

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

**SESSION LAW 2005-268  
SENATE BILL 324**

AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA  
BUSINESS CORPORATION ACT AND TO MAKE CONFORMING CHANGES  
TO THE OTHER ENTITY ACTS.

The General Assembly of North Carolina enacts:

**PART I. AMENDMENTS TO THE NORTH CAROLINA BUSINESS  
CORPORATION ACT.**

**SECTION 1.** G.S. 55-6-31 reads as rewritten:

**"§ 55-6-31. Corporation's acquisition of its own shares.**

(a) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

~~(c) Articles of amendment required by subsection (b) may be adopted by the board of directors without shareholder action and shall be delivered to the Secretary of State for filing. The articles must set forth:~~

~~(1) The name of the corporation;~~

~~(2) The reduction in the number of authorized shares, itemized by class and series; and~~

~~(3) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares."~~

**SECTION 2.** G.S. 55-7-04(a) reads as rewritten:

"(a) Action required or permitted by this Chapter to be taken at a shareholders' meeting may be taken without a meeting and without prior notice except as required by subsection (d) of this section, if the action is taken by all the shareholders entitled to vote on the action or, subject to subsection (a1) of this section, if so provided in the articles of incorporation of a corporation that is not a public corporation at the time the action is taken, by shareholders having not less than the minimum number of votes that would be necessary to take the action at a meeting at which all shareholders entitled to vote were present and voted. The action must be evidenced by one or more unrevoked written consents bearing the date of signature and signed by ~~the number of~~ shareholders sufficient to take the action without a meeting, before or after such action, describing the action taken and delivered to the corporation for inclusion in the minutes or filing with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55-1-50, a shareholder's consent to action taken without meeting or revocation thereof may be in electronic form and delivered by electronic means."

**SECTION 3.** G.S. 55-7-04(b) reads as rewritten:

"(b) A shareholder's written consent to action to be taken without a meeting shall cease to be effective on the sixty-first day after the date of signature appearing on the consent unless prior to the sixty-first day the corporation has received unrevoked written consents sufficient under subsection (a) of this section to take the action without meeting. If not otherwise fixed under G.S. 55-7-03 or G.S. 55-7-07, the record date for determining shareholders entitled to take action without a meeting is the earliest date of signature appearing on any consent that is to be counted in satisfying the requirements

of subsection (a) of this section. A shareholder may only revoke a written consent if such shareholder delivers to the corporation a written revocation prior to the corporation's receipt of unrevoked written consents sufficient under subsection (a) of this section to take the action."

**SECTION 4.** G.S. 55-7-24(b)(4) reads as rewritten:

"(4) The name signed purports to be that of a ~~beneficial owner-pledgee,~~ beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment;"

**SECTION 5.** G.S. 55-7-24(d) reads as rewritten:

"(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or G.S. 55-7-22(b) are not liable in damages to the shareholder for the consequences of the acceptance or rejection."

**SECTION 6.** G.S. 55-8-01(b) reads as rewritten:

"(b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed by or under the direction of, its board of directors, except as otherwise provided in the articles of incorporation or in an agreement valid under G.S. 55-7-31(b)."

**SECTION 7.** G.S. 55-8-03 reads as rewritten:

**"§ 55-8-03. Number and election of directors.**

(a) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) ~~The shareholders may from time to time increase or decrease the number of directors by amendment to the articles of incorporation or the bylaws, but no such decrease shall be made.~~ The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, but for a corporation to which G.S. 55-7-28(e) is applicable when applies, the number of directors shall not be decreased unless one of the following applies:

(1) The decrease is approved by the shareholders in a vote in which the number of shares voting against the proposal for decrease would not be sufficient to elect a director by cumulative voting if such shares are entitled to be voted cumulatively for the election of directors.

(2) If a board of directors has power under the articles of incorporation or bylaws to fix or change the number of directors and if the shareholders do not have the right to cumulate their votes for directors, the board may increase or decrease the number of directors by not more than thirty percent (30%) during any 12-month period. The decrease is made pursuant to a provision of the articles of incorporation or bylaws fixing a minimum and maximum number of directors and authorizing the number of directors to be fixed or changed from time to time, within the maximum and the minimum, by the shareholders or, unless the articles of incorporation or an agreement valid under G.S. 55-7-31 provides otherwise, the board of directors.

(c) ~~The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or (unless the articles of incorporation or an agreement valid under G.S. 55-7-31 shall otherwise provide) the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable range size board or vice versa.~~

(d) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under G.S. 55-8-06."

**SECTION 8.** G.S. 55-8-06 reads as rewritten:

**"§ 55-8-06. Staggered terms for directors.**

~~If the number of directors is fixed at nine or more directors, the~~ The articles of incorporation or bylaws adopted by the shareholders may provide for staggering ~~their~~ the terms of directors by dividing the total number of directors into two, three, or four groups, with each group containing one-half, one-third, or one-fourth of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, the terms of the third group, if any, expire at the third annual shareholders' meeting after their election, and the terms of the fourth group, if any, expire at the fourth annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two, three, or four years, as the case may be, to succeed those whose terms expire."

**SECTION 9.** G.S. 55-8-21 reads as rewritten:

**"§ 55-8-21. Action without meeting.**

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more unrevoked written consents signed by each director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55-1-50, a director's consent to action taken without meeting or revocation thereof may be in electronic form and delivered by electronic means.

(b) Action taken under this section is effective when ~~the last director signs the consent,~~ one or more unrevoked consents signed by all of the directors are delivered to the corporation, unless the ~~consent specifies~~ consents specify a different effective date. A director's consent to action may be revoked in a writing signed by the director and delivered to the corporation prior to the action becoming effective.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document."

**SECTION 10.** G.S. 55-8-25 reads as rewritten:

**"§ 55-8-25. Committees.**

(a) Unless ~~this Chapter,~~ the articles of incorporation ~~incorporation,~~ or ~~the~~ bylaws provide otherwise, a board of directors may create one or more committees and appoint one or more members of the board of directors to serve on ~~them.~~ Each committee must have two or more members, who serve at the pleasure of the board of directors. any such committee.

(b) ~~The~~ Unless this Chapter provides otherwise, the creation of a committee and appointment of members to it must be approved by the greater of:

- (1) A majority of all the directors in office when the action is taken; or
- (2) The number of directors required by the articles of incorporation or bylaws to take action under G.S. 55-8-24.

(b1) The creation and appointment of a committee pursuant to G.S. 55-7-44(b)(2) may be approved in the manner set forth in G.S. 55-7-44(b)(2).

(c) ~~G.S. 55-8-20 through G.S. 55-8-24, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, G.S. 55-8-24 apply~~ both to committees of the board of directors and to their members as well. members.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under G.S. 55-8-01.

(e) A committee ~~may not, however:~~ shall not, however, do any of the following:

- (1) Authorize ~~distributions;~~ distributions.
- (2) Approve or propose to shareholders action that this act requires be approved by ~~shareholders;~~ shareholders.
- (3) Fill vacancies on the board of directors or on any of its ~~committees;~~ committees.
- (4) Amend articles of incorporation pursuant to ~~G.S. 55-10-02;~~ G.S. 55-10-02.
- (5) Adopt, amend, or repeal ~~bylaws;~~ bylaws.
- (6) Approve a plan of merger not requiring shareholder ~~approval;~~ approval.
- (7) ~~Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or~~
- (8) ~~Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee (or a senior executive officer of the corporation) to do so within limits specifically prescribed by the board of directors.~~

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

**SECTION 11.** G.S. 55-8-31(c) reads as rewritten:

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

**SECTION 12.** G.S. 55-8-43 reads as rewritten:

**"§ 55-8-43. Resignation and removal of officers.**

(a) An officer may resign at any time by communicating his resignation to the corporation. A resignation is effective when it is communicated unless it specifies in writing a later effective ~~date.~~ time. If a resignation is made effective at a later ~~date.~~ time and the corporation accepts the future effective ~~date,~~ time, its board of directors or the appointing officer may fill the pending vacancy before the effective ~~date.~~ time if the board of directors or the appointing officer provides that the successor does not take office until the effective ~~date.~~ time.

(b) ~~A board of directors may remove any officer at any time with or without cause.~~ An officer may be removed at any time with or without cause by (i) the board of directors, (ii) the appointing officer, unless the bylaws or the board of directors provide otherwise, or (iii) any other officer if authorized by the bylaws or the board of directors.

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

**SECTION 13.** G.S. 55-10-02 reads as rewritten:

**"§ 55-10-02. Amendment by board of directors.**

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt ~~one or more any of the following~~ amendments to the corporation's articles of incorporation without shareholder ~~action.~~ approval:

- (1) Reserved for future codification ~~purposes;~~ purposes.
- (2) To delete the names and addresses of the initial ~~directors;~~ directors.

- (3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of ~~State~~; State.
- (4) If the corporation has only one class of shares outstanding:
  - a. ~~To change each issued and unissued authorized share of an outstanding the class into a greater number of whole shares if the corporation has only shares of that class outstanding; of the class; or~~
  - b. To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend.
- (5) To change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "Ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the ~~name; or name.~~
- (5a) To reflect a reduction in authorized shares pursuant to G.S. 55-6-31(b) when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares.
- (5b) To delete a class of shares from the articles of incorporation, as a result of the operation of G.S. 55-6-31(b), when there are no remaining authorized shares of the class because the corporation has acquired all authorized shares of the class and the articles of incorporation prohibit the reissue of the acquired shares.
- (6) To make any other change expressly permitted by this act- Chapter to be made without shareholder ~~action-approval.~~"

**SECTION 14.** G.S. 55-10-03 reads as rewritten:

**"§ 55-10-03. Amendment by board of directors and shareholders.**

(a) If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted pursuant to this section. Except as provided in G.S. 55-14A-01, the proposed amendment must be adopted by the board of directors. A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(b) ~~For the amendment to be adopted:~~

- (1) ~~The board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation, in which event the board of directors must communicate the basis for its lack of a recommendation to the shareholders with the amendment; and~~
- (2) ~~The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (e).~~

Except as provided in G.S. 55-10-02, 55-10-07, and 55-14A-01, after adopting the proposed amendment the board of directors must submit the amendment to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless the board of directors determines that, because of conflict of interest or other special circumstances, it should not make such a recommendation, in which event the board of directors must communicate the basis for that determination to the shareholders with the amendment.

(c) ~~The board of directors may condition its submission of the proposed amendment to the shareholders on any basis.~~

(d) ~~The~~ If the amendment must be approved by the shareholders and the approval is to be given at a meeting, the corporation shall must notify each shareholder, shareholder in accordance with G.S. 55-7-05, whether or not the shareholder is entitled

to vote, of the ~~proposed shareholders' meeting in accordance with G.S. 55-7-05.~~ of shareholders at which the amendment is to be submitted for approval. The notice of meeting must state that the purpose, or one of the purposes, of the meeting is to consider the ~~proposed~~ amendment and the notice must contain or be accompanied by a copy or summary of the amendment. If the amendment is required to be approved by the shareholders and the approval is to be obtained through action without meeting, the corporation must notify shareholders if required by G.S. 55-7-04(d).

(e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

- (1) A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and
- (2) The votes required by G.S. 55-7-25 and G.S. 55-7-26 by every other voting group entitled to vote on the amendment."

**SECTION 15.** G.S. 55-10-07 reads as rewritten:

**"§ 55-10-07. Restated articles of incorporation.**

(a) A corporation's board of directors may restate its articles of incorporation at any ~~time~~ time, with or without shareholder ~~action approval~~, to consolidate all amendments into a single document.

(b) The restated articles of incorporation may include one or more new amendments to the articles. If the restated articles of incorporation include ~~an~~ a new amendment requiring shareholder approval, it must be adopted and approved as provided in G.S. 55-10-03. The restated articles of incorporation may include a statement of the address of the current registered office and the name of the current registered agent of the corporation, and no other.

~~(c) If the board of directors submits restated articles of incorporation for shareholder action, the corporation shall notify each shareholder entitled to vote, of the proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice must also (i) state that the purpose, or one of the purposes, of the meeting is to consider the proposed restated articles of incorporation, (ii) contain or be accompanied by a copy of the proposed restated articles of incorporation, and (iii) identify any amendment or other change they would make in the articles.~~

(d) A corporation restating its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement which shall:

- (1) Set forth the name of the corporation;
- (2) Attach as an exhibit thereto the text of the restated articles of incorporation;
- (3) State ~~whether that~~ the restated articles of incorporation ~~contain an amendment to the articles requiring shareholder approval and, if they do not, that the board of directors adopted the restated articles of incorporation;~~ consolidate all amendments into a single document; and
- (4) If the restated articles of incorporation contain ~~an~~ a new amendment to the articles requiring shareholder approval, ~~state that shareholder approval was obtained as required by this Chapter.~~ articles, include the statements required by G.S. 55-10-06.

(e) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments ~~to them.~~ to the original articles of incorporation.

(f) The Secretary of State may certify restated articles of ~~incorporation,~~ incorporation as the articles of incorporation currently in ~~effect,~~ effect without including the other information required by subsection ~~(d).~~ (d) of this section."

**SECTION 16.** G.S. 55-11-01 is amended by adding the following new subsection to read:

"(d) The provisions of the plan of merger, other than the provisions referred to in subdivisions (b)(1) and (c)(1) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the corporation or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document."

**SECTION 17.** G.S. 55-11-02 reads as rewritten:

**"§ 55-11-02. Share exchange.**

(a) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders (if required by G.S. 55-11-03) approve the exchange.

(b) The plan of exchange must set forth:

- (1) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;
- (2) The terms and conditions of the exchange;
- (3) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(c) The plan of exchange may set forth other provisions relating to the exchange.

(c1) The provisions of the plan of share exchange, other than the provision required by subdivision (b)(1) of this section, may be made dependent on facts objectively ascertainable outside the plan of share exchange if the plan of share exchange sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the corporation or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(d) This section does not limit ~~the power of a corporation to acquire~~ the acquisition of all or part of the shares of one or more classes or series of ~~another~~ a corporation through a voluntary exchange or otherwise."

**SECTION 18.** G.S. 55-11-03(e) reads as rewritten:

"(e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the ~~shareholders~~ shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater ~~vote or a vote by voting groups, vote~~, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group and, for the purpose of Article 9 or any provision in the articles of incorporation or bylaws adopted prior to July 1, 1990, a merger shall be deemed to include a share exchange. If any shareholder of a merging corporation has or will have personal liability for any existing or future obligation of the surviving corporation in the merger solely as a result of owning one or more shares in the surviving corporation, then, in addition to the requirements of this subsection, authorization of the plan of merger by the merging corporation shall require the affirmative vote or written consent of that shareholder."

**SECTION 19.** G.S. 55-11-03(g) reads as rewritten:

"(g) ~~Action~~ Unless the articles of incorporation provide otherwise, approval by the surviving corporation's shareholders of the surviving corporation on a plan of merger is not required if: if all of the following conditions are met:

- (1) ~~The~~ Except for amendments permitted by G.S. 55-10-02, its articles of incorporation of the surviving corporation will not differ (except for amendments enumerated in G.S. 55-10-02) from its articles before the merger; be changed.
- (2) Each shareholder of the ~~surviving~~ corporation whose shares were outstanding immediately before the effective date of the merger will hold the same shares, with identical ~~designations,~~ preferences, limitations, and relative rights, immediately after the effective date of the ~~merger;~~ merger.
- (3) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of voting shares of the surviving corporation outstanding immediately before the ~~merger;~~ and merger.
- (4) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of participating shares outstanding immediately before the merger."

**SECTION 20.** G.S. 55-11-03(i) reads as rewritten:

"(i) After a plan of merger or share exchange is authorized, and at any time but before the articles of merger or share exchange are filed, become effective, the planned plan of merger or share exchange (i) may be amended as provided in the plan of merger or share exchange, or (ii) may be abandoned (subject to any contractual rights), without further shareholder action, in accordance with the procedure set forth ~~abandoned, subject to any contractual rights, as provided in the plan of merger or share exchange or, if none is set forth, in the manner there is no such provision, as determined by the board of directors~~ directors without further shareholder action."

**SECTION 21.** G.S. 55-11-04 reads as rewritten:

**"§ 55-11-04. Merger with subsidiary.**

(a) Subject to Article 9, a parent corporation owning at least ~~90~~ ninety percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent ~~or subsidiary corporation unless the articles of incorporation of the parent corporation require approval of the shareholders or the plan of merger contains one or more amendments to the articles of incorporation of the parent corporation for which shareholder approval is required by G.S. 55-10-03, and without approval of the board of directors or shareholders of the subsidiary corporation unless the articles of incorporation of the subsidiary corporation require approval of the shareholders of the subsidiary corporation.~~ Subject to Article 9, a parent corporation owning at least ninety percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge itself into the subsidiary corporation without approval of the board of directors or shareholders of the subsidiary if the merger is approved by the directors and shareholders of the parent corporation in accordance with G.S. 55-11-01 and G.S. 55-11-03. corporation unless the articles of incorporation of the subsidiary corporation provide otherwise or the plan of merger contains one or more amendments to the articles of incorporation of the subsidiary corporation for which shareholder approval is required by G.S. 55-10-03. Except as otherwise provided in this subsection,



the provisions of G.S. 55-11-01 and G.S. 55-11-03 apply to any merger described in this subsection.

~~(b) The board of directors of the parent shall adopt a plan of merger that sets forth:~~

- ~~(1) The names of the parent and subsidiary; and~~
- ~~(2) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.~~

If a merger is consummated without approval of the subsidiary corporation's shareholders, the parent corporation shall, within 10 days after the effective date of the merger, notify each shareholder of the subsidiary corporation as of the effective date of the merger, that the merger has become effective.

~~(c) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.~~

~~(d) The parent may not deliver articles of merger to the Secretary of State for filing until at least 30 days after the date it mailed a copy or summary of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement. This subsection does not apply to a merger in which the subsidiary was a public corporation before becoming a subsidiary qualifying for a merger under this section and is still a public corporation on the effective date of the merger.~~

~~(e) Articles of merger under this section may not contain amendments to the articles of incorporation of the surviving corporation (except for amendments enumerated in G.S. 55-10-02).~~

~~(f) The provisions of G.S. 55-13-02(c) do not apply to subsidiary corporations that are parties to mergers consummated under this section."~~

**SECTION 22.** G.S. 55-11-05 reads as rewritten:

**"§ 55-11-05. Articles of merger or share exchange.**

~~(a) After a plan of merger or a plan of share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, for the acquisition of shares of a domestic corporation has been authorized as required by this Chapter, the surviving or acquiring corporation shall deliver to the Secretary of State for filing articles of merger or share exchange setting forth: exchange.~~

- ~~(1) The plan of merger or share exchange;~~
- ~~(2) If shareholder approval was not required, a statement to that effect;~~
- ~~(3) If approval of the shareholders of one or more corporations party to the merger or share exchange was required, a statement that the merger or share exchange was approved by the shareholders as required by this Chapter.~~

In the case of a merger, the articles of merger shall set forth (i) the name and state or country of incorporation of each merging corporation, (ii) the name of the merging corporation that will survive the merger and, if the surviving corporation is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address, (iii) any amendments to the articles of incorporation of the surviving corporation provided in the plan of merger if the surviving corporation is a domestic corporation, and (iv) a statement that the plan of merger has been approved by each merging corporation in the manner required by law.

In the case of a share exchange, the articles of share exchange shall set forth (i) the name of the corporation whose shares will be acquired, (ii) the name and state or country of incorporation of the acquiring corporation, (iii) a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address if the acquiring corporation is not authorized to transact business or conduct affairs in this State, and (iv) a statement that the plan of share exchange has been approved by the corporation whose shares will be acquired and by the acquiring corporation in the manner required by law.

(a1) If the plan of merger or share exchange is amended after the articles of merger or share exchange have been filed but before the articles of merger or share exchange become effective and any statement in the articles of merger or share exchange becomes incorrect as a result of the amendment, the surviving or acquiring corporation shall deliver to the Secretary of State for filing prior to the time the articles of merger or share exchange become effective an amendment to the articles of merger or share exchange correcting the incorrect statement. If the articles of merger or share exchange are abandoned after the articles of merger or share exchange are filed but before the articles of merger or share exchange become effective, the surviving or acquiring corporation shall deliver to the Secretary of State for filing prior to the time the articles of merger or share exchange become effective an amendment reflecting abandonment of the plan of merger or share exchange.

(b) A merger or share exchange takes effect upon the effective date of when the articles of merger or share exchange become effective.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(d) In the case of a merger or share exchange pursuant to G.S. 55-11-07 or G.S. 55-11-09, references in subsections (a) and (b) of this section to "corporation" shall include a domestic corporation, a domestic nonprofit corporation, a foreign corporation, and a foreign nonprofit corporation as applicable."

**SECTION 23.** G.S. 55-11-06 reads as rewritten:

**"§ 55-11-06. Effect of merger or share exchange.**

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

- (1) ~~Every other~~ Each merging corporation party to the merger merges into the surviving corporation and the separate existence of every each merging corporation except the surviving corporation ceases; ceases.
- (2) The title to all real estate and other property owned by each merging corporation party to the merger is vested in the surviving corporation without reversion or impairment; impairment.
- (3) The surviving corporation has all liabilities of each corporation party to the merger; merging corporation.
- (4) A proceeding pending by or against any merging corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the a merging corporation whose separate existence ceased; ceases in the merger.
- (5) ~~The~~ If a domestic corporation survives the merger, its articles of incorporation of the surviving corporation are amended to the extent provided in the plan articles of merger; and merger.
- (6) The shares of each merging corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into the right to receive cash or other property are thereupon converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under Article 13, to them in the plan of merger or, in the case of former holders of shares in a domestic corporation, any right they may have under Article 13 of this Chapter.
- (7) If a foreign corporation or foreign nonprofit corporation survives the merger, it is deemed:
  - a. To agree that it will promptly pay to dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

- b. To agree that it may be served with process in this State in any proceeding for enforcement (i) of any obligation of any merging domestic corporation, (ii) of the rights of dissenting shareholders of any merging domestic corporation under Article 13 of this Chapter, and (iii) of any obligation of the surviving foreign corporation or foreign nonprofit corporation arising from the merger.
- c. To have appointed the Secretary of State as its agent for service of process in any proceeding for enforcement as specified in sub-subdivision b. of this subdivision. Service of process on the Secretary of State shall be made by delivering to, and leaving with, the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process on behalf of a surviving foreign corporation or foreign nonprofit corporation in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving foreign corporation or foreign nonprofit corporation. If the surviving foreign corporation or foreign nonprofit corporation is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office, or, if there is no principal office on file, its registered office. If the surviving foreign corporation or foreign nonprofit corporation is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55-11-05(a).

The merger shall not affect the liability or absence of liability of any holder of shares in a merging corporation for any acts, omissions, or obligations of any merging corporation made or incurred prior to the effectiveness of the merger.

(b) When a share exchange for the acquisition of shares of a domestic corporation pursuant to G.S. 55-11-02 or G.S. 55-11-07 takes effect, the effect:

- (1) The shares of each the acquired corporation are exchanged as provided in the ~~plan~~, plan of share exchange, and the former holders of the shares are entitled only to the exchange rights provided in the ~~articles~~ plan of share exchange or to their ~~rights~~ any right they may have under Article ~~13~~. 13 of this Chapter.
- (2) If the acquiring corporation is not a domestic corporation, it is deemed to agree that it will promptly pay to dissenting shareholders of the acquired corporation the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were an acquiring domestic corporation in the share exchange.
- (3) If the acquiring corporation is not a domestic corporation, the acquiring corporation is deemed:
  - a. To agree that it may be served with process in this State in any proceeding for enforcement (i) of the rights of dissenting shareholders of the acquired corporation under Article 13 of this Chapter and (ii) of any obligation of the acquiring corporation arising from the share exchange; and
  - b. To have appointed the Secretary of State as its agent for service of process in any proceeding for enforcement as specified in

sub-subdivision a. of this subdivision. Service of process on the Secretary of State shall be made by delivering to, and leaving with, the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process on behalf of an acquiring corporation in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the acquiring corporation. If the acquiring corporation is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the acquiring corporation is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55-11-05(a).

(c) In the case of a merger pursuant to G.S. 55-11-07 or G.S. 55-11-09 or a share exchange pursuant to G.S. 55-11-07, references in subsections (a) and (b) of this section to "corporation" shall include a domestic corporation, a domestic nonprofit corporation, a foreign corporation, and a foreign nonprofit corporation as applicable."

**SECTION 24.** G.S. 55-11-07 reads as rewritten:

**"§ 55-11-07. Merger or share exchange with foreign corporation.**

(a) One or more foreign corporations may merge ~~or enter into a share exchange~~ with one or more domestic corporations, and a foreign corporation may enter into a share exchange with a domestic corporation if:

- (1) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated ~~and each and, to the extent applicable, each domestic or~~ foreign corporation complies with that law in effecting the merger;
- (2) In a share exchange, ~~if~~ the corporation whose shares will be acquired is a ~~domestic-foreign~~ corporation, ~~whether or not a~~ the share exchange is permitted by the law of the state or country under whose law the ~~acquiring-foreign~~ corporation is ~~incorporated;~~ incorporated and the foreign corporation and the acquiring domestic corporation comply with that law in effecting the share exchange;
- (3) The foreign corporation complies with G.S. 55-11-05 if it is the surviving corporation of the merger or acquiring corporation of the share exchange ~~and, if the foreign corporation is not authorized to transact business in this State, includes in the articles of merger or articles of share exchange filed pursuant to G.S. 55-11-05 a designation of the foreign corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;~~ exchange; and
- (4) Each domestic corporation complies with the applicable provisions of G.S. 55-11-01 through G.S. 55-11-04 and, if it is the surviving corporation of the ~~merger or acquiring corporation of the share exchange,~~ merger with G.S. 55-11-05.

(b) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

- (1) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting

~~shareholders of each domestic corporation party to the merger or share exchange; and~~

- (2) ~~To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Article 13.~~

~~Service on the Secretary of State of any process authorized by this subsection shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign corporation. If the foreign corporation is authorized to transact business in this State, the address for mailing shall be its principal office or, if there is no mailing address for the principal office on file, its registered office. If the foreign corporation is not authorized to transact business in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (a) of this section.~~

(c) ~~This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise. otherwise, or the power of a domestic corporation to acquire all or part of the shares of one or more classes or series of a foreign corporation through a voluntary exchange or otherwise.~~

**SECTION 25.** G.S. 55-11-09 reads as rewritten:

**"§ 55-11-09. Merger with nonprofit corporation.**

(a) One or more domestic or foreign nonprofit corporations may merge with one or more domestic corporations if:

- (1) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03;
- (2) In a merger involving one or more foreign nonprofit corporations, the merger is permitted by law of the state or country under whose law each foreign nonprofit corporation is incorporated ~~and each and, to the extent applicable, each domestic corporation and each domestic or foreign nonprofit corporation complies with that law in effecting the merger;~~
- (3) The domestic or foreign nonprofit corporation complies with G.S. 55-11-05 if it is the surviving corporation ~~and, in the case of a foreign nonprofit corporation not authorized to conduct affairs in this State, includes in the articles of merger filed pursuant to G.S. 55-11-05 a designation of the foreign nonprofit corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;~~ corporation; and
- (4) Each domestic corporation complies with the applicable provisions of G.S. 55-11-01, 55-11-03, and 55-11-04 and, if it is the surviving corporation, with G.S. 55-11-05.

(b) ~~Upon the merger taking effect, if a foreign nonprofit corporation is the surviving corporation, then it is deemed:~~

- (1) ~~To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger; and~~
- (2) ~~To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Article 13 of this Chapter.~~

~~Service on the Secretary of State of any process authorized by this subsection shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the~~

~~process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign nonprofit corporation. If the foreign nonprofit corporation is authorized to conduct affairs in this State, the address for mailing shall be its principal office as defined in G.S. 55A-1-40(20), or, if there is no mailing address for the principal office on file, its registered office. If the foreign nonprofit corporation is not authorized to conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (a) of this section.~~

(c) This section does not limit the power of a domestic or foreign nonprofit corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise."

**SECTION 26.** G.S. 55-11-10 reads as rewritten:

"  
...  
(c) Each merging domestic corporation and each other merging business entity shall approve a written plan of merger containing:

- (1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (2) The name of the merging business entity that shall survive the merger;
- (3) The terms and conditions of the merger;
- (4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and
- (5) If the surviving business entity is a domestic corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

(c1) The plan of merger may contain other provisions relating to the merger.

(c2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (c) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the corporation or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(c3) In the case of a domestic corporation, approval of the plan of merger requires that the plan of merger be adopted by its board of directors as provided in G.S. 55-11-03 and, unless shareholder approval is not required under subsection (g) of G.S. 55-11-03, be approved by its shareholders as provided in G.S. 55-11-03. If any shareholder of a merging domestic corporation has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic corporation shall require the affirmative vote or written consent of that shareholder. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of that merging business entity.

(c4) After a plan of merger has been approved by a domestic corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual

rights) as provided in the plan of merger or, if there is no such provision, as determined by the board of directors without further shareholder action.

...."

**SECTION 27.** G.S. 55-11-10(d) reads as rewritten:

"(d) After a plan of merger has been approved by each merging domestic corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth: forth all of the following:

- (1) ~~The plan of merger;~~
- (2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal ~~affairs;~~ affairs.
- (3) The name of the ~~surviving-merging~~ business entity that shall survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing ~~address;~~ address.
- (3a) If the surviving business entity is a domestic corporation, any amendment to its articles of incorporation as provided in the plan of merger.
- (4) A statement that the plan of merger has been approved by each merging business entity in the manner required by ~~law;~~ and law.
- (5) ~~The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger.~~

If the plan of merger is amended ~~or abandoned~~ after the articles of merger have been filed but before the articles of merger become ~~effective,~~ effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger ~~reflecting the amendment or abandonment of the plan of merger.~~ correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1."

**SECTION 28.** G.S. 55-11-10(e)(5) reads as rewritten:

"(5) If a domestic corporation is the surviving business entity, its articles of incorporation shall be amended to the extent provided in the ~~plan~~ articles of merger;".

**SECTION 29.** G.S. 55-11A-02 reads as rewritten:

"(a) The converting business entity shall approve a written plan of conversion containing:

- (1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (2) The name of the resulting domestic corporation into which the converting business entity shall convert;
- (3) The terms and conditions of the conversion; and
- (4) The manner and basis for converting the interests in the converting business entity into shares, obligations, or other securities of the resulting domestic corporation or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the converting business entity or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document.

...."

**SECTION 30.** G.S. 55-11A-11 reads as rewritten:

"(a) The converting domestic corporation shall approve a written plan of conversion containing:

- (1) The name of the converting domestic corporation;
- (2) The name of the resulting business entity into which the domestic corporation shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (3) The terms and conditions of the conversion; and
- (4) The manner and basis for converting the shares of the domestic corporation into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the converting domestic corporation or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the converting domestic corporation is a party, or any other agreement or document.

...."

**SECTION 31.** G.S. 55-14-03 is amended by adding a new subsection to

read:

"(c) For purposes of this Chapter, a dissolved corporation is a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of a liquidation."

**SECTION 32.** G.S. 55-14-08(a) reads as rewritten:

"(a) A claim under G.S. 55-14-06 or G.S. 55-14-07 may be enforced:

- (1) Against the dissolved corporation, to the extent of its undistributed assets, including coverage under any applicable insurance policy, or
- (2) ~~If~~ Except as provided in G.S. 55-14-09(d), if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of ~~his~~ the shareholder's pro rata share of the claim or the corporate assets distributed to ~~him~~ the shareholder in



liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to ~~him~~ the shareholder."

**SECTION 33.** Article 14 of Chapter 55 of the General Statutes is amended by adding a new section to read:

**"§ 55-14-09. Court proceedings.**

(a) A dissolved corporation that has published a notice under G.S. 55-14-07 may file an application with the superior court of the county where the dissolved corporation's principal office, or its registered office if the corporation does not have a principal office in this State, is located for a determination of the amount and form of security to be provided for payments of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provisions need not be made for any claim that is or is reasonably anticipated to be barred under G.S. 55-14-07(c).

(b) Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(d) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (a) of this section shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution, and the claims shall not be enforced against a shareholder who received assets in liquidation."

**SECTION 34.** G.S. 55-14A-01(b) reads as rewritten:

"(b) Any articles of amendment, statement of change of registered office or registered agent, ~~certificate of reduction of capital, restated articles of incorporation, articles of restatement,~~ articles of merger or share exchange, articles of conversion, articles of dissolution, or any other document appropriate to complete any action permitted by this section shall be executed and filed in accordance with the provisions of this ~~act~~ Chapter on behalf of the corporation by such person or persons as may be authorized to take such action pursuant to subsection ~~(a)~~(a) of this section. The document shall set forth the statements required by this Chapter to be included in the document, except any statement that the action taken by the document was adopted by the incorporators or board of directors or was approved by the shareholders, and also shall set forth:

- (1) The date of the court's order or decree approving the action.
- (2) The title of the reorganization proceeding in which the order or decree was entered.
- (3) A statement that the court had jurisdiction of the proceeding under a federal statute of the United States."

**SECTION 35.** G.S. 55-16-03 reads as rewritten:

**"§ 55-16-03. Scope of inspection right.**

(a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder ~~he represents~~ represented.

(b) The right to copy records under G.S. 55-16-02 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means. by xerographic or other means, including copies through an electronic transmission if available and so requested by the shareholder.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for producing for inspection or copying any records provided to the shareholder. The charge may not exceed the estimated cost of ~~production or reproduction~~ production, reproduction, or transmission of the records.

(d) The corporation may comply with a shareholder's demand to inspect the record of shareholders under G.S. 55-16-02(b)(3) by providing ~~him~~ the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand."

**SECTION 36.** Article 16 of Chapter 55 of the General Statutes is amended by adding the following new sections to read:

**"§ 55-16-05. Inspection of records by directors.**

(a) A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The superior court of the county where the corporation's principal office, or its registered office if the corporation does not have a principal office in this State, is located may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has been refused inspection rights, unless the corporation establishes that the director is not entitled to inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable counsel fees, incurred in connection with the application.

**"§ 55-16-06. Exception to notice requirements.**

(a) Whenever notice is required to be given under any provision of this Chapter to a shareholder, the notice shall not be required to be given if either of the following applies:

- (1) Notice of two consecutive annual meetings, and all notices of meetings during the period between those two consecutive annual meetings, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable.
- (2) All, but not less than two, payments of dividends on securities during a 12-month period, or two consecutive payments of dividends on securities during a period of more than 12 months, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable.

(b) If a shareholder delivers to the corporation a written notice setting forth that shareholder's current address, the requirement that notice be given to the shareholder shall be reinstated."

**SECTION 37.** G.S. 55-16-21 is repealed.

**PART II. CONFORMING AMENDMENTS TO CHAPTER 55A, CHAPTER 57C, AND CHAPTER 59 OF THE GENERAL STATUTES.**

**SECTION 38.** G.S. 55A-11-01 is amended by adding the following new subsection to read:

"(d) The provisions of the plan of merger, other than the provisions referred to in subdivisions (b)(1) and (c)(1) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the

manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the corporation or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document."

**SECTION 39.** G.S. 55A-11-03(g) reads as rewritten:

"(g) After a merger is adopted, and at any time before articles of merger are filed, the merger may be abandoned (subject to any contractual rights), without further action by members or other persons who approved the plan, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors adopted but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned, subject to any contractual rights, as provided in the plan of merger, or, if there is no such provision, as determined by the board of directors without further action by the members or other persons who approved the plan of merger."

**SECTION 40.** G.S. 55A-11-04 reads as rewritten:

**"§ 55A-11-04. Articles of merger.**

(a) After a plan of merger is approved by the board of directors, and if required by G.S. 55A-11-03, by the members and any other persons, has been authorized as required by this Chapter, the surviving corporation shall deliver to the Secretary of State for filing articles of merger setting forth:

- (1) The plan of merger; name and state or country of incorporation of each merging corporation.
- (2) If approval by members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors; The name of the merging corporation that will survive the merger and, if the surviving corporation is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.
- (3) If approval by members was required, a statement that the merger was approved by the members as required by this Chapter; the surviving corporation is a domestic corporation, any amendment to the articles of incorporation of the corporation provided in the plan of merger.
- (4) If approval by some person or persons other than the members or the board was required pursuant to G.S. 55A-11-03(a)(3), a statement that the approval was obtained. A statement that the plan of merger has been approved by each merging corporation in the manner required by law.

(a1) If the plan of merger is amended after the articles of merger have been filed but before the articles of merger become effective and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving corporation shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving corporation shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger.

(b) A merger takes effect upon the effective date of when the articles of merger become effective.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(d) In the case of a merger pursuant to G.S. 55A-11-06 or G.S. 55A-11-08, references in subsections (a) and (b) of this section to "corporation", other than references to "domestic corporation", shall include a foreign nonprofit corporation, a domestic business corporation, and a foreign business corporation, as applicable."

**SECTION 41.** G.S. 55A-11-05 reads as rewritten:

**"§ 55A-11-05. Effect of merger.**

When a merger pursuant to G.S. 55A-11-01, 55A-11-06, or 55A-11-08 takes effect:

- (1) ~~Every other~~ Each merging corporation party to the merger merges into the surviving corporation and the separate existence of every each merging corporation except the surviving corporation ceases; ceases.
- (2) The title to all real estate and other property owned by each merging corporation party to the merger is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger; merger.
- (3) The surviving corporation has all liabilities and obligations of each corporation party to the merger; merging corporation.
- (4) A proceeding pending by or against any merging corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the a merging corporation whose separate existence ceased; and ceases in the merger.
- (5) ~~The~~ If a domestic corporation survives the merger, its articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan- articles of merger.
- (6) If a foreign corporation or a foreign business corporation survives the merger, it is deemed:
  - a. To agree that it may be served with process in this State in any proceeding for enforcement (i) of any obligation of any merging domestic corporation and (ii) of any obligation of the surviving foreign corporation or foreign business corporation arising from the merger.
  - b. To have appointed the Secretary of State as its agent for service of process in any proceeding for enforcement as specified in sub-subdivision a. of this subdivision. Service of process on the Secretary of State shall be made by delivering to, and leaving with, the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55A-1-22(b). Upon receipt of service of process on behalf of a surviving foreign corporation or foreign business corporation in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving foreign corporation or foreign business corporation. If the surviving foreign corporation or foreign business corporation is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office, or if there is no principal office on file, its registered office. If the surviving foreign corporation or foreign business corporation is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55A-11-04(a)(2).

The merger shall not affect the liability or absence of liability of any member of a merging corporation for acts, omissions, or obligations of any merging corporation made or incurred prior to the effectiveness of the merger.

(b) In the case of a merger pursuant to G.S. 55A-11-06 or G.S. 55A-11-08, references in subsection (a) of this section to "corporation" shall include a domestic corporation, a foreign nonprofit corporation, a domestic business corporation, and a foreign business corporation, as applicable."

**SECTION 42.** G.S. 55A-11-06 reads as rewritten:

**"§ 55A-11-06. Merger with foreign corporation.**

(a) Except as provided in G.S. 55A-11-02, one or more foreign nonprofit corporations may merge with one or more domestic nonprofit corporations if:

- (1) The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;
- (2) The foreign corporation complies with G.S. 55A-11-04 if it is the surviving corporation of the merger and, ~~if the foreign corporation is not authorized to conduct affairs in this State, includes in the articles of merger filed with the Secretary of State pursuant to G.S. 55A-11-04 a designation of the foreign corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;~~ merger; and
- (3) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the surviving corporation of the merger, with G.S. 55A-11-04.

~~(b) Upon the merger taking effect, if the surviving corporation is a foreign corporation, it shall be deemed to have appointed the Secretary of State as its agent for service of process in a proceeding to enforce any obligation of a domestic corporation party to the merger. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55A-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign corporation. If the foreign corporation is authorized to conduct affairs in this State, the address for mailing shall be its principal office or, if there is no mailing address for the principal office on file, its registered office. If the foreign corporation is not authorized to conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (2) of subsection (a) of this section.~~

(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic nonprofit corporation through a voluntary exchange or otherwise."

**SECTION 43.** G.S. 55A-11-08 reads as rewritten:

**"§ 55A-11-08. Merger with business corporation.**

(a) One or more domestic or foreign business corporations may merge with one or more domestic nonprofit corporations if:

- (1) Each domestic business corporation complies with the applicable provisions of G.S. 55-11-01, 55-11-03, and 55-11-04;
- (2) In a merger involving one or more foreign business corporations, the merger is permitted by the law of the state or country under whose law each foreign business corporation is incorporated and each foreign business corporation complies with that law in effecting the merger;
- (3) The domestic or foreign business corporation complies with G.S. 55A-11-04 if it is the surviving corporation and, ~~in the case of a foreign business corporation not authorized to transact business in this State, includes in the articles of merger filed pursuant to~~

~~G.S. 55A-11-04 a designation of the foreign business corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; corporation; and~~

- (4) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the surviving corporation, with G.S. 55A-11-04.

~~(b) Upon the merger taking effect, if the surviving corporation is a foreign business corporation, it shall be deemed to have appointed the Secretary of State as its agent for service of process in a proceeding to enforce any obligation of a domestic nonprofit corporation party to the merger. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55A-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign business corporation. If the foreign business corporation is authorized to transact business in this State, the address for mailing shall be its principal office as defined in G.S. 55-1-40(17) or, if there is no mailing address for the principal office on file, its registered office. If the foreign business corporation is not authorized to transact business in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (a) of this section.~~

~~(c) This section does not limit the power of a domestic or foreign business corporation to acquire all or part of the memberships of one or more classes of a domestic nonprofit corporation through a voluntary exchange or otherwise."~~

**SECTION 44.** G.S. 55A-11-09 reads as rewritten:

"

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

- (1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (2) The name of the merging business entity that shall survive the merger;
- (3) The terms and conditions of the merger;
- (4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and
- (5) If the surviving business entity is a domestic nonprofit corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

~~(c1) The plan of merger may contain other provisions relating to the merger.~~

~~(c2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (c) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:~~

- ~~(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.~~
- ~~(2) A determination or action by the domestic nonprofit corporation or by any other person, group, or body.~~
- ~~(3) The terms of, or actions taken under, an agreement to which the domestic nonprofit corporation is a party, or any other agreement or document.~~

(c3) In the case of a merging domestic nonprofit corporation, approval of the plan of merger requires that the plan of merger be adopted as provided in G.S. 55A-11-03. If any member of a merging domestic nonprofit corporation has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of G.S. 55A-11-03, approval of the plan of merger by the domestic nonprofit corporation shall require the affirmative vote or written consent of the member. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity.

(c4) After a plan of merger has been approved by a domestic nonprofit corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or, if there is no such provision, as determined by the board of directors.

...."

**SECTION 45.** G.S. 55A-11-09(d) reads as rewritten:

"(d) After a plan of merger has been approved by each merging domestic nonprofit corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

- (1) ~~The plan of merger;~~
- (2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal ~~affairs;~~ affairs.
- (3) The name of the ~~surviving~~ merging business entity that will survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing ~~address;~~ address.
- (3a) If the surviving business entity is a domestic corporation, any amendment to its articles of incorporation as provided in the plan of merger.
- (4) A statement that the plan of merger has been approved by each merging business entity in the manner required by ~~law;~~ and law.
- (5) ~~The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger.~~

If the plan of merger is amended ~~or abandoned~~ after the articles of merger have been filed but before the articles of merger become ~~effective,~~ effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger ~~reflecting the amendment or abandonment of the plan of merger.~~ correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1."

**SECTION 46.** G.S. 55A-11-09(e)(5) reads as rewritten:

- "(5) If a domestic nonprofit corporation is the surviving business entity, its articles of incorporation shall be amended to the extent provided in the ~~plan~~ articles of merger;"

**SECTION 47.** G.S. 57C-9A-02 reads as rewritten:

"(a) The converting business entity shall approve a written plan of conversion containing:

- (1) The name of the resulting domestic limited liability company into which the converting business entity shall convert;
- (1a) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (2) The terms and conditions of the conversion; and
- (3) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited liability company or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the converting business entity or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document.

...."

**SECTION 48.** G.S. 57C-9A-11 reads as rewritten:

"(a) The converting domestic limited liability company shall approve a written plan of conversion containing:

- (1) The name of the converting domestic limited liability company;
- (2) The name of the resulting business entity into which the domestic limited liability company shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (3) The terms and conditions of the conversion; and
- (4) The manner and basis for converting the interests in the domestic limited liability company into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the converting domestic limited liability company or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the converting domestic limited liability company is a party, or any other agreement or document.

...."



**SECTION 49.** G.S. 57C-9A-21 reads as rewritten:

"(a) Each merging domestic limited liability company and each other merging business entity shall approve a written plan of merger containing:

- (1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (2) The name of the merging business entity that shall survive the merger;
- (3) The terms and conditions of the merger;
- (4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and
- (5) If the surviving business entity is a domestic limited liability company, any amendments to its articles of organization that are to be made in connection with the merger.

(a1) The plan of merger may contain other provisions relating to the merger.

(a2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the domestic limited liability company or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the domestic limited liability company is a party, or any other agreement or document.

....  
**SECTION 50.** G.S. 57C-9A-22(a) reads as rewritten:

"(a) After a plan of merger has been approved by each merging domestic limited liability company and each other merging business entity as provided in G.S. 57C-9A-21, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

- ~~(1) The plan of merger;~~
- (2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal ~~affairs;~~ affairs.
- (3) The name of the ~~surviving merging~~ business entity that will survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing ~~address;~~ address.
- (3a) If the surviving business entity is a domestic limited liability company, any amendment to its articles of organization as provided in the plan of merger.
- (4) A statement that the plan of merger has been approved by each merging business entity in the manner required by ~~law;~~ and law.
- ~~(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.~~

If the plan of merger is amended or abandoned after the articles of merger have been filed but before the articles of merger become ~~effective,~~ effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger ~~reflecting~~

the amendment or abandonment of the plan of merger, correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger."

**SECTION 51.** G.S. 57C-9A-23(a)(5) reads as rewritten:

"(5) If a domestic limited liability company is the surviving business entity, its articles of organization shall be amended to the extent provided in the ~~plan~~ articles of merger;"

**SECTION 52.** G.S. 59-73.11 reads as rewritten:

"(a) The converting business entity shall approve a written plan of conversion containing:

- (1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (2) The name of the resulting domestic partnership into which the converting business entity shall convert;
- (3) The terms and conditions of the conversion; and
- (4) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic partnership or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the converting business entity or by any other person, group.
- (3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document.

...."

**SECTION 53.** G.S. 59-73.21 reads as rewritten:

"(a) The converting domestic partnership shall approve a written plan of conversion containing:

- (1) The name of the converting domestic partnership;
- (2) The name of the resulting business entity into which the domestic partnership shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (3) The terms and conditions of the conversion; and
- (4) The manner and basis for converting the interests in the domestic partnership into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the converting domestic partnership or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the converting domestic partnership is a party, or any other agreement or document.

...."

**SECTION 54.** G.S. 59-73.31 reads as rewritten:

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

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

(a1) The plan of merger may contain other provisions relating to the merger.

(a2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the domestic partnership or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the domestic partnership is a party, or any other agreement or document.

...."

**SECTION 55.** G.S. 59-73.32(a) reads as rewritten:

"(a) After a plan of merger has been approved by each merging domestic partnership and each other merging business entity as provided in G.S. 59-73.31, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

- ~~(1) The plan of merger;~~
- (2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal ~~affairs;~~ affairs.
- (3) The name of the ~~surviving~~ merging business entity that will survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing ~~address;~~ address.
- (4) A statement that the plan of merger has been approved by each merging business entity in the manner required by ~~law; and law.~~
- ~~(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.~~

If the plan of merger is amended or abandoned after the articles of merger have been filed but before the articles of merger become ~~effective,~~ effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving

business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger ~~become effective~~ ~~become~~ an amendment to the articles of merger ~~reflecting the amendment or abandonment of the plan of merger.~~ correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting the abandonment of the plan of merger."

**SECTION 56.** G.S. 59-1051 reads as rewritten:

"(a) The converting business entity shall approve a written plan of conversion containing:

- (1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (2) The name of the resulting domestic limited partnership into which the converting business entity shall convert;
- (3) The terms and conditions of the conversion; and
- (4) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited partnership or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the converting business entity or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document.

...."

**SECTION 57.** G.S. 59-1061 reads as rewritten:

"(a) The converting domestic limited partnership shall approve a written plan of conversion containing:

- (1) The name of the converting domestic limited partnership;
- (2) The name of the resulting business entity into which the domestic limited partnership shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (3) The terms and conditions of the conversion; and
- (4) The manner and basis for converting the interests in the domestic limited partnership into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion

sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the converting domestic limited partnership or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the converting domestic limited partnership is a party, or any other agreement or document.

...."

**SECTION 58.** G.S. 59-1071 reads as rewritten:

"(a) Each merging domestic limited partnership and each other merging business entity shall approve a written plan of merger containing:

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

(a1) The plan of merger may contain other provisions relating to the merger.

(a2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the domestic limited partnership or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the domestic limited partnership is a party, or any other agreement or document.

...."

**SECTION 59.** G.S. 59-1072(a) reads as rewritten:

"(a) After a plan of merger has been approved by each merging domestic limited partnership and each other merging business entity as provided in G.S. 59-1071, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

- ~~(1) The plan of merger;~~
- (2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal ~~affairs;~~ affairs.
- (3) The name of the ~~surviving merging~~ business entity that will survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing ~~address;~~ address.

- (3a) If the surviving business entity is a domestic limited partnership, any amendment to its certificate of limited partnership as provided in the plan of merger.
- (4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; ~~and law.~~
- (5) ~~The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.~~

If the plan of merger is amended ~~or abandoned~~ after the articles of merger have been filed but before the articles of merger become ~~effective~~, effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity promptly shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger ~~reflecting the amendment or abandonment of the plan of merger.~~ correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger."

**SECTION 60.** G.S. 59-1073(a)(5) reads as rewritten:

"(5) If a domestic limited partnership is the surviving business entity, its certificate of limited partnership shall be amended to the extent provided in the ~~plan~~ articles of merger;"

**SECTION 61.** The Revisor of Statutes may cause to be printed all explanatory comments of the drafters of this act as the Revisor deems appropriate.

**SECTION 62.** This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 1<sup>st</sup> day of August, 2005.

s/ Charlie S. Dannelly  
Deputy President Pro Tempore of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 3:10 p.m. this 12<sup>th</sup> day of August, 2005