

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 324

Short Title: Revise Business Corporation Act.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

March 3, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA
3 BUSINESS CORPORATION ACT AND TO MAKE CONFORMING CHANGES
4 TO THE OTHER ENTITY ACTS.

5 The General Assembly of North Carolina enacts:

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

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

9 **"§ 55-6-31. Corporation's acquisition of its own shares.**

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

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

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

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

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

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

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

24 "(a) Action required or permitted by this Chapter to be taken at a shareholders'
25 meeting may be taken without a meeting and without prior notice except as required by
26 subsection (d) of this section, if the action is taken by all the shareholders entitled to
27 vote on the action or, subject to subsection (a1) of this section, if so provided in the
28 articles of incorporation of a corporation that is not a public corporation at the time the
29 action is taken, by shareholders having not less than the minimum number of votes that

1 would be necessary to take the action at a meeting at which all shareholders entitled to
2 vote were present and voted. The action must be evidenced by one or more unrevoked
3 written consents bearing the date of signature and signed by the number of shareholders
4 sufficient to take the action without a meeting, before or after such action, describing
5 the action taken and delivered to the corporation for inclusion in the minutes or filing
6 with the corporate records. To the extent the corporation has agreed pursuant to
7 G.S. 55-1-50, a shareholder's consent to action taken without meeting or revocation
8 thereof may be in electronic form and delivered by electronic means."

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

10 "(b) A shareholder's written consent to action to be taken without a meeting shall
11 cease to be effective on the sixty-first day after the date of signature appearing on the
12 consent unless prior to the sixty-first day the corporation has received unrevoked written
13 consents sufficient under subsection (a) of this section to take the action without
14 meeting. If not otherwise fixed under G.S. 55-7-03 or G.S. 55-7-07, the record date for
15 determining shareholders entitled to take action without a meeting is the earliest date of
16 signature appearing on any consent that is to be counted in satisfying the requirements
17 of subsection (a) of this section. A shareholder's written consent to an action may be
18 revoked by the shareholder by delivering a written revocation to the corporation prior to
19 the corporation's receipt of written consents sufficient under subsection (a) of this
20 section to take the action."

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

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

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

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

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

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

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

38 "**§ 55-8-03. Number and election of directors.**

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

41 (b) ~~The shareholders may from time to time increase or decrease the number of~~
42 ~~directors by amendment to the articles of incorporation or the bylaws, but no such~~
43 ~~decrease shall be made.~~ The number of directors may be increased or decreased from
44 time to time by amendment to, or in the manner provided in, the articles of

1 incorporation or the bylaws, but for a corporation to which G.S. 55-7-28(e) is applicable
2 when applies, the number of directors shall not be decreased unless:

- 3 (1) The decrease is approved by the shareholders in a vote in which the
4 number of shares voting against the proposal for decrease would not be
5 sufficient to elect a director by cumulative voting if such shares are
6 entitled to be voted cumulatively for the election of directors voting; or
7 (2) If a board of directors has power under the articles of incorporation or
8 bylaws to fix or change the number of directors and if the shareholders
9 do not have the right to cumulate their votes for directors, the board
10 may increase or decrease the number of directors by not more than
11 thirty percent (30%) during any 12-month period. The decrease is made
12 pursuant to a provision of the articles of incorporation or bylaws fixing
13 a minimum and maximum number of directors and authorizing the
14 number of directors to be fixed or changed from time to time, within
15 the maximum and the minimum, by the shareholders or, unless the
16 articles of incorporation or an agreement valid under G.S. 55-7-31
17 provides otherwise, the board of directors.

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

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

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

29 "**§ 55-8-06. Staggered terms for directors.**

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

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

43 "**§ 55-8-21. Action without meeting.**

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

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

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

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

17 "**§ 55-8-25. Committees.**

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

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

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

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

28 (b1) The creation of a committee pursuant to G.S. 55-7-44(b)(2) may be appointed
29 in the manner set forth in that section.

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

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

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

38 (1) Authorize ~~distributions;~~ distributions.

39 (2) Approve or propose to shareholders action that this act requires be
40 approved by ~~shareholders;~~ shareholders.

41 (3) Fill vacancies on the board of directors or on any of its ~~committees;~~
42 committees.

43 (4) Amend articles of incorporation pursuant to ~~G.S. 55-10-02;~~
44 G.S. 55-10-02.

- 1 (5) Adopt, amend, or repeal ~~bylaws;~~ bylaws.
2 (6) Approve a plan of merger not requiring shareholder ~~approval;~~
3 approval.
4 (7) ~~Authorize or approve reacquisition of shares, except according to a~~
5 ~~formula or method prescribed by the board of directors; or~~
6 (8) ~~Authorize or approve the issuance or sale or contract for sale of shares,~~
7 ~~or determine the designation and relative rights, preferences, and~~
8 ~~limitations of a class or series of shares, except that the board of~~
9 ~~directors may authorize a committee (or a senior executive officer of~~
10 ~~the corporation) to do so within limits specifically prescribed by the~~
11 ~~board of directors.~~

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

15 **SECTION 11.** G.S. 55-8-43 reads as rewritten:

16 "**§ 55-8-43. Resignation and removal of officers.**

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

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

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

30 **SECTION 12.** G.S. 55-10-02 reads as rewritten:

31 "**§ 55-10-02. Amendment by board of directors.**

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

- 35 (1) Reserved for future codification ~~purposes;~~ purposes.
36 (2) To delete the names and addresses of the initial ~~directors;~~ directors.
37 (3) To delete the name and address of the initial registered agent or
38 registered office, if a statement of change is on file with the Secretary
39 of ~~State;~~ State.
40 (4) If the corporation has only one class of shares outstanding:
41 a. To change each issued and unissued authorized share of an
42 outstanding the class into a greater number of whole shares if
43 the corporation has only shares of that class outstanding; of the
44 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.

(6) To make any other change expressly permitted by this act- Chapter to be made without shareholder ~~action-~~approval.

(7) 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.

(8) 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."

SECTION 13. 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 (c).~~

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.

1 (d) ~~The~~ If the amendment must be approved by the shareholders and the
2 approval is to be given at a meeting, the corporation shall~~must~~ notify each shareholder,
3 shareholder in accordance with G.S. 55-7-05, whether or not the shareholder is entitled
4 to vote, of the proposed shareholders' meeting in accordance with G.S. 55-7-05. of
5 shareholders at which the amendment is to be submitted for approval. The notice of
6 meeting must state that the purpose, or one of the purposes, of the meeting is to consider
7 the proposed amendment and the notice must contain or be accompanied by a copy or
8 summary of the amendment. If the amendment is required to be approved by the
9 shareholders and the approval is to be obtained through action without meeting, the
10 corporation must notify shareholders in accordance with G.S. 55-7-04(d).

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

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

20 **SECTION 14.** G.S. 55-10-07 reads as rewritten:

21 "**§ 55-10-07. Restated articles of incorporation.**

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

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

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

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

- 40 (1) Set forth the name of the corporation;
- 41 (2) Attach as an exhibit thereto the text of the restated articles of
42 incorporation;
- 43 (3) State ~~whether that~~ the restated articles of incorporation ~~contain an~~
44 ~~amendment to the articles requiring shareholder approval and, if they~~

1 ~~do not, that the board of directors adopted the restated articles of~~
2 ~~incorporation; consolidate all amendments into a single document; and~~
3 (4) If the restated articles of incorporation contain ~~an a new~~ amendment to
4 the articles requiring shareholder approval, ~~state that shareholder~~
5 ~~approval was obtained as required by this Chapter.~~ articles, include the
6 statements required by G.S. 55-10-06.

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

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

12 **SECTION 15.** G.S. 55-11-01 is amended by adding the following new
13 subsection to read:

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

19 (1) Statistical or market indices, market prices of any security or group of
20 securities, interest rates, currency exchange rates, or similar economic
21 or financial data.

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

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

26 **SECTION 16.** G.S. 55-11-02 reads as rewritten:

27 "**§ 55-11-02. Share exchange.**

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

31 (b) The plan of exchange must set forth:

32 (1) The name of the corporation whose shares will be acquired and the
33 name of the acquiring corporation;

34 (2) The terms and conditions of the exchange;

35 (3) The manner and basis of exchanging the shares to be acquired for
36 shares, obligations, or other securities of the acquiring or any other
37 corporation or for cash or other property in whole or part.

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

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

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

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

11 **SECTION 17.** G.S. 55-11-03(e) reads as rewritten:

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

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

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

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

1 number of voting shares of the surviving corporation outstanding
2 immediately before the ~~merger~~; and merger.

- 3 (4) The number of participating shares outstanding immediately after the
4 merger, plus the number of participating shares issuable as a result of
5 the merger (either by the conversion of securities issued pursuant to
6 the merger or the exercise of rights and warrants issued pursuant to the
7 merger), will not exceed by more than twenty percent (20%) the total
8 number of participating shares outstanding immediately before the
9 merger."

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

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

19 **SECTION 20.** G.S. 55-11-04 reads as rewritten:

20 "**§ 55-11-04. Merger with subsidiary.**

21 (a) Subject to Article 9, a parent corporation owning at least ~~90~~ ninety percent
22 (90%) of the outstanding shares of each class of a subsidiary corporation may merge the
23 subsidiary into itself without approval of the shareholders of the parent ~~or subsidiary~~.
24 corporation unless the articles of incorporation of the parent corporation require
25 approval of the shareholders or the plan of merger contains one or more amendments to
26 the articles of incorporation of the parent corporation for which shareholder approval is
27 required by G.S. 55-10-03, and without approval of the board of directors or
28 shareholders of the subsidiary corporation unless the articles of incorporation of the
29 subsidiary corporation require approval of the shareholders. Subject to Article 9, a
30 parent corporation owning at least ninety percent (90%) of the outstanding shares of
31 each class of a subsidiary corporation may merge itself into the subsidiary corporation
32 without approval of the board of directors or shareholders of the subsidiary if the merger
33 is approved by the directors and shareholders of the parent corporation in accordance
34 with G.S. 55-11-01 and G.S. 55-11-03. corporation unless the articles of incorporation
35 of the subsidiary corporation require approval of the shareholders or the plan of merger
36 contains one or more amendments to the articles of incorporation of the subsidiary
37 corporation for which shareholder approval is required by G.S. 55-10-03. Except as
38 otherwise provided in this subsection, the provisions of G.S. 55-11-01 and
39 G.S. 55-11-03 apply to any merger described in this subsection.

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

- 42 (1) ~~The names of the parent and subsidiary; and~~

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

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

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

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

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

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

21 **SECTION 21.** G.S. 55-11-05 reads as rewritten:

22 **"§ 55-11-05. Articles of merger or share exchange.**

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

28 ~~(1) The plan of merger or share exchange;~~

29 ~~(2) If shareholder approval was not required, a statement to that effect;~~

30 ~~(3) If approval of the shareholders of one or more corporations party to the~~
31 ~~merger or share exchange was required, a statement that the merger or~~
32 ~~share exchange was approved by the shareholders as required by this~~
33 ~~Chapter.~~

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

43 In the case of a share exchange, the articles shall set forth (i) the name of the
44 corporation whose shares will be acquired, (ii) the name and state or country of

1 incorporation of the acquiring corporation, (iii) a designation of its mailing address and
2 a commitment to file with the Secretary of State a statement of any subsequent change
3 in its mailing address if the acquiring corporation is not authorized to transact business
4 or conduct affairs in this State, and (iv) a statement that the plan of share exchange has
5 been approved by the corporation whose shares will be acquired and by the acquiring
6 corporation in the manner required by law.

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

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

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

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

26 **SECTION 22.** G.S. 55-11-06 reads as rewritten:

27 **"§ 55-11-06. Effect of merger or share exchange.**

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

30 (1) ~~Every other~~ Each merging corporation party to the merger merges into
31 the surviving corporation and the separate existence of ~~every~~ each
32 merging corporation except the surviving corporation ceases; ceases.

33 (2) The title to all real estate and other property owned by each merging
34 corporation party to the merger is vested in the surviving corporation
35 without reversion or ~~impairment~~; impairment.

36 (3) The surviving corporation has all liabilities of each ~~corporation~~ party
37 to the merger; merging corporation.

38 (4) A proceeding pending by or against any merging corporation party to
39 the merger may be continued as if the merger did not occur or the
40 surviving corporation may be substituted in the proceeding for ~~the a~~
41 merging corporation whose separate existence ~~ceased~~; ceases in the
42 merger.

- 1 (5) ~~The~~ If a domestic corporation survives the merger, its articles of
2 incorporation ~~of the surviving corporation~~ are amended to the extent
3 provided in the ~~plan~~ articles of merger; and merger.
- 4 (6) The shares of each merging corporation ~~party to the merger~~ that are to
5 be converted into shares, obligations, or other securities of the
6 surviving or any other corporation or into the right to receive cash or
7 other property are thereupon converted, and the former holders of the
8 shares are entitled only to the rights provided ~~in the articles of merger~~
9 ~~or to their rights under Article 13.~~ to them in the plan of merger or, in
10 the case of former holders of shares in a domestic corporation, any
11 right they may have under Article 13 of this Chapter.
- 12 (7) If a foreign corporation or foreign nonprofit corporation survives the
13 merger, it is deemed:
- 14 a. To agree that it will promptly pay to dissenting shareholders of
15 any merging domestic corporation the amount, if any, to which
16 they are entitled under Article 13 of this Chapter and otherwise
17 to comply with the requirements of Article 13 as if it were a
18 surviving domestic corporation in the merger.
- 19 b. To agree that it may be served with process in this State in any
20 proceeding for enforcement (i) of any obligation of any merging
21 domestic corporation, (ii) of the rights of dissenting
22 shareholders of any merging domestic corporation under Article
23 13 of this Chapter, and (iii) of any obligation of the surviving
24 foreign corporation or foreign nonprofit corporation arising
25 from the merger.
- 26 c. To have appointed the Secretary of State as its agent for service
27 of process in any proceeding for enforcement as specified in
28 sub-subdivision b. of this subdivision. Service of process on the
29 Secretary of State shall be made by delivering to, and leaving
30 with, the Secretary of State, or with any clerk authorized by the
31 Secretary of State to accept service of process, duplicate copies
32 of the process and the fee required by G.S. 55-1-22(b). Upon
33 receipt of service of process on behalf of a surviving foreign
34 corporation or foreign nonprofit corporation in the manner
35 provided for in this section, the Secretary of State shall
36 immediately mail a copy of the process by registered or
37 certified mail, return receipt requested, to the surviving foreign
38 corporation or foreign nonprofit corporation. If the surviving
39 foreign corporation or foreign nonprofit corporation is
40 authorized to transact business or conduct affairs in this State,
41 the address for mailing shall be its principal office designated in
42 the latest document filed with the Secretary of State that is
43 authorized by law to designate the principal office, or, if there is
44 no principal office on file, its registered office. If the surviving

1 foreign corporation or foreign nonprofit corporation is not
2 authorized to transact business or conduct affairs in this State,
3 the address for mailing shall be the mailing address designated
4 pursuant to G.S. 55-11-05(a).

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

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

10 (1) The shares of each the acquired corporation are exchanged as provided
11 in the ~~plan,~~ plan of share exchange and the former holders of the
12 shares are entitled only to the exchange rights provided in the ~~articles~~
13 plan of share exchange or to their rights any right they may have under
14 Article 13. 13 of this Chapter.

15 (2) If the acquiring corporation is not a domestic corporation, it is deemed
16 to agree that it will promptly pay to dissenting shareholders of the
17 acquired corporation the amount, if any, to which they are entitled
18 under Article 13 of this Chapter and otherwise to comply with the
19 requirements of Article 13 as if it were an acquiring domestic
20 corporation in the share exchange.

21 (3) If the acquiring corporation is not a domestic corporation, the
22 acquiring corporation is deemed:

23 a. To agree that it may be served with process in this State in any
24 proceeding for enforcement (i) of the rights of dissenting
25 shareholders of the acquired corporation under Article 13 of this
26 Chapter and (ii) of any obligation of the acquiring corporation
27 arising from the share exchange; and

28 b. To have appointed the Secretary of State as its agent for service
29 of process in any proceeding for enforcement as specified in
30 sub-subdivision a. of this subdivision. Service of process on the
31 Secretary of State shall be made by delivering to, and leaving
32 with, the Secretary of State, or with any clerk authorized by the
33 Secretary of State to accept service of process, duplicate copies
34 of the process and the fee required by G.S. 55-1-22(b). Upon
35 receipt of service of process on behalf of an acquiring
36 corporation in the manner provided for in this section, the
37 Secretary of State shall immediately mail a copy of the process
38 by registered or certified mail, return receipt requested, to the
39 acquiring corporation. If the acquiring corporation is authorized
40 to transact business or conduct affairs in this State, the address
41 for mailing shall be its principal office designated in the latest
42 document filed with the Secretary of State that is authorized by
43 law to designate the principal office or, if there is no principal
44 office on file, its registered office. If the acquiring corporation

1 is not authorized to transact business or conduct affairs in this
2 State, the address for mailing shall be the mailing address
3 designated pursuant to G.S. 55-11-05(a).

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

8 **SECTION 23.** G.S. 55-11-07 reads as rewritten:

9 **"§ 55-11-07. Merger or share exchange with foreign corporation.**

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

13 (1) In a merger, the merger is permitted by the law of the state or country
14 under whose law each foreign corporation is incorporated and each
15 and, to the extent applicable, each domestic or foreign corporation
16 complies with that law in effecting the merger;

17 (2) In a share exchange, if the corporation whose shares will be acquired is
18 a domestic foreign corporation, whether or not a the share exchange is
19 permitted by the law of the state or country under whose law the
20 acquiring foreign corporation is incorporated; incorporated and the
21 foreign corporation and the acquiring domestic corporation comply
22 with that law in effecting the share exchange;

23 (3) The foreign corporation complies with G.S. 55-11-05 if it is the
24 surviving corporation of the merger or acquiring corporation of the
25 share exchange and, if the foreign corporation is not authorized to
26 transact business in this State, includes in the articles of merger or
27 articles of share exchange filed pursuant to G.S. 55-11-05 a
28 designation of the foreign corporation's mailing address and a
29 commitment to file with the Secretary of State a statement of any
30 subsequent change in its mailing address; exchange; and

31 (4) Each domestic corporation complies with the applicable provisions of
32 G.S. 55-11-01 through G.S. 55-11-04 and, if it is the surviving
33 corporation of the merger or acquiring corporation of the share
34 exchange, merger with G.S. 55-11-05.

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

38 (1) To appoint the Secretary of State as its agent for service of process in a
39 proceeding to enforce any obligation or the rights of dissenting
40 shareholders of each domestic corporation party to the merger or share
41 exchange; and

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

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

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

17 **SECTION 24.** G.S. 55-11-09 reads as rewritten:

18 **"§ 55-11-09. Merger with nonprofit corporation.**

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

21 (1) Each domestic nonprofit corporation complies with the applicable
22 provisions of G.S. 55A-11-01 through G.S. 55A-11-03;

23 (2) In a merger involving one or more foreign nonprofit corporations, the
24 merger is permitted by law of the state or country under whose law
25 each foreign nonprofit corporation is incorporated ~~and each and, to the~~
26 extent applicable, each domestic corporation and each domestic or
27 foreign nonprofit corporation complies with that law in effecting the
28 merger;

29 (3) The domestic or foreign nonprofit corporation complies with
30 G.S. 55-11-05 if it is the surviving corporation ~~and, in the case of a~~
31 ~~foreign nonprofit corporation not authorized to conduct affairs in this~~
32 ~~State, includes in the articles of merger filed pursuant to G.S. 55-11-05~~
33 ~~a designation of the foreign nonprofit corporation's mailing address~~
34 ~~and a commitment to file with the Secretary of State a statement of any~~
35 ~~subsequent change in its mailing address;~~ corporation; and

36 (4) Each domestic corporation complies with the applicable provisions of
37 G.S. 55-11-01, 55-11-03, and 55-11-04 and, if it is the surviving
38 corporation, with G.S. 55-11-05.

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

41 (1) ~~To appoint the Secretary of State as its agent for service of process in a~~
42 ~~proceeding to enforce any obligation or the rights of dissenting~~
43 ~~shareholders of each domestic corporation party to the merger; and~~

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

5 ~~Service on the Secretary of State of any process authorized by this subsection shall~~
6 ~~be made by delivering to and leaving with the Secretary of State, or with any clerk~~
7 ~~authorized by the Secretary of State to accept service of process, duplicate copies of the~~
8 ~~process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process in~~
9 ~~the manner provided in this subsection, the Secretary of State shall immediately mail a~~
10 ~~copy of the process by registered or certified mail, return receipt requested, to the~~
11 ~~foreign nonprofit corporation. If the foreign nonprofit corporation is authorized to~~
12 ~~conduct affairs in this State, the address for mailing shall be its principal office as~~
13 ~~defined in G.S. 55A-1-40(20), or, if there is no mailing address for the principal office~~
14 ~~on file, its registered office. If the foreign nonprofit corporation is not authorized to~~
15 ~~conduct affairs in this State, the address for mailing shall be the mailing address~~
16 ~~designated pursuant to subdivision (3) of subsection (a) of this section.~~

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

20 **SECTION 25.** G.S. 55-11-10(c) reads as rewritten:

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

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

34 The plan of merger may contain other provisions relating to the merger. The
35 provisions of the plan of merger, other than the provisions referred to in subdivisions
36 (1), (2), and (5) of this subsection, may be dependent on facts objectively ascertainable
37 outside the plan of merger if the plan of merger sets forth the manner in which the facts
38 will operate upon the affected provisions. The facts may include (i) statistical or market
39 indices, market prices of any security or group of securities, interest rates, currency
40 exchange rates, or similar economic or financial data; (ii) a determination or action by
41 the corporation or by any other person, group, or body; or (iii) the terms of, or actions
42 taken under, an agreement to which the corporation is a party, or any other agreement or
43 document.

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

13 After a plan of merger has been approved by a domestic corporation but before the
14 articles of merger become effective, the plan of merger (i) may be amended as provided
15 in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as
16 provided in the plan of merger or, if there is no such provision, as determined by the
17 board of directors without further shareholder action."

18 **SECTION 26.** G.S. 55-11-10(d) reads as rewritten:

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

- 23 (1) ~~The plan of merger;~~
24 (2) For each merging business entity, its name, type of business entity, and
25 the state or country whose laws govern its organization and internal
26 ~~affairs;~~ affairs.
27 (3) The name of the ~~surviving-merging~~ business entity that shall survive
28 the merger and, if the surviving business entity is not authorized to
29 transact business or conduct affairs in this State, a designation of its
30 mailing address and a commitment to file with the Secretary of State a
31 statement of any subsequent change in its mailing ~~address;~~ address.
32 (3a) If the surviving business entity is a domestic corporation, any
33 amendment to its articles of incorporation as provided in the plan of
34 merger.
35 (4) A statement that the plan of merger has been approved by each
36 merging business entity in the manner required by ~~law;~~ and law.
37 (5) ~~The effective date and time of merger if it is not to be effective at the~~
38 ~~time of filing of the articles of merger.~~

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

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

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

6 **SECTION 27.** G.S. 55-11-10(e)(5) reads as rewritten:

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

10 **SECTION 28.** G.S. 55-11A-02(a) reads as rewritten:

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

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

23 The plan of conversion may contain other provisions relating to the conversion.

24 The provisions of the plan of conversion, other than the provisions required by
25 subdivisions (1) and (2) of this subsection, may be dependent on facts objectively
26 ascertainable outside the plan of conversion if the plan of conversion sets forth the
27 manner in which the facts will operate upon the affected provisions. The facts may
28 include (i) statistical or market indices, market prices of any security or group of
29 securities, interest rates, currency exchange rates, or similar economic or financial data;
30 (ii) a determination or action by the converting business entity or by any other person,
31 group, or body; or (iii) the terms of, or actions taken under, an agreement to which the
32 converting business entity is a party, or any other agreement or document."

33 **SECTION 29.** G.S. 55-11A-11(a) reads as rewritten:

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

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

44 The plan of conversion may contain other provisions relating to the conversion.

1 The provisions of the plan of conversion, other than the provisions required by
2 subdivisions (1) and (2) of this subsection, may be dependent on facts objectively
3 ascertainable outside the plan of conversion if the plan of conversion sets forth the
4 manner in which the facts will operate upon the affected provisions. The facts may
5 include (i) statistical or market indices, market prices of any security or group of
6 securities, interest rates, currency exchange rates, or similar economic or financial data;
7 (ii) a determination or action by the converting domestic corporation or by any other
8 person, group, or body; or (iii) the terms of, or actions taken under, an agreement to
9 which the converting domestic corporation is a party, or any other agreement or
10 document."

11 **SECTION 30.** G.S. 55-14-03 is amended by adding a new subsection to
12 read:

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

17 **SECTION 31.** G.S. 55-14-08(a) reads as rewritten:

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

- 19 (1) Against the dissolved corporation, to the extent of its undistributed
20 assets, including coverage under any applicable insurance policy, or
21 (2) ~~If-Except as provided in G.S. 55-14-09(d), if the assets have been~~
22 distributed in liquidation, against a shareholder of the dissolved
23 corporation to the extent of ~~his-the shareholder's~~ pro rata share of the
24 claim or the corporate assets distributed to ~~him-the shareholder~~ in
25 liquidation, whichever is less, but a shareholder's total liability for all
26 claims under this section may not exceed the total amount of assets
27 distributed to ~~him-the shareholder."~~

28 **SECTION 32.** Article 14 of Chapter 55 of the General Statutes is amended
29 by adding a new section to read:

30 **§ 55-14-09. Court proceedings.**

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

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

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

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

11 **SECTION 33.** G.S. 55-14A-01(b) reads as rewritten:

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

23 (1) The date of the court's order or decree approving the action.

24 (2) The title of the reorganization proceeding in which the order or decree
25 was entered.

26 (3) A statement that the court had jurisdiction of the proceeding under the
27 federal statute of the United States."

28 **SECTION 34.** G.S. 55-16-03 reads as rewritten:

29 "**§ 55-16-03. Scope of inspection right.**

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

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

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

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

1 **SECTION 35.** Article 16 of Chapter 55 of the General Statutes is amended
2 by adding the following new sections to read:

3 **"§ 55-16-05. Inspection of records by directors.**

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

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

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

22 **"§ 55-16-06. Exception to notice requirements.**

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

25 (1) Notice of two consecutive annual meetings, and all notices of meetings
26 during the period between those two consecutive annual meetings,
27 have been sent to the shareholder at the shareholder's address as shown
28 on the records of the corporation and have been returned
29 undeliverable; or

30 (2) All, but not less than two, payments of dividends on securities during a
31 12-month period, or two consecutive payments of dividends on
32 securities during a period of more than 12 months, have been sent to
33 the shareholder at the shareholder's address as shown on the records of
34 the corporation and have been returned undeliverable.

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

38 **SECTION 36.** G.S. 55-16-21 is repealed.

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

41 **SECTION 37.** G.S. 55A-11-01 is amended by adding the following new
42 subsection to read:

43 "(d) The provisions of the plan of merger, other than the provisions referred to in
44 subdivisions (b)(1) and (c)(1) of this section, may be dependent on facts objectively

1 ascertainable outside the plan of merger if the plan of merger sets forth the manner in
2 which the facts will operate upon the affected provisions. The facts may include any of
3 the following:

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

11 **SECTION 38.** G.S. 55A-11-03(g) reads as rewritten:

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

21 **SECTION 39.** G.S. 55A-11-04 reads as rewritten:

22 "**§ 55A-11-04. Articles of merger.**

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

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

1 other person required by G.S. 55A-11-03(a)(3), in the manner required
2 by law.

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

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

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

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

19 **SECTION 40.** G.S. 55A-11-05 reads as rewritten:

20 **"§ 55A-11-05. Effect of merger.**

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

22 (1) ~~Every other~~ Each merging corporation ~~party to the merger~~ merges into
23 the surviving corporation and the separate existence of ~~every each~~
24 merging corporation except the surviving corporation ~~ceases;~~ ceases.

25 (2) The title to all real estate and other property owned by each merging
26 corporation ~~party to the merger~~ is vested in the surviving corporation
27 without reversion or impairment subject to any and all conditions to
28 which the property was subject prior to the ~~merger;~~ merger.

29 (3) The surviving corporation has all liabilities and obligations of each
30 ~~corporation party to the merger;~~ merging corporation.

31 (4) A proceeding pending by or against any merging corporation ~~party to~~
32 ~~the merger~~ may be continued as if the merger did not occur or the
33 surviving corporation may be substituted in the proceeding for ~~the a~~
34 merging corporation whose separate existence ~~ceased;~~ and ceases in
35 the merger.

36 (5) ~~The~~ If a domestic corporation survives the merger, its articles of
37 incorporation ~~and bylaws of the surviving corporation~~ are amended to
38 the extent provided in the ~~plan~~ articles of merger.

39 (6) If a foreign corporation or a foreign business corporation survives the
40 merger, it is deemed:

41 a. To agree that it may be served with process in this State in any
42 proceeding for enforcement (i) of any obligation of any merging
43 domestic corporation and (ii) of any obligation of the surviving

1 corporation or foreign business corporation arising from the
2 merger.

- 3 b. To have appointed the Secretary of State as its agent for service
4 of process in any proceeding for enforcement as specified in
5 sub-subdivision a. of this subdivision. Service of process on the
6 Secretary of State shall be made by delivering to, and leaving
7 with, the Secretary of State, or with any clerk authorized by the
8 Secretary of State to accept service of process, duplicate copies
9 of the process and the fee required by G.S. 55A-1-22(b). Upon
10 receipt of service of process on behalf of a surviving foreign
11 corporation or foreign business corporation in the manner
12 provided for in this section, the Secretary of State shall
13 immediately mail a copy of the process by registered or
14 certified mail, return receipt requested, to the surviving foreign
15 corporation or foreign business corporation. If the surviving
16 foreign corporation or foreign business corporation is
17 authorized to transact business or conduct affairs in this State,
18 the address for mailing shall be its principal office designated in
19 the latest document filed with the Secretary of State that is
20 authorized by law to designate the principal office, or if there is
21 no principal office on file, its registered office. If the surviving
22 foreign corporation or foreign business corporation is not
23 authorized to transact business or conduct affairs in this State,
24 the address for mailing shall be the mailing address designated
25 pursuant to G.S. 55A-11-04(a)(2).

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

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

33 **SECTION 41.** G.S. 55A-11-06 reads as rewritten:

34 **"§ 55A-11-06. Merger with foreign corporation.**

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

- 37 (1) The merger is permitted by the law of the state or country under whose
38 law each foreign corporation is incorporated and each foreign
39 corporation complies with that law in effecting the merger;
40 (2) The foreign corporation complies with G.S. 55A-11-04 if it is the
41 surviving corporation of the merger ~~and, if the foreign corporation is~~
42 ~~not authorized to conduct affairs in this State, includes in the articles of~~
43 ~~merger filed with the Secretary of State pursuant to G.S. 55A-11-04 a~~
44 ~~designation of the foreign corporation's mailing address and a~~

1 ~~commitment to file with the Secretary of State a statement of any~~
2 ~~subsequent change in its mailing address; merger; and~~

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

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

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

23 **SECTION 42.** G.S. 55A-11-08 reads as rewritten:

24 "**§ 55A-11-08. Merger with business corporation.**

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

- 27 (1) Each domestic business corporation complies with the applicable
28 provisions of G.S. 55-11-01, 55-11-03, and 55-11-04;

- 29 (2) In a merger involving one or more foreign business corporations, the
30 merger is permitted by the law of the state or country under whose law
31 each foreign business corporation is incorporated and each foreign
32 business corporation complies with that law in effecting the merger;

- 33 (3) The domestic or foreign business corporation complies with
34 G.S. 55A-11-04 if it is the surviving corporation and, in the case of a
35 ~~foreign business corporation not authorized to transact business in this~~
36 ~~State, includes in the articles of merger filed pursuant to~~
37 ~~G.S. 55A-11-04 a designation of the foreign business corporation's~~
38 ~~mailing address and a commitment to file with the Secretary of State a~~
39 ~~statement of any subsequent change in its mailing address;~~
40 ~~corporation; and~~

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

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

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

19 **SECTION 43.** G.S. 55A-11-09(c) reads as rewritten:

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

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

33 The plan of merger may contain other provisions relating to the merger. The
34 provisions of the plan of merger, other than the provisions referred to in subdivisions
35 (1), (2), and (5) of this subsection, may be dependent on facts objectively ascertainable
36 outside the plan of merger if the plan of merger sets forth the manner in which the facts
37 will operate upon the affected provisions. The facts may include (i) statistical or market
38 indices, market prices of any security or group of securities, interest rates, currency
39 exchange rates, or similar economic or financial data; (ii) a determination or action by
40 the domestic nonprofit corporation or by any other person, group, or body; or (iii) the
41 terms of, or actions taken under, an agreement to which the domestic nonprofit
42 corporation is a party, or any other agreement or document.

43 In the case of a merging domestic nonprofit corporation, approval of the plan of
44 merger requires that the plan of merger be adopted as provided in G.S. 55A-11-03. If

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

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

14 **SECTION 44.** G.S. 55A-11-09(d) reads as rewritten:

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

19 (1) ~~The plan of merger;~~

20 (2) For each merging business entity, its name, type of business entity, and
21 the state or country whose laws govern its organization and internal
22 ~~affairs;~~ affairs.

23 (3) The name of the ~~surviving~~ merging business entity that will survive
24 the merger and, if the surviving business entity is not authorized to
25 transact business or conduct affairs in this State, a designation of its
26 mailing address and a commitment to file with the Secretary of State a
27 statement of any subsequent change in its mailing ~~address;~~ address.

28 (3a) If the surviving business entity is a domestic corporation, any
29 amendment to its articles of incorporation as provided in the plan of
30 merger.

31 (4) A statement that the plan of merger has been approved by each
32 merging business entity in the manner required by ~~law;~~ and law.

33 (5) ~~The effective date and time of merger if it is not to be effective at the~~
34 ~~time of filing of the articles of merger.~~

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

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

2 **SECTION 45.** G.S. 55A-11-09(e)(5) reads as rewritten:

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

6 **SECTION 46.** G.S. 57C-9A-02(a) reads as rewritten:

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

9 (1) The name of the resulting domestic limited liability company into
10 which the converting business entity shall convert;

11 (1a) The name of the converting business entity, its type of business entity,
12 and the state or country whose laws govern its organization and
13 internal affairs;

14 (2) The terms and conditions of the conversion; and

15 (3) The manner and basis for converting the interests in the converting
16 business entity into interests, obligations, or securities of the resulting
17 domestic limited liability company or into cash or other property in
18 whole or in part.

19 The plan of conversion may contain other provisions relating to the conversion.

20 The provisions of the plan of conversion, other than the provisions required by
21 subdivisions (1) and (2) of this subsection, may be made dependent on facts objectively
22 ascertainable outside the plan of conversion if the plan of conversion sets forth the
23 manner in which the facts will operate upon the affected provisions. The facts may
24 include (i) statistical or market indices, market prices of any security or group of
25 securities, interest rates, currency exchange rates, or similar economic or financial data;
26 (ii) a determination or action by the converting business entity or by any other person,
27 group, or body; or (iii) the terms of, or actions taken under, an agreement to which the
28 converting business entity is a party, or any other agreement or document."

29 **SECTION 47.** G.S. 57C-9A-11(a) reads as rewritten:

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

32 (1) The name of the converting domestic limited liability company;

33 (2) The name of the resulting business entity into which the domestic
34 limited liability company shall convert, its type of business entity, and
35 the state or country whose laws govern its organization and internal
36 affairs;

37 (3) The terms and conditions of the conversion; and

38 (4) The manner and basis for converting the interests in the domestic
39 limited liability company into interests, obligations, or securities of the
40 resulting business entity or into cash or other property in whole or in
41 part.

42 The plan of conversion may contain other provisions relating to the conversion.

43 The provisions of the plan of conversion, other than the provisions required by
44 subdivisions (1) and (2) of this subsection, may be made dependent on facts objectively

1 ascertainable outside the plan of conversion if the plan of conversion sets forth the
2 manner in which the facts will operate upon the affected provisions. The facts may
3 include (i) statistical or market indices, market prices of any security or group of
4 securities, interest rates, currency exchange rates, or similar economic or financial data;
5 (ii) a determination or action by the converting domestic limited liability company or by
6 any other person, group, or body; or (iii) the terms of, or actions taken under, an
7 agreement to which the converting domestic limited liability company is a party, or any
8 other agreement or document."

9 **SECTION 48.** G.S. 57C-9A-21(a) reads as rewritten:

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

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

23 The plan of merger may contain other provisions relating to the merger.

24 The provisions of the plan of merger, other than the provisions referred to in
25 subdivisions (1), (2), and (5) of this subsection, may be made dependent on facts
26 objectively ascertainable outside the plan of merger if the plan of merger sets forth the
27 manner in which the facts will operate upon the affected provisions. The facts may
28 include (i) statistical or market indices, market prices of any security or group of
29 securities, interest rates, currency exchange rates, or similar economic or financial data;
30 (ii) a determination or action by the domestic limited liability company or by any other
31 person, group, or body; or (iii) the terms of, or actions taken under, an agreement to
32 which the domestic limited liability company is a party, or any other agreement or
33 document."

34 **SECTION 49.** G.S. 57C-9A-22(a) reads as rewritten:

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

- 39 ~~(1) The plan of merger;~~
- 40 (2) For each merging business entity, its name, type of business entity, and
41 the state or country whose laws govern its organization and internal
42 ~~affairs;~~affairs.
- 43 (3) The name of the ~~surviving merging~~ business entity that will survive the
44 merger and, if the surviving business entity is not authorized to

1 transact business or conduct affairs in this State, a designation of its
2 mailing address and a commitment to file with the Secretary of State a
3 statement of any subsequent change in its mailing address; address.

4 (3a) If the surviving business entity is a domestic limited liability company,
5 any amendment to its articles of organization as provided in the plan of
6 merger.

7 (4) A statement that the plan of merger has been approved by each
8 merging business entity in the manner required by ~~law;~~ and law.

9 (5) ~~The effective date and time of the merger if it is not to be effective at~~
10 ~~the time of filing of the articles of merger.~~

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

21 **SECTION 50.** G.S. 57C-9A-23(a)(5) reads as rewritten:

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

25 **SECTION 51.** G.S. 59-73.11(a) reads as rewritten:

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

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

37 The plan of conversion may contain other provisions relating to the conversion.

38 The provisions of the plan of conversion, other than the provisions required by
39 subdivisions (1) and (2) of this subsection, may be made dependent on facts objectively
40 ascertainable outside the plan of conversion if the plan of conversion sets forth the
41 manner in which the facts will operate upon the affected provisions. The facts may
42 include (i) statistical or market indices, market prices of any security or group of
43 securities, interest rates, currency exchange rates, or similar economic or financial data;
44 (ii) a determination or action by the converting business entity or by any other person,

1 group, or body; or (iii) the terms of, or actions taken under, an agreement to which the
2 converting business entity is a party, or any other agreement or document."

3 **SECTION 52.** G.S. 59-73.21(a) reads as rewritten:

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

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

14 The plan of conversion may contain other provisions relating to the conversion.

15 The provisions of the plan of conversion, other than the provisions required by
16 subdivisions (1) and (2) of this subsection, may be made dependent on facts objectively
17 ascertainable outside the plan of conversion if the plan of conversion sets forth the
18 manner in which the facts will operate upon the affected provisions. The facts may
19 include (i) statistical or market indices, market prices of any security or group of
20 securities, interest rates, currency exchange rates, or similar economic or financial data;
21 (ii) a determination or action by the converting domestic partnership or by any other
22 person, group, or body; or (iii) the terms of, or actions taken under, an agreement to
23 which the converting domestic partnership is a party, or any other agreement or
24 document."

25 **SECTION 53.** G.S. 59-73.31(a) reads as rewritten:

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

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

36 The plan of merger may contain other provisions relating to the merger.

37 The provisions of the plan of merger, other than the provisions referred to in
38 subdivisions (1) and (2) of this subsection, may be made dependent on facts objectively
39 ascertainable outside the plan of merger if the plan of merger sets forth the manner in
40 which the facts will operate upon the affected provisions. The facts may include (i)
41 statistical or market indices, market prices of any security or group of securities, interest
42 rates, currency exchange rates, or similar economic or financial data; (ii) a
43 determination or action by the domestic partnership or by any other person, group, or

1 body; or (iii) the terms of, or actions taken under, an agreement to which the domestic
2 partnership is a party, or any other agreement or document."

3 **SECTION 54.** G.S. 59-73.32(a) reads as rewritten:

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

8 (1) ~~The plan of merger;~~

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

12 (3) The name of the ~~surviving~~ merging business entity that will survive
13 the merger and, if the surviving business entity is not authorized to
14 transact business or conduct affairs in this State, a designation of its
15 mailing address and a commitment to file with the Secretary of State a
16 statement of any subsequent change in its mailing ~~address; address.~~

17 (4) A statement that the plan of merger has been approved by each
18 merging business entity in the manner required by ~~law; and law.~~

19 (5) ~~The effective date and time of the merger if it is not to be effective at~~
20 ~~the time of filing of the articles of merger.~~

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

31 **SECTION 55.** G.S. 59-1051(a) reads as rewritten:

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

34 (1) The name of the converting business entity, its type of business entity,
35 and the state or country whose laws govern its organization and
36 internal affairs;

37 (2) The name of the resulting domestic limited partnership into which the
38 converting business entity shall convert;

39 (3) The terms and conditions of the conversion; and

40 (4) The manner and basis for converting the interests in the converting
41 business entity into interests, obligations, or securities of the resulting
42 domestic limited partnership or into cash or other property in whole or
43 in part.

44 The plan of conversion may contain other provisions relating to the conversion.

1 The provisions of the plan of conversion, other than the provisions required by
2 subdivisions (1) and (2) of this subsection, may be made dependent on facts objectively
3 ascertainable outside the plan of conversion if the plan of conversion sets forth the
4 manner in which the facts will operate upon the affected provisions. The facts may
5 include (i) statistical or market indices, market prices of any security or group of
6 securities, interest rates, currency exchange rates, or similar economic or financial data;
7 (ii) a determination or action by the converting business entity or by any other person,
8 group, or body; or (iii) the terms of, or actions taken under, an agreement to which the
9 converting business entity is a party, or any other agreement or document."

10 **SECTION 56.** G.S. 59-1061(a) reads as rewritten:

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

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

23 The plan of conversion may contain other provisions relating to the conversion.

24 The provisions of the plan of conversion, other than the provisions required by
25 subdivisions (1) and (2) of this subsection, may be made dependent on facts objectively
26 ascertainable outside the plan of conversion if the plan of conversion sets forth the
27 manner in which the facts will operate upon the affected provisions. The facts may
28 include (i) statistical or market indices, market prices of any security or group of
29 securities, interest rates, currency exchange rates, or similar economic or financial data;
30 (ii) a determination or action by the converting domestic limited partnership or by any
31 other person, group, or body; or (iii) the terms of, or actions taken under, an agreement
32 to which the converting domestic limited partnership is a party, or any other agreement
33 or document."

34 **SECTION 57.** G.S. 59-1071(a) reads as rewritten:

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

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

- 1 (5) If the surviving business entity is a domestic limited partnership, any
2 amendments to its certificate of limited partnership that are to be made
3 in connection with the merger.

4 The plan of merger may contain other provisions relating to the merger.

5 The provisions of the plan of merger, other than the provisions referred to in
6 subdivisions (1), (2), and (5) of this subsection, may be made dependent on facts
7 objectively ascertainable outside the plan of merger if the plan of merger sets forth the
8 manner in which the facts will operate upon the affected provisions. The facts may
9 include (i) statistical or market indices, market prices of any security or group of
10 securities, interest rates, currency exchange rates, or similar economic or financial data;
11 (ii) a determination or action by the domestic limited partnership or by any other person,
12 group, or body; or (iii) the terms of, or actions taken under, an agreement to which the
13 domestic limited partnership is a party, or any other agreement or document."

14 **SECTION 58.** G.S. 59-1072(a) reads as rewritten:

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

19 (1) ~~The plan of merger;~~

20 (2) For each merging business entity, its name, type of business entity, and
21 the state or country whose laws govern its organization and internal
22 ~~affairs;~~ affairs.

23 (3) The name of the ~~surviving-merging~~ business entity that will survive the
24 merger and, if the surviving business entity is not authorized to
25 transact business or conduct affairs in this State, a designation of its
26 mailing address and a commitment to file with the Secretary of State a
27 statement of any subsequent change in its mailing ~~address;~~ address.

28 (3a) If the surviving business entity is a domestic limited partnership, any
29 amendment to its certificate of limited partnership as provided in the
30 plan of merger.

31 (4) A statement that the plan of merger has been approved by each
32 merging business entity in the manner required by ~~law;~~ and law.

33 (5) ~~The effective date and time of the merger if it is not to be effective at~~
34 ~~the time of filing of the articles of merger.~~

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

- 1 **SECTION 59.** G.S. 59-1073(a)(5) reads as rewritten:
2 "(5) If a domestic limited partnership is the surviving business entity, its
3 certificate of limited partnership shall be amended to the extent
4 provided in the ~~plan~~articles of merger;"
5 **SECTION 60.** This act becomes effective October 1, 2005.