HOUSE DOCKET, NO. 2797 FILED ON: 1/18/2013

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:
Angelo M. Scaccia	*14th Suffolk*	*1/18/2013*
William F. Galvin	*Secretary of the Commonwealth*	*1/18/2013*
David M. Nangle	*17th Middlesex*	*1/18/2013*

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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:

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

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

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

By deleting the word "stock" wherever it appears and inserting in its place the following word: shares;

By inserting the words "and series" after the words "shares of all classes" in the definition of "Authorized shares";

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

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

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

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

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

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

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

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

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

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

(4) A provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director notwithstanding any provision of law imposing such liability; but the provision shall not eliminate or limit the liability of a director (i) for any breach of the director’s duty of loyalty to 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 8. Section 2.05 of chapter 156D is hereby amended by deleting the word “by-laws” in each place where it appears and inserting in its place the following word: bylaws.

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

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

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

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

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

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

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

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

(1) 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 15. 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 business corporation, a domestic nonprofit corporation or a domestic other entity;

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

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

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

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

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

SECTION 18. 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 entitled 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 entitled 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 19. 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 20. Section 6.40(f) of chapter 156D is hereby amended by deleting the words "subordinated by agreement" and inserting in their place the following words: the indebtedness is expressly made subordinate.

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

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

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

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

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

(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 non-consenting 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 23. Section 7.07(c) of chapter 156D is hereby amended by deleting the words "the date fixed for the original meeting" and inserting in their place the following words: the record date fixed for the original meeting.

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

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

SECTION 26. 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 this chapter specifies, but not less than a majority of all the votes entitled to be cast on the matter by the voting group.

SECTION 27. Section 7.44(a) of chapter 156D is deleted in its entirety and replaced by 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 subsection (b)(1), (b)(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 28. 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 at a meeting at which a quorum exists, 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. Shares entitled to cast a majority of all the votes entitled to be cast on the matter and entitled to be counted under this clause (3) constitute a quorum for the purpose of this clause.

SECTION 29. Section 7.44(e) of chapter 156D is deleted in its entirety and replaced by 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 by independent directors is made or if the determination is made by shareholders pursuant to clause (3) of subsection (b) or by a panel appointed pursuant to subsection (f), the plaintiff shall have the burden of proving that the requirements of subsection (a) have not been met.

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

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

By deleting the portion of the first sentence that begins with the word “unless”

and inserting in its place the following quoted phrase:

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

By inserting the following additional sentence after the first sentence: A vote by which

the corporation elected to be exempt from the provisions of subsection (b) of section 50A of chapter 156B shall constitute such a vote.

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

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

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

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

SECTION 35. 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 it is delivered to the corporation or as the corporation 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 complying with this section has the effect of a meeting vote and may be described as such in any document.

SECTION 36. 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 any purchase, redemption or other acquisition of shares, unless made 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 37. 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 at a meeting at which a quorum exists it receives the affirmative vote of a majority of all the votes entitled to be cast on the matter and 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 those shares, however, is counted in determining whether the transaction is approved under other sections of this chapter. Shares entitled to cast a majority of all the votes entitled to be counted in a vote under this subsection constitute a quorum for the purpose of this section.

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

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

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

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

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

By deleting the words "articles of incorporation" and inserting in their place the following quoted words: “articles of organization”; and

By deleting the number 3 that appears in parentheses immediately after the word "clause” and inserting in its place the number 4.

SECTION 43. 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 (i) 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, (ii) 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 44. Section 9.21(6)(i) is hereby amended by deleting the word “are” and inserting in its place the following word: is.

SECTION 45. 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 vote, in accordance with section 7.27(b), approval of the plan of nonprofit conversion requires (i) 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, (ii) 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 46. Section 9.52(4) of chapter 156D is hereby amended by deleting the words "organizational documents" and inserting in their place the following words: organic documents.

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

(5) Unless (i) 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 (ii) the articles provide for a lesser percentage vote, in accordance with subsection (b) of section 7.27, approval of the plan of entity conversion requires (i) 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, (ii) 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 48. Section 9.52(6) of chapter 156D is amended by deleting clause (i) thereof 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 the 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 ground that they were receiving interests in a different issuer; or

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

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

SECTION 51. 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 this section, 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), (i) 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, (ii) 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 this section, 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 52. Section 10.04(a) of chapter 156D is hereby amended by deleting the text preceding paragraph subsection (1), and inserting in its place the following:

Subject to Section 10.05, if the corporation has more than one class or series

of shares outstanding, the holders of the outstanding shares of a class or series are entitled to vote as a separate voting group, whether or not shareholder voting is otherwise required by this chapter, on a proposed amendment to the articles of organization if the amendment would:

SECTION 53. 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 54. Part 11 of chapter 156D is amended by deleting the words “organizational documents” each time they appear in Part 11 and inserting in their place the following words: organic documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 64. 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 paragraph (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 (i) 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, (ii) 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.

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

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

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

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

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

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

(iv) in the case of a plan of merger, the shares of any class or series of shares of such corporation to be issued or delivered pursuant to the plan of merger (including any shares issuable upon conversion of convertible securities or exercise of rights 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 65. 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 66. Subsection (c) of section 11.06 of chapter 156D is hereby amended by deleting the words “or share exchange” each of the three times they appear in that subsection.

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

SECTION 68. 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 domestic or foreign business

corporations or domestic or foreign other entities all of the shares or interests of which are owned, directly or indirectly, by the corporation; or

SECTION 69. 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, or (2) the articles provide for a lesser percentage vote, in accordance with subsection (b) of section 7.27, approval of the transaction requires (i) 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, (ii) 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.

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

"Marketable securities",

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

(a) listed on a national securities exchange; or

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

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

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

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

SECTION 71. 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 and the merger is governed by 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

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

(2) consummation of a plan of share exchange in which his shares are included unless (A) both his existing shares and the shares, obligations or other securities to be acquired by him are marketable securities; and (B) no director, officer or controlling shareholder has a direct or indirect material financial interest in the share exchange other than (i) in his capacity as a shareholder of the corporation whose shares are to be exchanged, (ii) in his capacity as a director, officer, employee or consultant of either the corporation whose shares are to be exchanged 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 provided that the shareholder does not own shares entitled to cast more than five percent of all votes entitled to be cast by holders of all classes and series of shares to be exchanged pursuant to the plan of share exchange;

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

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

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

(iii) in the case of a disposition of all, or substantially all, of the property of the corporation subject to section 12.02, approval of shareholders for the disposition 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 disposition and no director, officer or controlling shareholder has a direct or indirect material financial interest in the disposition 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 provided that the shareholder does not own shares entitled to cast more than five

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

(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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 15.07. REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN CORPORATION

Each foreign corporation authorized to transact business in the commonwealth 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 foreign corporation:

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

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

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

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

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

By deleting the words “requiring the filing of reports with” and inserting in their place the following words: requiring the submission or delivery of reports to;

And by inserting after "or chapter 63" the following words: of the General Laws.

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

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

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

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

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

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

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

SECTION 91. 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 statements to each shareholder before the earlier to occur of the annual meeting of shareholders or 120 days after the close of the fiscal year.

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