

HOUSE No. 2774

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo M. Scaccia

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act making amendments to the Massachusetts business corporation act.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>	<i>1/21/2011</i>
<i>William F. Galvin</i>	<i>Secretary of the Commonwealth</i>	

HOUSE No. 2774

By Mr. Scaccia of Boston, a petition (accompanied by bill, House, No. 2774) of Angelo M. Scaccia and William F. Galvin relative to business corporations. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act making amendments to the Massachusetts business corporation act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1.40 of chapter 156D is hereby amended by striking out the word
2 “stock” in each place where it appears and inserting in place thereof the following word:- shares.

3 SECTION 2. Section 1.40 of Chapter 156D is hereby further amended by adding at the
4 end of subsection (a) the following paragraph:

5 “Voting power” means the current power to vote in the election of directors.

6 SECTION 3. Section 2.02(b)(4) of Chapter 156D is deleted in its entirety and replaced
7 with the following:—

8 (4) A provision eliminating or limiting the personal liability of a director to the
9 corporation or its shareholders for monetary damages for breach of fiduciary duty as a director
10 notwithstanding any provision of law imposing such liability; but the provision shall not
11 eliminate or limit the liability of a director (i) for any breach of the director’s duty of loyalty to
12 the corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve

intentional misconduct or a knowing violation of law, (iii) for improper distributions under section 6.40, or (iv) for any transaction from which the director derived an improper personal benefit.

SECTION 4. Section 2.05 of chapter 156D is hereby amended by striking out the word “by-laws” in each place where it appears and inserting in place thereof the following word:- bylaws.

SECTION 5. Section 2.05 of chapter 156D is hereby further amended by striking out the word "and" in line 19 and inserting in place thereof the following word:- or.

SECTION 6. Section 3.02 of chapter 156D is hereby amended by striking out the word “stock” in each place where it appears and inserting in place thereof the following word:- shares.

SECTION 7. Clause (1) of subsection (a) of section 4.01 of chapter 156D is hereby amended by striking out its text in its entirety and inserting in place thereof the following words:- shall contain the word “corporation,” “incorporated,” “company” or “limited” or the abbreviation “corp,” “inc,” “co,” or “ltd,” or words or abbreviations of like import in another language; and

SECTION 8. Section 5.01 of Chapter 156D is deleted in its entirety and replaced by the following:—

Section 5.01. REGISTERED OFFICE AND REGISTERED AGENT

Each corporation shall continuously maintain in the commonwealth:

(1) a registered office that may, but need not, be the same as any of its places of business; and

(2) a registered agent, who may be any of the following individuals or entities whose business office is also the registered office of the corporation:

(i) an individual, including the secretary or another officer of the corporation;

(ii) a domestic corporation or not-for-profit domestic corporation;

(iii) a foreign corporation or not-for-profit foreign corporation qualified to do business in this commonwealth; or

(iv) an other entity.

SECTION 9. Section 6.02 of chapter 156D is hereby amended by striking out the word “recision” in line 40, and inserting in place thereof the following word:- rescission.

SECTION 10. Section 6.23(b) of Chapter 156D is deleted in its entirety and replaced by the following:—

(b) Shares of 1 class or series shall not be issued as a share dividend in respect of shares of another class or series unless (1) the articles of organization so authorize, (2) the holders of shares holding the right to cast a majority of all the votes entitled to be cast by the class or series to be issued approve the issue, or (3) there are no outstanding shares of the class or series to be issued. In addition, shares of a class or series having preference over another class or series with respect to distributions, including dividends and distributions upon the dissolution of the corporation, shall not be issued as a share dividend in respect of shares of such other class or series if there are at the time any outstanding shares of any third class or series as to which the shares then to be issued have a right with respect to distributions which is prior, superior or substantially equal unless (1) the articles of organization so authorize, or (2) the holders of shares

holding the right to cast a majority of all the votes entitled to be cast by the outstanding shares of such third class or series approve the issue.

SECTION 11. Section 6.30(a) of Chapter 156D is deleted in its entirety and replaced by the following:—

(a) The shareholders of a corporation shall not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of organization so provide.

SECTION 12. Section 7.04(d) of Chapter 156D is deleted in its entirety and replaced by the following:—

(d) If (1) this chapter requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, or (2) action is taken by less than unanimous written consent of the voting shareholders, the corporation shall give its nonvoting shareholders or its nonconsenting voting shareholders, as the case may be, written notice of the action not more than 7 days after written consents sufficient to take the action have been delivered to the corporation. The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this chapter, would have been required to be sent to nonvoting shareholders or to voting shareholders, as the case may be, in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(e) The notice requirements in subsection (d) shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, provided that this subsection shall not be deemed to

limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

SECTION 13. Section 7.07(c) of Chapter 156D is deleted in its entirety and replaced with the following:—

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the record date fixed for the original meeting.

SECTION 14. Section 7.08 of chapter 156D is hereby amended by striking out the word "stockholder" in line 17, and inserting in place thereof the following word:- shareholder.

SECTION 15. Section 7.08 of chapter 156D is hereby further amended by striking out the word "stockholder" in line 23, and inserting in place thereof the following word:- shareholder.

SECTION 16. Section 7.27(b) of Chapter 156D is deleted in its entirety and replaced by the following:—

(b) If any provision of this chapter requires the affirmative vote of more than a majority of all the votes entitled to be cast on a matter by any voting group, the articles of organization may provide that action may be taken by the affirmative vote of a lesser proportion than the chapter specifies, but not less than a majority of all the votes entitled to be cast on the matter by the voting group.

SECTION 17. Section 7.44(a) of Chapter 156D is deleted in its entirety and replaced with the following:—

(a) A derivative proceeding shall be dismissed by the court on motion by the corporation if the court finds that either: (1) 1 of the groups specified in subsections (b)(1) and (2) or (f) has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation; or (2) shareholders specified in subsection (b)(3) have determined that the maintenance of the derivative proceeding is not in the best interests of the corporation.

SECTION 18. Section 7.44(b)(3) of Chapter 156D is deleted in its entirety and replaced by the following:—

(3) the affirmative vote of a majority of all the votes entitled to be cast on the matter, not including the votes cast by holders of shares owned by or voted under the control of a shareholder or related person who has or had a beneficial financial interest in the act or omission complained of or other interest therein that would reasonably be expected to exert an influence on that shareholder's or related person's judgment if called upon to vote in the determination.

SECTION 19. Section 7.44(e) of Chapter 156D is deleted in its entirety and replaced with the following:—

(e) If a majority of the board of directors does not consist of independent directors at the time the determination by independent directors is made, the corporation shall have the burden of proving that the requirements of subsection (a) have been met and that the determination that maintenance of the derivative proceeding is not in the best interests of the corporation was reasonable and principled. If a majority of the board of directors consists of independent directors at the time the determination is made or if the determination is made by shareholders pursuant to clause (3) of subsection (b) or is made pursuant to subsection (f), the plaintiff shall

have the burden of proving that the requirements of subsection (a) have not been met and, if the determination is made by a group specified in clauses (1) or (2) of subsection (b), that the independent directors, in making the determination, have not met the standard set forth in Section 8.30.

SECTION 20. Section 8.06 of chapter 156D is hereby amended by striking out the word “stock” in line 38 and inserting in place thereof the following word:- shares.

SECTION 21. Sections 8.06(c)(1) and (2) are deleted in their entirety and replaced by the following:—

(c) (1) Subsection (b) shall apply to every public corporation, whether or not notice of an annual meeting of the public corporation has been given on or prior to the effective date of this chapter, unless (i) the board of directors of the public corporation, or (ii) the holders of shares of each class of shares outstanding holding the right to cast two-thirds of all the votes entitled to be cast by the class, and the holders of two-thirds of the shares of each outstanding class of otherwise non-voting shares, each voting as a separate voting group, shall at a meeting duly called for the purpose of the vote adopt a vote providing that the corporation elects to be exempt from the provisions of subsection (b). Upon adoption of the vote, subsection (b) shall, unless otherwise provided in the vote, become immediately ineffective with respect to such public corporation and the provisions of section 8.05 shall become immediately effective with respect to the corporation as soon as subsection (b) of this section is no longer effective.

(2) In the event that any public corporation shall so elect by vote of the board of directors to be exempt pursuant to clause (1) the public corporation may at any time thereafter adopt a vote of its board of directors electing to be subject to subsection (b). In the event that any public

corporation shall so elect by the shareholders to be exempt pursuant to clause (1) of this subsection the public corporation may at any time thereafter by vote of the holders of the shares of all classes of stock outstanding, voting as a single voting group, holding the right to cast two-thirds of all the votes entitled to be cast by all classes, elect to be subject to the provisions of subsection (b). Upon adoption of the vote, subsection (b), unless otherwise provided in the vote, shall immediately become effective.

SECTION 22. Section 8.06(d) of Chapter 156D is deleted in its entirety and replaced by the following:—

(d) Notwithstanding anything to the contrary in this chapter or in the articles of organization or bylaws of any public corporation, in the case of directors of a public corporation whose terms are staggered pursuant to subsection (b), shareholders may, by the vote of the holders of shares having the right to cast a majority of all the votes entitled to be cast by the holders of all classes of stock outstanding and entitled to vote in the election of directors, voting as a single voting group, effect the removal of any director or directors or the entire board of directors only for cause.

SECTION 23. Section 8.10 of chapter 156D is hereby amended by striking out the word “by-laws” in line 12, and inserting in place thereof the following word:- bylaws.

SECTION 24. Section 8.21 of Chapter 156D is deleted in its entirety and replaced by the following:—

Section 8.21. ACTION WITHOUT MEETING

(a) Unless the articles of organization or bylaws provide that action required or permitted by this chapter to be taken by the directors may be taken only at a meeting, the action may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation or as the corporations directs for inclusion in the corporate records.

(b) Action taken under this section is effective when one or more consents signed by all the directors are delivered as provided in subsection (a), unless the consent specifies a different effective date.

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

SECTION 25. Section 8.25(e) of Chapter 156D is deleted in its entirety and replaced by the following:—

(e) A committee may not, however:

(1) authorize distributions, including in connection with the reacquisition of shares, except according to a formula or method prescribed by the board of directors;

(2) adopt or submit to shareholders action that this chapter requires be approved by shareholders;

(3) change the number of the board of directors, remove directors from office or fill vacancies on the board of directors;

(4) amend articles of organization pursuant to section 10.02; or

(5) adopt, amend or repeal bylaws.

SECTION 26. Section 8.31(d) of Chapter 156D is deleted in its entirety and replaced by the following:—

(d) For purposes of clause (2) of subsection (a), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of all the votes entitled to be cast on the matter entitled to be counted under this subsection. The votes of shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and of shares owned by or voted under the control of an entity described in clause (1) of subsection (b), may not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction under clause (2) of subsection (a). The vote of these shares, however, is counted in determining whether the transaction is approved under other sections of this chapter. Shares having the right to cast a majority of all the votes entitled to be counted in a vote on a transaction under this subsection, whether or not present, constitutes a quorum for the purpose of taking action under this section.

SECTION 27. Section 8.32 of chapter 156D is hereby amended by striking out the words “the obligation of a director of, the corporation” in line 3, and inserting in place thereof the following words:- the obligation of, a director of the corporation.

SECTION 28. Section 8.45 of chapter 156D is hereby amended by striking out the words “clerk or an assistant clerk” in line 6, and inserting in place thereof the following words:- secretary or an assistant secretary.

SECTION 29. Section 8.54 of chapter 156D is hereby amended by striking out the words “sections 8.51 or 8.51” in lines 19-20, and inserting in place thereof the following words:- section 8.51.

SECTION 30. Section 8.58 of chapter 156D is hereby amended by striking out the words "articles of incorporation" in line 20, and inserting in place thereof the following words:- articles of organization.

SECTION 31. Section 8.58 of chapter 156D is hereby further amended by striking out the words "clause (3) of subsection (a) of section 11.07" in line 24, and inserting in place thereof the following words:- clause (4) of subsection (a) of section 11.07.

SECTION 32. Section 9.21(5) of Chapter 156D is deleted in its entirety and replaced by the following:—

(5) Unless (1) a greater percentage vote is required by the articles of organization, pursuant to subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the board of directors, acting pursuant to paragraph (3) of this section, or (2) the articles provide for a lesser percentage vote, in accordance with subsection (b) of section 7.27, approval of the plan of domestication requires the affirmative vote of two-thirds of all the votes entitled generally to be cast on the plan by the articles of organization, and in addition the affirmative vote of two-thirds of all the votes entitled to be cast by any voting group entitled to vote separately on the plan by this chapter, by the articles, by the bylaws, or by action of the board of directors pursuant to paragraph (3) of this section.

SECTION 33. Section 9.31(5) of Chapter 156D is deleted in its entirety and replaced by the following:—

(5) Unless (1) a greater percentage vote is required by the articles of organization, pursuant to section 7.27(a), by the bylaws, pursuant to section 10.21, or by the board of directors, acting pursuant to paragraph (3) of this section, or (2) the articles provide for a lesser percentage

224 vote, in accordance with subsection (b) of section 7.27, approval of the plan of nonprofit
225 conversion requires the affirmative vote of two-thirds of all the votes entitled generally to be cast
226 on the plan by the articles of organization, and in addition the affirmative vote of two-thirds of
227 all the votes entitled to be cast by any voting group entitled to vote separately on the plan by this
228 chapter, by the articles, by the bylaws, or by action of the board of directors pursuant to
229 paragraph (3) of this section.

230 SECTION 34. Section 9.52 of chapter 156D is hereby amended by striking out the words
231 "organizational documents" in lines 16-17, and inserting in place thereof the following words:-
232 organic documents.

233 SECTION 35. Section 9.52(5) of Chapter 156D is deleted in its entirety and replaced by
234 the following:—

235 (5) Unless (i) a greater percentage vote is required by the articles of organization,
236 pursuant to section 7.27(a), by the bylaws, pursuant to section 10.21, or by the board of directors,
237 acting pursuant to paragraph (3) of this section, or (ii) the articles provide for a lesser percentage
238 vote, in accordance with subsection (b) of section 7.27, approval of the plan of entity conversion
239 requires the affirmative vote of two-thirds of all the votes entitled generally to be cast on the plan
240 by the articles of organization, and in addition the affirmative vote of two-thirds of all the votes
241 entitled to be cast by any voting group entitled to vote separately on the plan by this chapter, by
242 the articles, by the bylaws, or by action of the board of directors pursuant to paragraph (3) of this
243 section.

244 SECTION 36. Section 9.52(6) of Chapter 156D is amended by deleting clause (i) thereof
245 in its entirety and replacing it with the following:—

(i) would have a right to vote as a separate voting group on a provision in the plan that, if contained in a proposed amendment to articles of organization, would require action by separate voting groups under section 10.04; provided, however, that receipt of interests in another entity in exchange for shares pursuant to a plan of conversion shall not entitle holders of the exchanged class or series to vote as a separate voting group based solely on the grounds that they were receiving interests in a different issuer; or

SECTION 37. Section 9.53 of chapter 156D is hereby amended by striking out the words “any other desired provisions that section 2.02 subsection (b) of permits” in lines 34-35, and inserting in place thereof the following words:- any other desired provisions that subsection (b) of section 2.02 permits.

SECTION 38. Clause (5) of subsection (a) of section 9.55 of chapter 156D is hereby amended by striking out the words "organizational document" in each place it appears and inserting in place thereof the following words:- organic document.

SECTION 39. Section 10.03(e) of Chapter 156D is deleted in its entirety and replaced by the following:—

(e) Unless (1) a greater percentage vote is required by the articles of organization, pursuant to subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the board of directors, acting pursuant to subsection (c) of section 10.03, or (2) the articles provide for a lesser percentage vote, in accordance with subsection (b) of section 7.27, approval of the amendment requires:

(1) except as otherwise provided in clause (2), the affirmative vote of two-thirds of all the votes entitled generally to be cast on the amendment by the articles of organization, and in

addition the affirmative vote of two-thirds of all the votes entitled to be cast by any voting group entitled to vote separately on the amendment by this chapter, by the articles, by the bylaws, or by action of the board of directors pursuant to subsection (c) of section 10.03, or

(2) if the amendment relates solely to (A) an increase or reduction in the corporation's capital stock of any class or series then authorized, (B) a change in its authorized shares into a different number of shares or the exchange thereof pro rata for a different number of shares of the same class or series, or (C) a change of its corporate name, the required vote shall be a majority rather than two-thirds, except that if the vote of a separate voting group is required under section 10.04, the required vote of that voting group shall remain two-thirds.

If the amendment to the articles of organization changes a quorum or voting requirement for action by the shareholders, approval by the shareholders shall satisfy not only the quorum and voting requirement then applicable for amendment of the articles but also the particular quorum or voting requirement being changed.

SECTION 40. Section 10.04(a) is hereby amended by inserting at the beginning thereof the following:—

(a) Subject to section 10.05,

SECTION 41. Section 10.21(c) of Chapter 156D is deleted in its entirety and replaced by the following:—

(c) Any initial bylaw adopted by the incorporators or board of directors, and any bylaw subsequently adopted or amended by the shareholders, that provides for (i) a greater or lesser quorum requirement for shareholders than is provided by this chapter or (ii) a greater voting

requirement for shareholders (or for voting groups of shareholders) than is provided by this chapter may not be amended or repealed by the board of directors unless the bylaw otherwise provides.

SECTION 42. Section 11.01 of chapter 156D is hereby amended by striking out the words "merger under a plan of merger" in line 9, and inserting in place thereof the following word:- merge under a plan of merger.

SECTION 43. Section 11.03(e) of Chapter 156D is deleted in its entirety.

SECTION 44. Sections 11.04(5) through 11.04(8), inclusive, of Chapter 156D are deleted in their entirety and replaced by the following:—

(5) Unless (i) a greater percentage vote is required by the articles of organization, pursuant to subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the board of directors, acting pursuant to clause (3) of this section, or (ii) the articles provide for a lesser percentage vote, in accordance with subsection (b) of section 7.27, approval of the plan of merger or share exchange requires the affirmative vote of two-thirds of all the votes entitled generally to be cast on the plan by the articles of organization, and in addition the affirmative vote of two-thirds of all the votes entitled to be cast by any voting group entitled to vote separately on the plan by this chapter, by the articles, by the bylaws, or by action of the board of directors pursuant to paragraph (3) of this section 11.04.

(6) Except as otherwise expressly provided in the articles of organization, voting by a class or series of shares as a separate voting group is required on a plan of merger or share exchange if the plan contains a provision that, if contained in a proposed amendment to articles of organization, would entitle such class or series to vote as a separate voting group on the

311 proposed amendment under section 10.04; provided however, that (i) receipt of shares of a class
312 or series of shares in exchange for shares pursuant to a plan of merger or share exchange
313 involving each outstanding class and series shall not entitle holders of the exchanged class or
314 series to vote as a separate voting group based solely on the grounds that they are receiving
315 shares of a different issuer or that clauses (1) or (5) of section 10.04 would apply if the change
316 were contained in a proposed amendment to the articles of organization, and (ii) if the proposed
317 provision would, as an amendment, entitle two or more classes or series of shares to vote
318 separately but would affect those classes or series in the same or a substantially similar way, the
319 shares of all such classes or series shall, unless the articles of organization provide otherwise,
320 vote together as a single voting group on the plan.

321 (7) Unless the articles of organization otherwise provide, approval by the corporation's
322 shareholders of a plan of merger or share exchange is not required if:

323 (i) the corporation will survive the merger or is the acquiring corporation in a share
324 exchange;

325 (ii) except for amendments permitted by section 10.05, its articles of organization will
326 not be changed;

327 (iii) each shareholder of the corporation whose shares were outstanding immediately
328 before the effective date of the merger or share exchange will hold the same number of shares,
329 with identical preferences, limitations, and relative rights, immediately after the effective date of
330 change; and

331 (iv) in the case of a plan of merger, the shares of any class or series of shares of such
332 corporation to be issued or delivered pursuant to the plan of merger does not exceed 20 per cent

of the shares of such corporation of the same class or series outstanding immediately before the effective date of the merger.

(8) If as a result of a merger or share exchange 1 or more shareholders of a domestic corporation would become subject to owner liability for the debts, obligations or liabilities of any other person or entity, approval of the plan of merger or share exchange shall require the execution, by each such shareholder, of a separate written consent to become subject to such owner liability.

SECTION 45. Section 11.05(a) of Chapter 156D is deleted in its entirety and replaced by the following:—

(a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation, and a foreign parent corporation that owns shares of a domestic subsidiary corporation, in each case that carry at least 90 per cent of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power, may merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without the approval of the board of directors or shareholders of the subsidiary unless the laws of the foreign jurisdiction or jurisdictions under which the parent or the subsidiary is organized or the articles of organization of any of the corporations otherwise provide.

SECTION 46. Section 11.06 of chapter 156D is hereby amended by striking out the words "organizational documents" in line 28, and inserting in place thereof the following words:-
organic documents.

SECTION 47. Section 11.07 of chapter 156D is hereby amended by striking out the words "organizational documents" in line 18, and inserting in place thereof the following words:-
organic documents.

SECTION 48. Section 12.01(a)(3) of Chapter 156D is deleted in its entirety and replaced by the following:—

(3) transfer any or all of its assets to one or more corporations or other entities all of the shares or interests of which are owned, directly or indirectly, by the corporation; or

SECTION 49. Section 12.02(e) of Chapter 156D is deleted in its entirety and replaced by the following:—

(e) Unless (1) a greater percentage vote is required by the articles of organization, pursuant to subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the board of directors, acting pursuant to subsection (b) of this section 12.02, or (2) the articles provide for a lesser percentage vote, in accordance with subsection (b) of section 7.27, approval of the transaction requires the affirmative vote of two-thirds of all the votes entitled generally to be cast on the matter by the articles of organization, and in addition the affirmative vote of two-thirds of all the votes entitled to be cast by any voting group entitled to vote separately on the matter by the articles, by the bylaws, or by action of the board of directors pursuant to subsection (b) of this section 12.02.

SECTION 50. Section 13.01 of Chapter 156D is hereby amended by deleting therefrom the definition of "marketable securities" and by substituting the following new definition in its place:—

“Marketable securities”,

(1) securities held of record by, or by financial intermediaries or depositories on behalf of, at least 1,000 persons and which were

(i) listed on a national securities exchange, or

(ii) listed on a regional securities exchange or traded in an interdealer quotation system or other trading system and had at least 250,000 outstanding shares, exclusive of shares held by officers, directors and affiliates, which have a market value of at least \$5,000,000; or

(2) securities issued by an open end management investment company registered under the Investment Company Act of 1940 and which may be redeemed at the option of the holder at net asset value.

SECTION 51. Section 13.02(a) of Chapter 156D is deleted in its entirety and replaced by the following:—

(a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of his shares in the event of, any of the following corporate or other actions:

(1) consummation of a plan of merger to which the corporation is a party if shareholder approval is required for the merger by section 11.04 or the articles of organization or if the corporation is a subsidiary that is merged with its parent under section 11.05, unless, in either case, (A) all shareholders are to receive only cash for their shares in amounts proportionate to what they would receive upon a dissolution of the corporation or, in the case of shareholders already holding marketable securities in the merging corporation, only marketable securities of the surviving corporation, marketable securities of the parent in the case of a merger with a

395 subsidiary and/or cash and (B) no director, officer or controlling shareholder has a direct or
396 indirect material financial interest in the merger other than (i) in his capacity as a shareholder of
397 the corporation, (ii) in his capacity as a director, officer, employee or consultant of either the
398 merging or the surviving corporation or of any affiliate of the surviving corporation if his
399 financial interest is pursuant to bona fide arrangements with either corporation or any such
400 affiliate, or (iii) in any other capacity so long as the shareholder owns not more than five percent
401 of the voting shares of all classes and series of the corporation in the aggregate;

402 (2) consummation of a plan of share exchange in which his shares are included unless:
403 (A) both his existing shares and the shares, obligations or other securities to be acquired are
404 marketable securities; and (B) no director, officer or controlling shareholder has a direct or
405 indirect material financial interest in the share exchange other than (i) in his capacity as a
406 shareholder of the corporation whose shares are to be exchanged, (ii) in his capacity as a director,
407 officer, employee or consultant of either the corporation whose shares are to be exchanged or the
408 acquiring corporation or of any affiliate of the acquiring corporation if his financial interest is
409 pursuant to bona fide arrangements with either corporation or any such affiliate, or (iii) in any
410 other capacity so long as the shareholder owns not more than five percent of the voting shares of
411 all classes and series of the corporation whose shares are to be exchanged in the aggregate;

412 (3) consummation of a sale or exchange of all, or substantially all, of the property of the
413 corporation if the sale or exchange is subject to section 12.02, or a sale or exchange of all, or
414 substantially all, of the property of a corporation in dissolution, unless:

415 (i) his shares are then redeemable by the corporation at a price not greater than the cash
416 to be received in exchange for his shares; or

(ii) the sale or exchange is pursuant to court order; or

(iii) in the case of a sale or exchange of all or substantially all the property of the corporation subject to section 12.02, approval of shareholders for the sale or exchange is conditioned upon the dissolution of the corporation and the distribution in cash or, if his shares are marketable securities, in marketable securities and/or cash, of substantially all of its net assets, in excess of a reasonable amount reserved to meet unknown claims under section 14.07, to the shareholders in accordance with their respective interests within one year after the sale or exchange and no director, officer or controlling shareholder has a direct or indirect material financial interest in the sale or exchange other than (i) in his capacity as a shareholder of the corporation, (ii) in his capacity as a director, officer, employee or consultant of either the corporation or the acquiring corporation or of any affiliate of the acquiring corporation if his financial interest is pursuant to bona fide arrangements with either corporation or any such affiliate, or (iii) in any other capacity so long as the shareholder owns not more than five percent of the voting shares of all classes and series of the corporation in the aggregate;

(4) an amendment of the articles of organization that materially and adversely affects rights in respect of a shareholder's shares because it:

(i) creates, alters or abolishes the stated rights or preferences of the shares with respect to distributions or to dissolution, including making non-cumulative in whole or in part a dividend theretofore stated as cumulative;

(ii) creates, alters or abolishes a stated right in respect of conversion or redemption, including any provision relating to any sinking fund or purchase, of the shares;

438 (iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or
439 other securities;

440 (iv) excludes or limits the right of the holder of the shares to vote on any matter, or to
441 cumulate votes, except as such right may be limited by voting rights given to new shares then
442 being authorized of an existing or new class; or

443 (v) reduces the number of shares owned by the shareholder to a fraction of a share if the
444 fractional share so created is to be acquired for cash under section 6.04;

445 (5) an amendment of the articles of organization or of the bylaws or the entering into by
446 the corporation of any agreement to which the shareholder is not a party that adds restrictions on
447 the transfer or registration of transfer of any outstanding shares held by the shareholder or
448 amends any pre-existing restrictions on the transfer or registration of transfer of his shares in a
449 manner which is materially adverse to the ability of the shareholder to transfer his shares;

450 (6) any corporate action taken pursuant to a shareholder vote to the extent the articles of
451 organization, bylaws or a resolution of the board of directors provides that voting or nonvoting
452 shareholders are entitled to appraisal;

453 (7) consummation of a conversion of the corporation to nonprofit status pursuant to
454 subdivision B of PART 9; or

455 (8) consummation of a conversion of the corporation into a form of other entity pursuant
456 to subdivision D of PART 9.

457 (9) consummation of a domestication if the shareholder would have had appraisal rights
458 if the transaction had been effected as a merger.

459 SECTION 52. Section 13.02(b) of Chapter 156D is deleted in its entirety and replaced
460 with the following:—

461 (b) Except as otherwise provided in subsection (a) of section 13.03, in the event of
462 corporate action specified in clauses (1), (2), (3), (7), (8) or (9) of subsection (a), a shareholder
463 may assert appraisal rights only if he seeks them with respect to all of his shares of whatever
464 class or series.

465 SECTION 53. Section 13.21 of chapter 156D is hereby amended by striking out the word
466 "chapter" in line 13, and inserting in place thereof the following word:- PART.

467 SECTION 54. Section 13.22 of chapter 156D is hereby amended by striking out the word
468 "chapter" in line 38, and inserting in place thereof the following word:- PART.

469 SECTION 55. Section 13.25 of chapter 156D is hereby amended by striking out the word
470 "deserved" in line 31, and inserting in place thereof the following word:- described.

471 SECTION 56. Section 13.31 of chapter 156D is hereby amended by striking out the word
472 "chapter" in line 20, and inserting in place thereof the following word:- PART.

473 SECTION 57. Section 14.30 of chapter 156D is hereby amended by striking out the word
474 “stock” in line 11, and inserting in place thereof the following word:- shares.

475 SECTION 58. Section 14.34 of chapter 156D is hereby amended by striking out the word
476 “stock” in line 24, and inserting in place thereof the following word:- shares.

477 SECTION 59. Section 15.01 of chapter 156D is hereby amended by inserting after the
478 word "with" in line 29, the following word:- the.

479 SECTION 60. Section 15.03 of chapter 156D is hereby amended by striking out the word
480 "agents" in line 14, and inserting in place thereof the following word:- agent's.

481 SECTION 61. Section 15.04 of chapter 156D is hereby amended by inserting after the
482 word "information" in line 23, the following word:- in.

483 SECTION 62. Section 15.05 of chapter 156D is hereby amended by striking out the word
484 "corporations" in line 12, and inserting in place thereof the following word:- corporation's.

485 SECTION 63. Section 15.05 of chapter 156D is hereby further amended by striking out
486 the word "stockholders" in line 13, and inserting in place thereof the following word:-
487 shareholders.

488 SECTION 64. Section 15.07 of Chapter 156D is deleted in its entirety and replaced by
489 the following:—

490 Section 15.07. REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN
491 CORPORATION

492 Each foreign corporation authorized to transact business in the commonwealth shall
493 continuously maintain in the commonwealth:

494 (1) a registered office that may, but need not, be the same as any of its places of
495 business; and

496 (2) a registered agent, who may be any of the following individuals or entities whose
497 business office is also the registered office of the foreign corporation:

(i) an individual who resides in the commonwealth and whose business office is identical with the registered office;

(ii) a domestic corporation or not-for-profit domestic corporation;

(iii) a foreign corporation or not-for-profit foreign corporation qualified to do business in this commonwealth; or

(iv) an other entity.

SECTION 65. Section 15.30 of chapter 156D is hereby amended by inserting after the words "or chapter 63" in line 6, the following words:- of the General Laws.

SECTION 66. Section 15.31 of chapter 156D is hereby amended by striking out the word "corporations" in line 13, and inserting in place thereof the following word:- corporation's.

SECTION 67. Section 15.31 of chapter 156D is hereby further amended by striking out the word "corporations" in line 19, and inserting in place thereof the following word:- corporation's.

SECTION 68. Section 15.32 of chapter 156D is hereby amended by striking out the word "corporations" in line 10, and inserting in place thereof the following word:- corporation's.

SECTION 69. Section 16.20(c) of Chapter 156D is deleted in its entirety and replaced by the following:—

(c) Unless otherwise provided in the articles of organization or bylaws or unless the annual financial statements of the corporation shall have previously been delivered to the shareholders, a corporation shall deliver a written notice of the availability of its annual financial

518 statements to each shareholder before the earlier to occur of the annual meeting of shareholders
519 or 120 days after the close of the fiscal year.

520 SECTION 70. Section 16.21 of chapter 156D is hereby amended by striking out the title
521 “BY-LAW AMENDMENTS” in line 1, and inserting in place thereof the following title:-
522 BYLAW AMENDMENTS.