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SESSION 2017

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SENATE BILL 622
Judiciary Committee Substitute Adopted 6/14/17
PROPOSED HOUSE COMMITTEE SUBSTITUTE S622-PCS45569-TG-48

Short Title: Business Corporation Act Revisions.

(Public)

Sponsors:

Referred to:

April 5, 2017

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

4 The General Assembly of North Carolina enacts:

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

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

8 Document Fee

9 ...

10 (28) Articles of validation 150.00"

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

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

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

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

25 ...

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

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

32 "Part 6. Ratification of Defective Corporate Actions.

33 "**§ 55-1-60. Definitions.**

34 In this Part, the following definitions apply:



* S 6 2 2 - P C S 4 5 5 6 9 - T G - 4 8 *

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

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

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

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

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

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

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

13 **"§ 55-1-62. Ratification of defective corporate actions.**

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

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

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

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

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

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

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

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

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

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

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

47 **"§ 55-1-63. Action on ratification.**

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

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

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

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

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

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

33 **"§ 55-1-64. Notice requirements.**

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

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

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

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

6 **"§ 55-1-65. Effect of ratification.**

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

- 10 (1) Each defective corporate action ratified in accordance with G.S. 55-1-62 is
11 not void or voidable as a result of the failure of authorization identified in the
12 action taken under subsection (a) or (b) of G.S. 55-1-62 and is a valid
13 corporate action effective as of the date of the defective corporate action.
14 (2) The issuance of each putative share or fraction of a putative share purportedly
15 issued pursuant to a defective corporate action identified in the action taken
16 under G.S. 55-1-62 is not void or voidable, and the putative share or fraction
17 of the putative share is an identical share or fraction of a valid share as of the
18 time it was purportedly issued.
19 (3) Any corporate action taken subsequent to the defective corporate action
20 ratified in accordance with this Part in reliance on the defective corporate
21 action having been validly effected and any subsequent defective corporate
22 action resulting directly or indirectly from the original defective corporate
23 action shall be valid as of the time taken.

24 **"§ 55-1-66. Filings.**

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

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

- 32 (1) The defective corporate action that is the subject of the articles of validation,
33 including, in the case of any defective corporate action involving the issuance
34 of putative shares, the number and type of putative shares issued and the date
35 or dates upon which the putative shares were purported to have been issued.
36 (2) The date of the defective corporate action.
37 (3) The nature of the failure of authorization in respect of the defective corporate
38 action.
39 (4) A statement that the defective corporate action was ratified in accordance with
40 G.S. 55-1-62, including the date on which the board of directors ratified the
41 defective corporate action and the date, if any, on which the shareholders
42 approved the ratification of the defective corporate action.
43 (5) The information required by subsection (c) of this section.

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

- 46 (1) If a filing was previously made in respect of the defective corporate action and
47 no changes to the filing are required to give effect to the ratification of the
48 defective corporate action in accordance with G.S. 55-1-62, the articles of
49 validation shall set forth (i) the name, title, and filing date of the filing
50 previously made and any articles of correction thereto and (ii) a statement that

1 a copy of the filing previously made, together with any articles of correction
2 thereto, is attached as an exhibit to the articles of validation.

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

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

20 **§ 55-1-67. Judicial proceedings regarding validity of corporate actions.**

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

30 (1) Determine the validity and effectiveness of any corporate action or defective
31 corporate action.

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

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

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

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

43 (d) Notwithstanding any other provision of this section or otherwise under applicable
44 law, any action asserting that the ratification of any defective corporate action and any putative
45 shares issued as a result of the defective corporate action should not be effective, or should be
46 effective only on certain conditions, shall be brought within 120 days of the validation effective
47 time."

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

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

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

2 "**§ 55-7-30. Voting trusts.**

3 ...

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

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

13 (d) Any limits on the duration of a voting trust shall be as set forth in the voting trust. A
14 voting trust that became effective prior to October 1, 2018, is valid for not more than 10 years
15 after its effective date unless the voting trust is amended to provide otherwise by agreement of
16 the parties to the voting trust. An amendment to a voting trust under this subsection shall bind
17 only those parties signing it. The voting trustee shall deliver copies of the amendment and a list
18 of beneficial owners signing it to the corporation's principal office."

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

20 "**§ 55-7-31. Shareholders' agreements.**

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

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

42 (1) Eliminates the board of directors or restricts the discretion or powers of the
43 board of directors.

44 (2) Governs the authorization or making of distributions, whether or not in
45 proportion to ownership of shares, subject to the limitations in G.S. 55-6-40.

46 (3) Establishes who shall be directors or officers of the corporation, or their terms
47 of office or manner of selection or removal.

48 (4) Governs, in general or in regard to specific matters, the exercise or division of
49 voting power by or between the shareholders and directors or by among any
50 of them, including use of weighted voting rights or director proxies.

- 1 (5) Establishes the terms and conditions of any agreement for the transfer or use
2 of property or the provision of services between or among the corporation and
3 any shareholder, director, officer, or employee of the corporation.
- 4 (6) Transfers to one or more shareholders or other persons all or part of the
5 authority to exercise the corporate powers or to manage the business and
6 affairs of the corporation, including the resolution of any issue about which
7 there exists a deadlock among directors or shareholders.
- 8 (7) Requires dissolution of the corporation at the request of one or more of the
9 shareholders or upon the occurrence of a specified event or contingency.
- 10 (8) Otherwise governs the exercise of the corporate powers or the management of
11 the business and affairs of the corporation or the relationship between or
12 among the shareholders, the directors, and the corporation and is not contrary
13 to public policy.

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

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

- 24 (1) The agreement shall be set forth (i) in the articles of incorporation or bylaws
25 and approved by all persons who are shareholders at the time of the agreement
26 or (ii) in a written document that is signed by all persons who are shareholders
27 at the time of the agreement and is made known to the corporation.
- 28 (2) The agreement is subject to amendment only by all persons who are
29 shareholders at the time of the amendment unless the agreement provides
30 otherwise.

31 (e) The existence of an agreement authorized by subsection (b) of this section shall be
32 noted conspicuously on the front or back of each certificate for outstanding shares or on the
33 information statement required by G.S. 55-6-26(b). If, at the time of the agreement, the
34 corporation has shares outstanding represented by certificates, the corporation shall recall the
35 outstanding certificates and issue substitute certificates that comply with this subsection. The
36 failure to note the existence of the agreement on the certificate or information statement shall not
37 affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares
38 who, at the time of purchase, did not have knowledge of the existence of the agreement is entitled
39 to rescission of the purchase. A purchaser is deemed to have knowledge of the existence of the
40 agreement if its existence is noted on the certificate or information statement for the shares in
41 compliance with this subsection and, if the shares are not represented by a certificate, the
42 information statement is delivered to the purchaser at or prior to the time of purchase of the
43 shares. An action to enforce the right of rescission authorized by this subsection shall be
44 commenced within the earlier of 90 days after discovery of the existence of the agreement or two
45 years after the time of purchase of the shares.

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

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

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

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

17 (j) Any limits on the duration of any agreement authorized by this section shall be set
 18 forth in the agreement. A voting agreement authorized by subsection (a) of this section that
 19 became effective prior to October 1, 2018, is valid as between the parties thereto for not more
 20 than 10 years after its effective date or, if later, the effective date of the most recent extension or
 21 renewal of the voting agreement, unless it is amended after October 1, 2018, to provide otherwise
 22 by agreement of the parties thereto. An amendment to a voting agreement under this subsection
 23 shall bind only those parties signing it."

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

25 "**§ 55-8-11. Compensation of directors.**

26 Unless the articles of incorporation or bylaws provide otherwise, the board of ~~directors~~
 27 directors, without regard to personal interest, may fix the compensation of ~~directors~~-directors
 28 for services in any capacity. The compensation established pursuant to this section of directors of a
 29 public corporation or of a corporation that so provides in its articles of incorporation is presumed
 30 to be fair to the corporation unless proven not to be fair to the corporation by a preponderance of
 31 the evidence."

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

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

- 36 (1) ~~He~~The director objects at the beginning of the meeting (or promptly upon
 37 ~~his~~the director's arrival) to holding it or transacting business at the
 38 ~~meeting;~~meeting.
- 39 (2) ~~His~~The director's dissent or abstention from the action taken is entered in the
 40 minutes of the ~~meeting;~~ or meeting.
- 41 (3) ~~He~~The director files written notice of ~~his~~the director's dissent or abstention
 42 with the presiding officer of the meeting before its adjournment or with the
 43 corporation immediately after adjournment of the meeting. The right of
 44 dissent or abstention is not available to a director who votes in favor of the
 45 action taken."

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

47 "**§ 55-8-25. Committees.**

48 (a) Unless this Chapter, the articles of incorporation, or the bylaws provide otherwise, a
 49 board of directors may create one or more committees and appoint one or more members of the
 50 board of directors to serve on ~~any such~~the committee. Unless otherwise provided in the articles
 51 of incorporation, the bylaws, or the resolution of the board of directors designating the

1 committee, a committee, by action of a majority of its members then in office when the action is
 2 taken, may create one or more subcommittees consisting of one or more members of the
 3 committee and delegate to the one or more subcommittees any or all of the powers and authority
 4 of the committee.

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

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

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

10 ...

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

13 ...

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

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

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

21 "**§ 55-8-30. General standards for directors.**

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

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

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

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

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

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

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

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

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

45 (d) A director is not liable for (i) any action taken as a director, or any failure to take any
 46 action, if ~~he~~the director performed the duties of ~~his~~the director's office in compliance with this
 47 ~~section.~~section or (ii) any failure to offer the corporation the right to have or participate in a
 48 business opportunity prior to the pursuit or taking of the opportunity by the director or other
 49 person if the corporation's articles of incorporation include a provision authorized by
 50 G.S. 55-2-02(b)(4) and the procedures and approvals required by the provision, if any, were
 51 complied with or obtained prior to the pursuit or taking of the opportunity by the director or other

1 person. The duties of a director weighing a change of control situation shall not be any different,
2 nor the standard of care any higher, than otherwise provided in this section."

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

4 "**§ 55-8-31. Director conflict of interest.**

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

9 (1) The material facts of the transaction and the director's interest were disclosed
10 or known to the board of directors or a committee or subcommittee of the
11 board of directors and the board of ~~directors or committee~~ directors, or the
12 committee or subcommittee of the board of directors, authorized, approved,
13 or ratified the ~~transaction;~~ transaction.

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

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

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

20 (1) Another entity in which ~~he~~ the director has a material financial interest or in
21 which ~~he~~ the director is a general partner is a party to the ~~transaction;~~
22 ~~or~~ transaction.

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

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

35"

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

37 "(d) An officer is not liable for (i) any action taken as an officer, or any failure to take any
38 action, if ~~he~~ the officer performed the duties of ~~his~~ the officer's office in compliance with this
39 ~~section.~~ section or (ii) any failure to offer the corporation the right to have or participate in a
40 business opportunity prior to the pursuit or taking of the opportunity by the officer or other person
41 if the corporation's articles of incorporation include a provision authorized by G.S. 55-2-02(b)(4)
42 and the procedures and approvals required by the provision, if any, were complied with or
43 obtained prior to the pursuit or taking of the opportunity by the officer or other person."

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

45 "**§ 55-8-58. Application of Part.**

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

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

1 ...
2 (d) A right of indemnification, or to advances for expenses, created by this Part or under
3 G.S. 55-8-57(a) and in effect at the time of an act or omission, shall not be eliminated or impaired
4 with respect to the act or omission by an amendment of the articles of incorporation or bylaws or
5 a resolution of the directors or shareholders, adopted after the occurrence of the act or omission,
6 unless, in the case of a right created under G.S. 55-8-57(a), the provision creating the right and
7 in effect at the time of the act or omission explicitly authorizes the elimination or impairment of
8 the right after the act or omission has occurred."

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

10 "(b) Except as provided in ~~G.S. 55-10-02~~, ~~G.S. 55-7-31(f)~~, ~~55-10-02~~, 55-10-07, and
11 55-14A-01, after adopting the proposed amendment the board of directors shall submit the
12 amendment to the shareholders for their approval. The board of directors shall also transmit to
13 the shareholders a recommendation that the shareholders approve the amendment, unless one of
14 the following circumstances exist, in which event the board of directors shall communicate the
15 basis for not recommending approval of the amendment to the shareholders at the time it submits
16 the amendment to the shareholders:

17"

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

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

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

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

- 30 (1) The name of each corporation planning to merge and the name of the surviving
31 corporation into which each other corporation plans to ~~merge~~merge.
- 32 (2) The terms and conditions of the ~~merger~~and merger.
- 33 (3) The manner and basis of converting the shares of each corporation into shares,
34 obligations, or other securities of the surviving or any other
35 ~~corporation~~corporation, or into cash or other property in whole or ~~part~~part, or
36 of cancelling the shares."

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

38 **"§ 55-11-03. Action on plan.**

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

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

- 46 (1) The board of directors shall recommend ~~to that~~ that the shareholders ~~that~~ approve
47 the plan of merger or share exchange ~~be approved, or, in the case of an offer~~
48 referred to in subdivision (2) of subsection (j) of this section, that the
49 shareholders tender their shares to the offeror in response to the offer, unless
50 one of the following circumstances exist, in which event the board of directors
51 shall communicate to the shareholders the basis for not recommending

1 ~~approval of that the shareholders approve the plan of merger or share~~
2 ~~exchange to the shareholders or tender their shares to the offeror in response~~
3 ~~to the offer at the time it submits to the shareholders the plan of merger or~~
4 ~~share exchange to the shareholders; or communicates with the shareholders~~
5 ~~regarding an offer referred to in subdivision (2) of subsection (j) of this~~
6 ~~section:~~

7 a. The board of directors determines that, because of a conflict of interest
8 or other special circumstances, it should not make a recommendation
9 that the shareholders approve the plan of merger or share
10 ~~exchange-exchange or, in the case of an offer referred to in subdivision~~
11 ~~(2) of subsection (j) of this section, that the shareholders tender their~~
12 ~~shares to the offeror in response to the offer.~~

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

14 ...

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

18 (1) The plan of merger or share exchange expressly (i) permits or requires the
19 merger or share exchange to be effected under this subsection and (ii) provides
20 that, if the merger or share exchange is to be effected under this subsection,
21 the merger or share exchange shall be effected as soon as practicable
22 following the satisfaction of the requirement set forth in subdivision (6) of this
23 subsection.

24 (2) Another party to the merger or share exchange, or a parent of another party to
25 the merger or share exchange, makes an offer to purchase, on the terms
26 provided in the plan of merger or share exchange, any and all of the
27 outstanding shares of the corporation that, absent this subsection, would be
28 entitled to vote on the plan of merger or share exchange, except that the offer
29 may exclude shares of the corporation that are owned at the commencement
30 of the offer by the corporation, the offeror, or any parent of the offeror, or by
31 any wholly owned subsidiary of the corporation, the offeror, or any parent of
32 the offeror.

33 (3) The offer discloses that the plan of merger or share exchange provides that the
34 merger or share exchange shall be effected as soon as practicable following
35 the satisfaction of the requirement set forth in subdivision (6) of this
36 subsection and that the shares of the corporation that are not tendered in
37 response to the offer shall be treated as set forth in subdivision (8) of this
38 subsection.

39 (4) The offer remains open for at least 10 days.

40 (5) The offeror purchases all shares properly tendered in response to the offer and
41 not properly withdrawn.

42 (6) Any or all of the following types of shares are collectively entitled to cast at
43 least the minimum number of votes on the merger or share exchange that,
44 absent this subsection, would be required by Articles 9 and 11 of this Chapter
45 and by the articles of incorporation of the corporation for the approval of the
46 merger or share exchange by the shareholders and by any other voting group
47 entitled to vote on the merger or share exchange at a meeting at which all
48 shares entitled to vote on the approval were present and voted:

49 a. Shares purchased by the offeror in accordance with the offer.

50 b. Shares otherwise owned by the offeror or by any parent or wholly
51 owned subsidiary of the offeror.

- 1 c. Shares subject to an agreement to be transferred, contributed, or
 2 delivered to the offeror, any parent of the offeror, or any wholly owned
 3 subsidiary of the offeror in exchange for stock or other equity interests
 4 in the offeror, parent, or subsidiary.
- 5 (7) The offeror or a wholly owned subsidiary of the offeror merges with or into,
 6 or effects a share exchange in which it acquires shares of, the corporation.
- 7 (8) Each outstanding share of each class or series of shares of the corporation that
 8 the offeror is offering to purchase in accordance with the offer, and that is not
 9 purchased in accordance with the offer, is to be converted in the merger into,
 10 or into the right to receive, or is to be exchanged in the share exchange for, or
 11 for the right to receive, the same amount and kind of securities, interests,
 12 obligations, rights, cash, or other property to be paid or exchanged in
 13 accordance with the offer for each share of that class or series of shares that is
 14 tendered in response to the offer, except that shares of the corporation that are
 15 owned by the corporation or that are described in sub-subdivisions b. and c.
 16 of subdivision (6) of this subsection need not be converted into or exchanged
 17 for the consideration described in this subdivision.
- 18 (k) The following definitions apply in subsection (j) of this section:
- 19 (1) Offer. – The offer referred to in subdivision (2) of subsection (j) of this section.
 20 (2) Offeror. – The person making the offer.
 21 (3) Parent. – A person that owns, directly or indirectly, through one or more
 22 wholly owned subsidiaries, all of the outstanding shares of or interests in an
 23 entity.
- 24 (4) Purchased. – Shares tendered in response to an offer are deemed to have been
 25 purchased in accordance with the offer at the earliest time as of which (i) the
 26 offeror has irrevocably accepted those shares for payment and (ii) either of the
 27 following has occurred:
- 28 a. In the case of shares represented by certificates, the offeror, or the
 29 offeror's designated depository or other agent, has physically received
 30 the certificates representing those shares.
- 31 b. In the case of shares without certificates, those shares have been
 32 transferred into the account of the offeror or its designated depository
 33 or other agent, or an agent's message relating to those shares has been
 34 received by the offeror or its designated depository or other agent.
- 35 (5) Wholly owned subsidiary of a person. – An entity of or in which that person
 36 owns, directly or indirectly, through one or more wholly owned subsidiaries,
 37 all of the outstanding shares or other interests."

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

39 "**§ 55-11-04. Merger between parent corporation and subsidiary or between subsidiaries."**

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

41 "(a) When a merger pursuant to G.S. 55-11-01, 55-11-04, 55-11-07, or 55-11-09, or
 42 ~~55-11-14~~55-11-20 takes effect:

43 "

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

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

- 47 (1) For each merging business entity, its name, type of business entity, and the
 48 state or country whose laws govern its organization and internal ~~affairs;~~affairs.
- 49 (2) The name of the merging business entity that shall survive the ~~merger;~~merger
 50 and, if the surviving business entity is not authorized to transact business or
 51 conduct affairs in this State, a designation of its mailing address and a

1 commitment to file with the Secretary of State a statement of any subsequent
2 change in its mailing address.

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

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

8"

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

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

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

13 **"§ 55-11-12. Merger between parent unincorporated entity and subsidiary corporation or**
14 **corporations.**

15 (a) Subject to the other provisions of this section and Article 9 of this Chapter, a parent
16 unincorporated entity owning shares of a domestic subsidiary corporation that carry at least
17 ninety percent (90%) of the voting power of each class and series of the outstanding shares of the
18 subsidiary corporation and that have the power to vote in the election of directors at the time of
19 a merger under this section may merge the subsidiary corporation or corporations into itself, or
20 merge itself and one or more subsidiary corporations into another subsidiary corporation, without
21 approval of the board of directors or shareholders of the subsidiary corporation or corporations,
22 unless the articles of incorporation for the subsidiary corporation or corporations require approval
23 of the shareholders of the subsidiary corporation or corporations, if both of the following
24 requirements are met:

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

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

30 (b) If any shareholder of the domestic subsidiary corporation, other than the parent
31 unincorporated entity, has or will have personal liability for any existing or future obligation of
32 the surviving business entity solely as a result of holding an interest in the surviving business
33 entity, then the plan of merger under subsection (a) of this section shall require the affirmative
34 approval, by vote or written consent, of that shareholder.

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

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

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

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

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

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

- 1 (5) If the surviving business entity is a domestic corporation, any amendment to
2 its articles of incorporation as provided in a plan of merger or board resolution.
3 (e) The provisions of the articles of merger may be made dependent on facts objectively
4 ascertainable outside the articles of merger if the articles of merger set forth the manner in which
5 the facts will operate upon the affected provisions. The facts may include any of the following:
6 (1) Statistical or market indices, market prices of any security or group of
7 securities, interest rates, currency exchange rates, or similar economic or
8 financial data.
9 (2) A determination or action by the corporation or by any other person, group,
10 or body.
11 (3) The terms of, or actions taken under, an agreement to which the corporation
12 is a party, or any other agreement or document.
13 (f) A merger takes effect when the articles of merger become effective.

14 **"§ 55-11-13. Effect of merger with unincorporated entity.**

- 15 (a) Upon taking effect, a merger pursuant to G.S. 55-11-10 or 55-11-12 shall have all of
16 the following effects:
17 (1) Each other merging business entity merges into the surviving business entity,
18 and the separate existence of each merging business entity, except the
19 surviving business entity, ceases.
20 (2) The title to all real estate and other property owned by each merging business
21 entity is vested in the surviving business entity without reversion or
22 impairment.
23 (3) The surviving business entity has all liabilities of each merging business
24 entity.
25 (4) A proceeding pending by or against any merging business entity may be
26 continued as if the merger did not occur, or the surviving business entity may
27 be substituted in the proceeding for a merging business entity whose separate
28 existence ceases in the merger.
29 (5) If a domestic corporation is the surviving business entity, its articles of
30 incorporation shall be amended to the extent provided in the articles of merger.
31 (6) The interests in each merging business entity that are to be converted into
32 interests, obligations, or securities of the surviving business entity, or into the
33 right to receive cash or other property, are thereupon so converted, and the
34 former holders of the interests are entitled only to the rights provided to them
35 in the plan of merger, resolution, or, in the case of former holders of shares in
36 a domestic corporation, any rights they may have under Article 13 of this
37 Chapter.
38 (7) If the surviving business entity is not a domestic corporation, the surviving
39 business entity is deemed to agree that it will promptly pay to the shareholders
40 of any merging domestic corporation exercising appraisal rights the amount,
41 if any, to which they are entitled under Article 13 of this Chapter and
42 otherwise to comply with the requirements of Article 13 of this Chapter as if
43 it were a surviving domestic corporation in the merger.
44 (b) The merger shall not affect the liability or absence of liability of any holder of an
45 interest in a merging business entity for any acts, omissions, or obligations of any merging
46 business entity made or incurred prior to the effectiveness of the merger. The cessation of
47 separate existence of a merging business entity in the merger shall not constitute a dissolution or
48 termination of the merging business entity.
49 (c) If the surviving business entity is not a domestic limited liability company, a domestic
50 corporation, a domestic nonprofit corporation, or a domestic limited partnership, when the
51 merger takes effect the surviving business entity is deemed to have done both of the following:

- 1 (1) Agreed that it may be served with process in this State in any proceeding for
 2 enforcement of (i) any obligation of any merging domestic limited liability
 3 company, domestic corporation, domestic nonprofit corporation, domestic
 4 limited partnership, or other partnership as defined in G.S. 59-36 that is
 5 formed under the laws of this State, (ii) the appraisal rights of shareholders of
 6 any merging domestic corporation under Article 13 of this Chapter, and (iii)
 7 any obligation of the surviving business entity arising from the merger.
- 8 (2) Appointed the Secretary of State as its agent for service of process in the
 9 proceeding. Service on the Secretary of State of process shall be made by
 10 delivering to and leaving with the Secretary of State, or with any clerk
 11 authorized by the Secretary of State to accept service of process, duplicate
 12 copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of
 13 service of process on behalf of a surviving business entity in the manner
 14 provided for in this section, the Secretary of State shall immediately mail a
 15 copy of the process by registered or certified mail, return receipt requested, to
 16 the surviving business entity. If the surviving business entity is authorized to
 17 transact business or conduct affairs in this State, the address for mailing shall
 18 be its principal office designated in the latest document filed with the
 19 Secretary of State that is authorized by law to designate the principal office
 20 or, if there is no principal office on file, its registered office. If the surviving
 21 business entity is not authorized to transact business or conduct affairs in this
 22 State, the address for mailing shall be the mailing address designated pursuant
 23 to G.S. 55-11-10(c)(2) or G.S. 55-11-12(d)(4)."

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

- 25 "(7) Interested transaction. – A corporate action described in G.S. 55-13-02(a),
 26 other than a merger pursuant to ~~G.S. 55-11-04,~~ G.S. 55-11-04 or
 27 G.S. 55-11-12, involving an interested person and in which any of the shares
 28 or assets of the corporation are being acquired or converted. As used in this
 29 definition, the following definitions apply:
 30"

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

32 **"§ 55-13-02. Right to appraisal.**

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

- 36 (1) Consummation of a merger to which the corporation is a party if either (i)
 37 shareholder approval is required for the merger by G.S. 55-11-03 ~~and the~~
 38 ~~shareholder is entitled to vote on the merger, or would be required but for the~~
 39 provisions of G.S. 55-11-03(j), except that appraisal rights shall not be
 40 available to any shareholder of the corporation with respect to shares of any
 41 class or series that remain outstanding after consummation of the merger or
 42 (ii) the corporation is a subsidiary and the merger is governed by
 43 ~~G.S. 55-11-04,~~ G.S. 55-11-04 or G.S. 55-11-12.
- 44 (2) Consummation of a share exchange to which the corporation is a party as the
 45 corporation whose shares will be ~~acquired if the shareholder is entitled to vote~~
 46 ~~on the exchange, acquired,~~ except that appraisal rights shall not be available to
 47 any shareholder of the corporation with respect to any class or series of shares
 48 of the corporation that is not exchanged.
- 49 (3) Consummation of a disposition of assets pursuant to ~~G.S. 55-12-02 if the~~
 50 ~~shareholder is entitled to vote on the disposition,~~ G.S. 55-12-02.

51 ...

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

4 ...

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

12 ...

13 (c) Notwithstanding any other provision of this section, the articles of incorporation as
 14 originally filed or any amendment to the articles may limit or eliminate appraisal rights for any
 15 class or series of preferred shares. ~~Any shares with respect to any corporate action, except that~~
 16 (i) no limitation or elimination shall be effective if the class or series does not have the right to
 17 vote separately as a voting group, alone or as part of a group, on the corporate action or if the
 18 corporate action is an amendment to the articles of incorporation that changes the corporation
 19 into a nonprofit corporation or a cooperative organization, and (ii) any limitation or elimination
 20 contained in an amendment to the articles of incorporation that limits or eliminates appraisal
 21 rights for any shares that are outstanding immediately prior to the effective date of the
 22 amendment amendment, or that the corporation is or may be required to issue or sell thereafter
 23 pursuant to any conversion, exchange, or other right existing immediately before the effective
 24 date of the amendment, however, shall not apply to any corporate action that becomes effective
 25 within one year of that date if the corporate action would otherwise afford appraisal rights.

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

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

33 "**§ 55-13-20. Notice of appraisal rights.**

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

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

50 ...

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

6 ...

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

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

10 "**§ 55-13-21. Notice of intent to demand payment and consequences of voting or consenting.**

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

15 ...

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

20 (1) The shareholder must deliver to the corporation, before the proposed action
21 becomes effective, written notice of the shareholder's intent to demand
22 payment if the proposed action is effectuated, except that the written notice is
23 not required if the notice required by G.S. 55-13-20(c) is given less than 25
24 days prior to the date the proposed action is effectuated.

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

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

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

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

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

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

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

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

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

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

9"

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

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

13 ...

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

18"

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

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

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

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

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

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

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

47 **SECTION 33.1.** G.S. 55-1-40(13a) reads as rewritten:

48 "(13a) An item is "mailed" when it is deposited "Mail," when used as a verb, means
 49 to deposit in the United States mail with postage thereon prepaid and correctly
 50 addressed. When a corporation mails an item to a shareholder, "correctly

1 addressed" means addressed to the shareholder's address as shown in the
2 corporation's current record of shareholders."
3 **SECTION 34.** This act becomes effective October 1, 2018.