

HOUSE No. 2878

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>1/18/2013</i>
<i>William F. Galvin</i>	<i>Secretary of the Commonwealth</i>	
<i>David M. Nangle</i>	<i>17th Middlesex</i>	<i>1/18/2013</i>

HOUSE No. 2878

By Mr. Scaccia of Boston, a petition (accompanied by bill, House, No. 2878) of Angelo M. Scaccia, William F. Galvin and David M. Nangle for legislation to further regulate business corporations. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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 1.24(d)(1) of chapter 156D is hereby amended by deleting the
2 words “of the articles of correction” and inserting in their place the following words: on which
3 the articles of correction were filed.

4 SECTION 2. Section 1.26 of chapter 156D is hereby amended by deleting the words
5 “after the return of the document to” in the second sentence and inserting in their place the
6 following words: after the secretary of state has given the notice required by section 1.25(c) in.

7 SECTION 3. Section 1.40(a) of chapter 156D is hereby amended as follows:

8 By deleting the word “stock” wherever it appears and inserting in its place the following
9 word: shares;

10 By inserting the words “and series” after the words “shares of all classes” in the
11 definition of “Authorized shares”;

12 By inserting the words “any or all of” in the first sentence of the definition of
13 “Distribution” after the words “benefit of” and before the words “its shareholders”;

14 By deleting the words “filed organizational document” in the definition of “Nonfiling
15 entity” and inserting in their place the following words: public organic document;

16 By inserting the words “or a subsequent statement of change under section 5.02” in the
17 definition of “Principal office” after the words “annual report” and before the word “where”;

18 By deleting the phrase “appointed under chapter 156B unless the corporation has also
19 appointed a ‘secretary’ or the context otherwise requires” in the definition of “Secretary” and
20 inserting in its place the following phrase: unless the corporation has appointed another person as
21 “clerk” to perform the functions of “secretary”;

22 And by adding at the end of Section 1.40(a) the following paragraph:

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

24 SECTION 4. Section 1.41(e) of chapter 156D is hereby amended by deleting the
25 following words: “shown in its most recent annual report.”

26 SECTION 5. Section 2.02 (b)(1)(iii) of chapter 156D is hereby amended by deleting the
27 words “or any class thereof.”

28 SECTION 6. Section 2.02 (b)(1)(iv) of chapter 156D is hereby amended by inserting the
29 words “or series” after the words “or classes” and before the words “of shares.”

30 SECTION 7. Section 2.02(b)(4) of chapter 156D is deleted in its entirety and replaced by
31 the following:

32 (4) A provision eliminating or limiting the personal liability of a director to the
33 corporation or its shareholders for monetary damages for breach of fiduciary duty as a director
34 notwithstanding any provision of law imposing such liability; but the provision shall not
35 eliminate or limit the liability of a director (i) for any breach of the director’s duty of loyalty to
36 the corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve
37 intentional misconduct or a knowing violation of law, (iii) for improper distributions under
38 section 6.40, or (iv) for any transaction from which the director derived an improper personal
39 benefit.

40 SECTION 8. Section 2.05 of chapter 156D is hereby amended by deleting the word “by-
41 laws” in each place where it appears and inserting in its place the following word: bylaws.

42 SECTION 9. Section 2.05(a)(2) of chapter 156D is hereby amended as follows:

43 By deleting the words “the initial directors named in the articles of organization” and
44 inserting in their place the following quoted words: “the directors, president, treasurer and
45 secretary named in the articles of organization shall be the initial directors, president, treasurer
46 and secretary”; and

47 By deleting the words “shall be elected” and inserting in their place the following words:
48 may be elected to replace the initial president, treasurer and secretary.

49 SECTION 10. Section 2.05(c) of chapter 156D is hereby amended by deleting the word
50 “and” and inserting in its place the following word: or.

51 SECTION 11. Section 3.02(a)(6) of chapter 156D is hereby amended by deleting the
52 words “any other entity” and inserting in their place the following words: any other domestic
53 business corporation, any domestic nonprofit corporation, any foreign business or nonprofit
54 corporation or any other entity.

55

56 SECTION 12. Section 3.02(a)(12) of chapter 156D is hereby amended by deleting the
57 words “any other corporation or entity” and inserting in their place the following words: any
58 other domestic business corporation, domestic nonprofit corporation, foreign business or
59 nonprofit corporation or other entity.

60 SECTION 13. Section 3.02(b) of chapter 156D is hereby amended by deleting the word
61 “stock” in each place where it appears and inserting in its place the following word: shares.

62 SECTION 14. Section 4.01(a)(1) of chapter 156D is deleted in its entirety and replaced
63 by the following:

64 (1) shall contain the word “corporation,” “incorporated,” “company,” or “limited”
65 or the abbreviation “corp.,” “inc.,” “co.” or “ltd.,” or words or abbreviations of like
66 import in another language; and

67 SECTION 15. Section 5.01 of chapter 156D is deleted in its entirety and replaced by the
68 following:

69 Section 5.01. REGISTERED OFFICE AND REGISTERED AGENT

70 Each corporation shall continuously maintain in the commonwealth:

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

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

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

76 (ii) a domestic business corporation, a domestic nonprofit corporation or a domestic
77 other entity;

78 (iii) a foreign business corporation or a foreign nonprofit corporation authorized in either
79 case to transact business in this commonwealth; or

80 (iv) a foreign other entity authorized to transact business in this commonwealth.

81 SECTION 16. The second sentence of Section 6.01(a) of chapter 156D is deleted in its
82 entirety and is replaced by the following two sentences:

83 The articles of organization also shall, before the issuance of any shares of a class or
84 series, prescribe the number of authorized shares of the class or series and its distinguishing
85 designation, preferences, limitations and relative rights. All shares of a class or series must have
86 a distinguishing designation and preferences, limitations and relative rights that are identical with
87 those of other shares of the same class or series.

88 SECTION 17. Section 6.02(d) of chapter 156D is hereby amended by deleting the word
89 “recision” and inserting in its place the following word: rescission.

90 SECTION 18. Section 6.23(b) of chapter 156D is deleted in its entirety and replaced by
91 the following:

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

104 SECTION 19. Section 6.30(a) of Chapter 156D is deleted in its entirety and replaced by
105 the following:

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

108 SECTION 20. Section 6.40(f) of chapter 156D is hereby amended by deleting the words
109 “subordinated by agreement” and inserting in their place the following words: the indebtedness
110 is expressly made subordinate.

111 SECTION 21. Sections 6.41(f)(2) and (3) of chapter 156D are deleted in their entirety
112 and replaced by the following:

113 (2) in the case of a distribution in liquidation by a corporation in dissolution under Part
114 14, the later of (i) the date on which the effect of the challenged distribution would have been

115 measured under subsection (e) or (g) of section 6.40 if it had not been a distribution in
116 liquidation and (ii) 6 months after the end of the 3-year period referred to in subsection (d); or

117 (3) in the case of a distribution in liquidation by a corporation not in dissolution under
118 Part 14, as described in the second clause of the last sentence of subsection (h) of section 6.40,
119 three years after the date on which the effect of the challenged distribution would have been
120 measured under subsection (e) or (g) of section 6.40 if it had not been a distribution in
121 liquidation.

122 SECTION 22. Section 7.04(d) of chapter 156D is deleted in its entirety and replaced by
123 the following two subsections:

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

134 (e) The notice requirements in subsection (d) shall not delay the effectiveness of actions
135 taken by written consent, and a failure to comply with such notice requirements shall not
136 invalidate actions taken by written consent, provided that this subsection shall not be deemed to
137 limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely
138 affected by a failure to give such notice within the required time period.

139 SECTION 23. Section 7.07(c) of chapter 156D is hereby amended by deleting the words
140 “the date fixed for the original meeting” and inserting in their place the following words: the
141 record date fixed for the original meeting.

142 SECTION 24. Section 7.08(2)(i) of chapter 156D is hereby amended by deleting the
143 word “stockholder” and inserting in its place the following word: shareholder.

144 SECTION 25. Section 7.08(2)(iii) of chapter 156D is hereby amended by deleting the
145 word “stockholder” and inserting in its place the following word: shareholder.

146 SECTION 26. Section 7.27(b) of chapter 156D is deleted in its entirety and replaced by
147 the following:

148 (b) If any provision of this chapter requires the affirmative vote of more than a majority
149 of all the votes entitled to be cast on a matter by any voting group, the articles of organization

150 may provide that action may be taken by the affirmative vote of a lesser proportion than this
151 chapter specifies, but not less than a majority of all the votes entitled to be cast on the matter by
152 the voting group.

153 SECTION 27. Section 7.44(a) of chapter 156D is deleted in its entirety and replaced by
154 the following:

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

161 SECTION 28. Section 7.44(b)(3) of chapter 156D is deleted in its entirety and replaced
162 by the following:

163 (3) the affirmative vote of a majority of all the votes entitled to be cast on the matter at a
164 meeting at which a quorum exists, not including the votes cast by holders of shares owned by or
165 voted under the control of a shareholder or related person who has or had a beneficial financial
166 interest in the act or omission complained of or other interest therein that would reasonably be
167 expected to exert an influence on that shareholder's or related person's judgment if called upon to
168 vote in the determination. Shares entitled to cast a majority of all the votes entitled to be cast on
169 the matter and entitled to be counted under this clause (3) constitute a quorum for the purpose of
170 this clause.

171 SECTION 29. Section 7.44(e) of chapter 156D is deleted in its entirety and replaced by
172 the following:

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

182 SECTION 30. Section 8.06(b) of chapter 156D is hereby amended by deleting the word
183 “stock” and inserting in its place the following word: shares.

184 SECTION 31. Section 8.06(c)(1) of Chapter 156D is hereby amended as follows:

185 By deleting the portion of the first sentence that begins with the word “unless”
186 and inserting in its place the following quoted phrase:

187 “unless (i) the board of directors of the public corporation shall have elected to be exempt
188 from the provisions of subsection (b), or (ii) holders of shares of each class or series of the
189 corporation that has voting power, voting as separate voting groups if required by the articles of
190 organization, at a meeting duly called for the purpose, shall have so elected by vote of two-thirds
191 of all the votes entitled to be cast by the voting group.”; and

192 By inserting the following additional sentence after the first sentence: A vote by which
193 the corporation elected to be exempt from the provisions of subsection (b) of section 50A
194 of chapter 156B shall constitute such a vote.

195 SECTION 32. Section 8.06(c)(2) of chapter 156D is hereby amended by deleting the
196 second sentence and inserting in its place the following sentence:

197 In the event that any public corporation shall have so elected by a vote of shareholders
198 pursuant to clause (1) of this subsection, the public corporation may at any time thereafter, by a
199 vote or votes cast by holders of two-thirds of all shares having voting power that would satisfy
200 the requirements of clause (1) if it were applicable, elect to be subject to the provisions of
201 subsection (b).

202 SECTION 33. Section 8.06(d) of chapter 156D is hereby amended by deleting the words
203 “the shares outstanding and entitled to vote in the election of directors” and inserting in their
204 place the following words: holders of shares with voting power casting a majority of all the votes
205 entitled to be cast by such holders, voting as a single group.

206 SECTION 34. Section 8.10(b) of chapter 156D is hereby amended by deleting the word
207 “by-laws” and inserting in its place the following word: bylaws.

208 SECTION 35. Section 8.21 of chapter 156D is deleted in its entirety and replaced by the
209 following:

210 Section 8.21. ACTION WITHOUT MEETING

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

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

218 (c) A consent complying with this section has the effect of a meeting vote and may be
219 described as such in any document.

220 SECTION 36. Section 8.25(e) of chapter 156D is deleted in its entirety and replaced by
221 the following:

222 (e) A committee may not, however:

223 (1) authorize distributions, including any purchase, redemption or other acquisition of
224 shares, unless made according to a formula or method prescribed by the board of directors;

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

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

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

230 (5) adopt, amend or repeal bylaws.

231 SECTION 37. Section 8.31(d) of chapter 156D is deleted in its entirety and replaced by
232 the following:

233 (d) For purposes of clause (2) of subsection (a), a conflict of interest transaction is

234 authorized, approved, or ratified if at a meeting at which a quorum exists it receives the
235 affirmative vote of a majority of all the votes entitled to be cast on the matter and counted under
236 this subsection. The votes of shares owned by or voted under the control of a director who has a
237 direct or indirect interest in the transaction, and of shares owned by or voted under the control of
238 an entity described in clause (1) of subsection (b), may not be counted in a vote of shareholders
239 to determine whether to authorize, approve, or ratify a conflict of interest transaction under
240 clause (2) of subsection (a). The vote of those shares, however, is counted in determining
241 whether the transaction is approved under other sections of this chapter. Shares entitled to cast a
242 majority of all the votes entitled to be counted in a vote under this subsection constitute a
243 quorum for the purpose of this section.

244 SECTION 38. Section 8.32(a) of chapter 156D is hereby amended by deleting the phrase
245 “the obligation of a director of, the corporation” and inserting in its place the following phrase:
246 the obligation of, a director of the corporation.

247 SECTION 39. The first sentence of Section 8.45 of chapter 156D is hereby amended by
248 deleting the words “the clerk or an assistant clerk” and inserting in their place the following
249 words: the secretary or an assistant secretary.

250 SECTION 40. Section 8.53(c)(1)(i) of chapter 156D is hereby amended by deleting the
251 words “by the vote” and inserting in their place the following words: by such a vote.

252

253 SECTION 41. Section 8.54(a)(3)(ii) of chapter 156D is hereby amended by deleting the
254 phrase “sections 8.51 or 8.51” and inserting in its place the following phrase: section 8.51.

255 SECTION 42. Section 8.58(b) of chapter 156D is hereby amended as follows:

256 By deleting the words "articles of incorporation" and inserting in their place the

257 following quoted words: “articles of organization”; and

258 By deleting the number 3 that appears in parentheses immediately after the word

259 "clause” and inserting in its place the number 4.

260 SECTION 43. Section 9.21(5) of Chapter 156D is deleted in its entirety and replaced by
261 the following:

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

271 SECTION 44. Section 9.21(6)(i) is hereby amended by deleting the word “are” and
272 inserting in its place the following word: is.

273 SECTION 45. Section 9.31(5) of chapter 156D is deleted in its entirety and replaced by
274 the following:

275 (5) Unless (1) a greater percentage vote is required by the articles of organization,
276 pursuant to section 7.27(a), by the bylaws, pursuant to section 10.21, or by the board of directors,
277 acting pursuant to paragraph (3) of this section, or (2) the articles provide for a lesser percentage
278 vote, in accordance with section 7.27(b), approval of the plan of nonprofit conversion requires (i)
279 the affirmative vote of two-thirds of all the votes entitled generally to be cast on the plan by the
280 articles of organization, and, in addition, (ii) the affirmative vote of two-thirds of all the votes
281 entitled to be cast by any voting group entitled to vote separately on the plan by this chapter, by

282 the articles, by the bylaws, or by action of the board of directors pursuant to paragraph (3) of this
283 section.

284 SECTION 46. Section 9.52(4) of chapter 156D is hereby amended by deleting the words
285 "organizational documents" and inserting in their place the following words: organic documents.

286 SECTION 47. Section 9.52(5) of Chapter 156D is deleted in its entirety and replaced by
287 the following:

288 (5) Unless (i) a greater percentage vote is required by the articles of organization,
289 pursuant to section 7.27(a), by the bylaws, pursuant to section 10.21, or by the board of directors,
290 acting pursuant to paragraph (3) of this section, or (ii) the articles provide for a lesser percentage
291 vote, in accordance with subsection (b) of section 7.27, approval of the plan of entity conversion
292 requires (i) the affirmative vote of two-thirds of all the votes entitled generally to be cast on the
293 plan by the articles of organization and, in addition, (ii) the affirmative vote of two-thirds of all
294 the votes entitled to be cast by any voting group entitled to vote separately on the plan by this
295 chapter, by the articles, by the bylaws, or by action of the board of directors pursuant to
296 paragraph (3) of this section.

297 SECTION 48. Section 9.52(6) of chapter 156D is amended by deleting clause (i) thereof
298 in its entirety and replacing it with the following:

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

305 SECTION 49. Section 9.53(b)(3) of chapter 156D is hereby amended by deleting the
306 phrase "any other desired provisions that section 2.02 subsection (b) of permits" and inserting in
307 its place the following phrase: any other desired provisions that section 2.02(b) permits.

308 SECTION 50. Section 9.55(a)(5) of chapter 156D is hereby amended by deleting the
309 words "organizational document" in each place they appear and inserting in their place the
310 following words: organic document.

311 SECTION 51. Section 10.03(e) of chapter 156D is deleted in its entirety and replaced by
312 the following:

313 (e) Unless (1) a greater percentage vote is required by the articles of organization,
314 pursuant to subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the
315 board of directors, acting pursuant to subsection (c) of this section, or (2) the articles provide for

316 a lesser percentage vote, in accordance with subsection (b) of section 7.27, approval of the
317 amendment requires:

318 (1) except as otherwise provided in clause (2), (i) the affirmative vote of two-thirds of all
319 the votes entitled generally to be cast on the amendment by the articles of organization and, in
320 addition, (ii) the affirmative vote of two-thirds of all the votes entitled to be cast by any voting
321 group entitled to vote separately on the amendment by this chapter, by the articles, by the
322 bylaws, or by action of the board of directors pursuant to subsection (c) of this section, or

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

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

333 SECTION 52. Section 10.04(a) of chapter 156D is hereby amended by deleting the text
334 preceding paragraph subsection (1), and inserting in its place the following:

335 Subject to Section 10.05, if the corporation has more than one class or series
336 of shares outstanding, the holders of the outstanding shares of a class or series are entitled
337 to vote as a separate voting group, whether or not shareholder voting is otherwise required by
338 this chapter, on a proposed amendment to the articles of organization if the amendment would:

339 SECTION 53. Section 10.21(c) of chapter 156D is deleted in its entirety and replaced by
340 the following:

341 (c) Any initial bylaw adopted by the incorporators or board of directors, and any
342 bylaw

343 subsequently adopted or amended by the shareholders, that provides for (i) a greater or
344 lesser quorum requirement for shareholders than is provided by this chapter or (ii) a greater
345 voting requirement for shareholders (or for voting groups of shareholders) than is provided by
346 this chapter may not be amended or repealed by the board of directors unless the bylaw
347 otherwise provides.

348 SECTION 54. Part 11 of chapter 156D is amended by deleting the words “organizational
349 documents” each time they appear in Part 11 and inserting in their place the following words:
350 organic documents.

351 SECTION 55. Section 11.01 of chapter 156D is hereby amended as follows:

352 By deleting in its entirety the phrase “As used in this part:” and the definition of
353 “Interests” and replacing them with the following:

354 As used in this Part, the following words have the following meanings, unless the context
355 requires otherwise:

356 “Interest,” includes any form of membership in a domestic or foreign nonprofit
357 corporation.

358 And by deleting in paragraph (1) of the definition of “Party to a merger” or “party to a
359 share exchange” the words “merger under a plan of merger” and inserting in their place the
360 following words: merge under a plan of merger.

361 SECTION 56. Section 11.02 of chapter 156D is hereby amended by deleting the words
362 “or other entity” in the text preceding subsection (a) and inserting in their place the following
363 words: or a domestic or foreign other entity.

364 SECTION 57. Section 11.02(b) of chapter 156D is hereby amended by deleting the
365 words “the law under which a domestic other entity is organized” and inserting in their place the
366 following words: the organic law applicable to a domestic other entity.

367 SECTION 58. Section 11.02(b)(1) is hereby amended by deleting the words “filed
368 organizational document” and inserting in their place the following words: organic document.

369 SECTION 59. Section 11.03(a)(2) of chapter 156D is hereby amended by deleting the
370 words “or other entity” and inserting in their place the following words: or by a domestic or
371 foreign other entity.

372 SECTION 60. Section 11.03(b) of chapter 156D is hereby amended by deleting the
373 words “the law under which a domestic other entity is organized” and inserting in their place the
374 following words: the organic law applicable to a domestic other entity.

375 SECTION 61. Section 11.03(b)(1) is hereby amended by deleting the words “filed
376 organizational document” and inserting in their place the following words: organic document.

377 SECTION 62. Section 11.03(c) of chapter 156D is hereby amended by deleting the words
378 “domestic or” in the text preceding paragraph (1).

379 SECTION 63. Section 11.03 of chapter 156D is hereby further amended by deleting
380 subsection (e) in its entirety and changing the parenthetical letters designating subsections (f) and
381 (g) to (e) and (f) respectively.

382 SECTION 64. Sections 11.04(5) through 11.04(8), inclusive, of Chapter 156D are deleted
383 in their entirety and replaced by the following:

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

393 (6) Except as otherwise expressly provided in the articles of organization, voting by a
394 class or series of shares as a separate voting group is required on a plan of merger or share
395 exchange if the plan contains a provision that, if contained in a proposed amendment to articles
396 of organization, would entitle such class or series to vote as a separate voting group on the
397 proposed amendment under section 10.04; provided however, that (i) receipt of shares of a class
398 or series of shares in exchange for shares pursuant to a plan of merger or share exchange
399 involving each outstanding class and series shall not entitle holders of the exchanged class or
400 series to vote as a separate voting group based solely on the grounds that they are receiving
401 shares of a different issuer or that paragraphs (1) or (5) of section 10.04 would apply if the
402 change were contained in a proposed amendment to the articles of organization, and (ii) if the
403 proposed provision would, as an amendment, entitle two or more classes or series of shares to
404 vote separately but would affect those classes or series in the same or a substantially similar way,
405 the shares of all such classes or series shall, unless the articles of organization provide otherwise,
406 vote together as a single voting group on the plan.

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

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

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

413 (iii) each shareholder of the corporation whose shares were outstanding immediately
414 before the effective date of the merger or share exchange will hold the same number of shares,

415 with identical preferences, limitations, and relative rights, immediately after the effective date of
416 change; and

417 (iv) in the case of a plan of merger, the shares of any class or series of shares of such
418 corporation to be issued or delivered pursuant to the plan of merger (including any shares
419 issuable upon conversion of convertible securities or exercise of rights issued or delivered
420 pursuant to the plan of merger) does not exceed 20 per cent of the shares of such corporation of
421 the same class or series outstanding immediately before the effective date of the merger.

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

427 SECTION 65. Section 11.05(a) of Chapter 156D is deleted in its entirety and replaced by
428 the following:

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

437 SECTION 66. Subsection (c) of section 11.06 of chapter 156D is hereby amended by
438 deleting the words “or share exchange” each of the three times they appear in that subsection.

439 SECTION 67. The first sentence of section 11.08(b) of chapter 156D is hereby amended
440 by deleting the word “with” the first time it appears and inserting in its place the following word:
441 by.

442 SECTION 68. Section 12.01(a)(3) of Chapter 156D is deleted in its entirety and replaced
443 by the following:

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

447 SECTION 69. Section 12.02(e) of Chapter 156D is deleted in its entirety and replaced by
448 the following:

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

458 SECTION 70. Section 13.01 of Chapter 156D is hereby amended by deleting the
459 definition of “Marketable securities” and by inserting in its place the following definition:

460 “Marketable securities”,

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

463 (a) listed on a national securities exchange; or

464 (b) listed on a regional securities exchange or traded in an interdealer
465 quotation

466 or other trading system and are of a class or series that has at least 250,000 shares
467 outstanding with a market value of at least \$5,000,000, excluding in each case shares owned by
468 officers, directors and affiliates; or

469 (2) securities issued by an open end management investment company registered

470 under the Investment Company Act of 1940 that may be redeemed at the option of the
471 holder at net asset value.

472 SECTION 71. Section 13.02(a) of Chapter 156D is deleted in its entirety and replaced by
473 the following:

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

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

483 subsidiary and/or cash and (B) no director, officer or controlling shareholder has a direct or
484 indirect material financial interest in the merger other than (i) in his capacity as a shareholder of
485 the corporation, (ii) in his capacity as a director, officer, employee or consultant of either the
486 merging or the surviving corporation or of any affiliate of the surviving corporation if his
487 financial interest is pursuant to bona fide arrangements with either corporation or any such
488 affiliate, or (iii) in any other capacity provided that the shareholder does not own shares entitled
489 to cast more than five percent of all votes entitled to be cast by holders of all classes and series of
490 shares either generally or on the plan of merger;

491 (2) consummation of a plan of share exchange in which his shares are included unless
492 (A) both his existing shares and the shares, obligations or other securities to be acquired by him
493 are marketable securities; and (B) no director, officer or controlling shareholder has a direct or
494 indirect material financial interest in the share exchange other than (i) in his capacity as a
495 shareholder of the corporation whose shares are to be exchanged, (ii) in his capacity as a director,
496 officer, employee or consultant of either the corporation whose shares are to be exchanged or the
497 acquiring corporation or of any affiliate of the acquiring corporation if his financial interest is
498 pursuant to bona fide arrangements with either corporation or any such affiliate, or (iii) in any
499 other capacity provided that the shareholder does not own shares entitled to cast more than five
500 percent of all votes entitled to be cast by holders of all classes and series of shares to be
501 exchanged pursuant to the plan of share exchange;

502 (3) consummation of a disposition of property pursuant to section 12.02 or a disposition
503 of all, or substantially all, of the property of a corporation in dissolution, unless:

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

506 (ii) the disposition is pursuant to court order; or

507 (iii) in the case of a disposition of all, or substantially all, of the property of the
508 corporation subject to section 12.02, approval of shareholders for the disposition is conditioned
509 upon the dissolution of the corporation and the distribution in cash or, if his shares are
510 marketable securities, in marketable securities and/or cash, of substantially all of its net assets, in
511 excess of a reasonable amount reserved to meet unknown claims under section 14.07, to the
512 shareholders in accordance with their respective interests within one year after the disposition
513 and no director, officer or controlling shareholder has a direct or indirect material financial
514 interest in the disposition other than (i) in his capacity as a shareholder of the corporation, (ii) in
515 his capacity as a director, officer, employee or consultant of either the corporation or the
516 acquiring corporation or of any affiliate of the acquiring corporation if his financial interest is
517 pursuant to bona fide arrangements with either corporation or any such affiliate, or (iii) in any
518 other capacity provided that the shareholder does not own shares entitled to cast more than five

519 percent of all votes entitled to be cast by holders of all classes and series of shares either
520 generally or on the disposition;

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

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

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

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

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

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

535 (5) an amendment of the articles of organization or of the bylaws that adds restrictions
536 on the transfer or registration of transfer of any outstanding shares held by the shareholder or
537 amends any pre-existing restrictions on the transfer or registration of transfer of his shares in a
538 manner that is materially adverse to the ability of the shareholder to transfer his shares;

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

542 (7) consummation of a domestication pursuant to subdivision A of Part 9 if the
543 shareholder would have had appraisal rights if the transaction had been effected as a merger;

544 (8) consummation of a conversion of the corporation to nonprofit status pursuant to
545 subdivision B of Part 9; or

546 (9) consummation of a conversion of the corporation into a form of other entity pursuant
547 to subdivision E of Part 9.

548 SECTION 72. Section 13.02(b) of Chapter 156D is deleted in its entirety and replaced by
549 the following:

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

554 SECTION 73. Section 13.21(b) of chapter 156D is hereby amended by deleting the word
555 “chapter” and inserting in its place the following word: Part.

556 SECTION 74. Section 13.22(b)(3) of chapter 156D is hereby amended by deleting the
557 word "chapter" and inserting in its place the following word: Part.

558 SECTION 75. Section 13.25(d) of chapter 156D is hereby amended as follows:

559 By deleting the word “if” and inserting in its place the following word: it; and

560 By deleting the word "deserved" and inserting in its place the following word: described.

561 SECTION 76. Section 13.31(b)(2) of chapter 156D is hereby amended by deleting the
562 word "chapter" and inserting in its place the following word: Part.

563

564 SECTION 77. Section 14.06(a) of chapter 156D is hereby amended by deleting the
565 following quoted phrase: “, subject to paragraph (f),”.

566 SECTION 78. Section 14.09(d) of chapter 156D is hereby amended by deleting the
567 words “if the procedures described in those sections are followed” and inserting in their place the
568 following words: if the procedure described in the section applicable to the claim is followed.

569 SECTION 79. Section 14.30(2) of chapter 156D is hereby amended by deleting the
570 phrase “the shareholders holding not less than 40 per cent of the total combined voting power of
571 all the shares of the corporation’s stock outstanding and” and inserting in its place the following
572 phrase: shareholders entitled to cast not less than 40 per cent of the total number of votes entitled
573 to be cast by all holders of shares entitled to vote.

574 SECTION 80. Section 14.33(b) of chapter 156D is hereby amended by deleting the
575 phrase “sections 14.06 and 14.07.” and inserting in its place the following phrase: sections 14.06,
576 14.07 and 14.08.

577 SECTION 81. Section 14.40 of chapter 156D is amended by deleting from both the first
578 and the second sentences of that section the following words: or other appropriate official of the
579 commonwealth.

580

581 SECTION 82. Section 15.01(c)(4) of chapter 156D is hereby amended by deleting the
582 word “corporations” and inserting in its place the following word: corporation’s.

583 SECTION 83. Section 15.03(a)(5) of chapter 156D is hereby amended by deleting the
584 word "agents" and inserting in its place the following word: agent’s.

585 SECTION 84. Section 15.04(d) of chapter 156D is hereby amended by inserting after the
586 word “information" the following word: in.

587 SECTION 85. The first sentence of Section 15.05(c) of chapter 156D is hereby amended
588 as follows:

589 By deleting the word "corporation” and inserting in its place the following word:
590 corporation’s; and

591 By deleting the word “stockholders” and inserting in its place the following word:
592 shareholders.

593 SECTION 86. Section 15.07 of Chapter 156D is deleted in its entirety and replaced by
594 the following:

595 Section 15.07. REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN
596 CORPORATION

597 Each foreign corporation authorized to transact business in the commonwealth shall
598 continuously maintain in the commonwealth:

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

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

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

605 (ii) a domestic business corporation or a domestic nonprofit corporation;

606 (iii) a foreign business or nonprofit corporation authorized to transact business in the
607 commonwealth; or

608 (iv) a domestic other entity or a foreign other entity authorized to transact business in the
609 commonwealth.

610 SECTION 87. Section 15.30 of chapter 156D is hereby amended as follows:

611 By deleting the words “requiring the filing of reports with” and inserting in their
612 place the following words: requiring the submission or delivery of reports to;
613 And by inserting after "or chapter 63" the following words: of the General Laws.

614 SECTION 88. Section 15.31(b) of chapter 156D is hereby amended as follows:

615 By deleting the words “that each ground determined by the secretary” and inserting in
616 their place the following words: that the ground; and

617 By deleting the word "corporations" and inserting in its place the following word:
618 corporation’s.

619 SECTION 89. Section 15.31(d) of chapter 156D is hereby amended by deleting the word
620 “corporations” and inserting in its place the following word: corporation’s.

621 SECTION 90. Section 15.32(a) of chapter 156D is hereby amended as follows:

622 By deleting in the text preceding paragraph (1) the phrase “section 15.30” and inserting
623 in its place the following quoted phrase: “section 15.31”; and

624 By deleting in subsection (3) the word "corporations" and inserting in its place the
625 following word: corporation’s.

626 SECTION 91. Section 16.20(c) of chapter 156D is deleted in its entirety and replaced by
627 the following:

628 (c) Unless otherwise provided in the articles of organization or bylaws or unless the
629 annual financial statements of the corporation shall have previously been delivered to the
630 shareholders, a corporation shall deliver a written notice of the availability of its annual financial
631 statements to each shareholder before the earlier to occur of the annual meeting of shareholders
632 or 120 days after the close of the fiscal year.

633 SECTION 92. Section 16.21 of chapter 156D is hereby amended by deleting the words
634 “BY-LAW AMENDMENTS” in the caption and inserting in their place the following words:
635 BYLAW AMENDMENTS.