name and address  
1105 of the officer who signs the report; provided, that other than an initial report, all reports shall list a  
1106 director or directors excepting any report filed in conjunction with a certificate of dissolution filed by  
1107 an incorporator pursuant to § 274 of this title or a certificate of dissolution filed pursuant to § 275(c) of  
1108 this title;
- 1109 (5) The number of shares and the par value per share of each class of capital stock having a par value and  
1110 the number of shares of each class of stock without par value which the corporation is authorized to  
1111 issue;
- 1112 (6) If exempt from taxation for any cause, the specific facts entitling the corporation to exemption from  
1113 taxation; and
- 1114 (7) Such additional information, schedules and attachments as the Secretary shall require to ascertain the  
1115 franchise tax due to the State.

1116 Section 39. Sections 1 through 7 and 11 through 38 shall be effective on August 1, 2017.

1117 Section 40. Sections 8 through 10 shall be effective only for actions taken by consent having a record date,  
1118 for purposes of determining the stockholders or members entitled to consent, on or after August 1, 2017.

1119 **SYNOPSIS**

1120 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,  
1121 232(c) and 364 of Title 8, respectively. Amendments to Sections 219, 224 and 232 and related provisions are  
1122 intended to provide specific statutory authority for Delaware corporations to use networks of electronic databases  
1123 (examples of which are described currently as “distributed ledgers” or a “blockchain”) for the creation and  
1124 maintenance of corporate records, including the corporation’s stock ledger. Section 219(c), as amended, now  
1125 includes a definition of “stock ledger.” Section 224, as amended, requires that the stock ledger serve three functions  
1126 contemplated by the Delaware General Corporation Law: it must enable the corporation to prepare the list of  
1127 stockholders specified in Sections 219 and 220; it must record the information specified in Sections 156, 159, 217(a)  
1128 and 218; and, as required by Section 159, it must record transfers of stock as governed by Article 8 of subtitle I of

1129 Title 6. Sections 151, 202 and 364 are also amended to clarify that the notices given to holders of uncertificated  
1130 shares pursuant to those sections may be given by electronic transmission.

1131 Section 2. Sections 3 and 4 of this Act amend Section 203(b) of Title 8. The amendments to Section  
1132 203(b)(3) clarify that an amendment to the corporation’s certificate of incorporation opting out of the restrictions on  
1133 business combinations under that section becomes effective at the date and time such amendment becomes effective  
1134 under Section 103 (in the case of a corporation that has never had a class of voting stock listed on a national  
1135 securities exchange or held of record by more than 2,000 stockholders and that has not elected through its original  
1136 certificate of incorporation or any amendment thereto to be governed by Section 203) or 12 months after the  
1137 effective date of such amendment (in the case of all other corporations), rather than, in each case, the time at which  
1138 the amendment is adopted by stockholders. The amendment to the last sentence of Section 203(b) adopts the same  
1139 language with respect to the effectiveness of an amendment as added in Section 203(b)(3).

1140 Section 3. Sections 8, 9 and 10 of this Act amend Sections 228(c), 228(d) and 228(e) of Title 8,  
1141 respectively. Section 228 is amended to provide that a consent need not bear the date of signature of the stockholder  
1142 or member signing the consent. The amendments to Section 228(c) also provide that the sixty-day period for the  
1143 delivery of consents will start on the first date a consent is delivered to the corporation. The amendments eliminate  
1144 surplus language that specified where consents had to be delivered.

1145 Section 4. Sections 12 through 35 of this Act amend the provisions on mergers and consolidations in  
1146 subchapter IX of chapter 1 of Title 8. Sections 254, 263 and 264 are amended to permit mergers of Delaware  
1147 corporations with joint-stock or other associations, limited liability companies and partnerships formed or organized  
1148 under the laws of a non-US jurisdiction. Sections 252, 253, 258 and 267 are amended to use the term “foreign  
1149 corporation” (as such term is defined in Section 371(a)) to refer consistently to mergers with a corporation organized  
1150 under the laws of any jurisdiction other than the State of Delaware. Sections 255 and 256 are amended to clarify  
1151 how membership interests in a non-stock corporation may be treated in a merger and, as a result, redundant language  
1152 to this effect in Section 257 is eliminated. All sections relating to mergers are amended to conform language to  
1153 eliminate inconsistencies. The term “organized” is used with respect to corporations and refers to the method by  
1154 which a corporation is formed, incorporated, created or otherwise comes into being under the laws governing its  
1155 internal affairs. The term “formed” is used with respect to non-corporate entities and includes the method by which  
1156 a non-corporate entity is formed, created or otherwise comes into being under the laws governing its internal affairs.

1157 Both terms are used with respect to joint stock associations given that the manner in which they are characterized  
1158 may, depending upon the law at issue, include attributes of both “organized” and “formed”. The clarification of the  
1159 terms used to refer to corporations and non-corporate entities and the elimination of the term “existing” from Section  
1160 251 are for clarification purposes only and do not change the intent of such sections prior to the amendments. Each  
1161 of the statutes on mergers and consolidations involving Delaware corporations and non-Delaware entities are  
1162 amended to provide that such mergers and consolidations are permitted so long as the laws of the applicable non-  
1163 Delaware jurisdictions do not prohibit the transaction. These amendments change provisions of Sections 252, 253,  
1164 256 and 258 that permitted these mergers and consolidations under Delaware law only if the applicable non-  
1165 Delaware law “permitted” the transaction and change the language of Sections 254, 263, 264 and 267 from not  
1166 “forbid” to not “prohibit”. The amendments are intended to further facilitate mergers and consolidations of  
1167 Delaware corporations with non-Delaware entities.

1168 Section 5. Sections 37 and 38 of this Act amend Sections 374 and 502(a) of Title 8, respectively. Section  
1169 502 is amended to clarify the information required to be disclosed in annual reports filed by domestic corporations  
1170 with the Office of the Secretary of State of the State of Delaware. Section 374 is amended to conform the annual  
1171 reporting requirements for corporations formed in another jurisdiction and qualifying to do business in Delaware  
1172 with the requirements for domestic corporations. The amendments will allow for seamless electronic integration  
1173 and more efficient processing of these annual reports.

1174 Section 6. Sections 39 and 40 of this Act relate to the effectiveness of the amendments to Title 8. Section  
1175 40 of this Act provides that Sections 8 through 10 of this Act (relating to the amendments to Section 228 of Title 8)  
1176 are effective only for stockholder and member actions taken by consent having a record date, for purposes of  
1177 determining the stockholders or members entitled to consent, on or after August 1, 2017. Section 39 of this Act  
1178 provides that Sections 1 through 7 and Sections 11 through 38 of this Act (relating to the remaining amendments to  
1179 Title 8 set forth in this Act) are effective on August 1, 2017.

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