

HOUSE No. 1711

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>1/18/2017</i>
<i>William F. Galvin</i>	<i>Secretary of the Commonwealth</i>	<i>1/18/2017</i>

HOUSE No. 1711

By Mr. Scaccia of Boston, a petition (accompanied by bill, House, No. 1711) of Angelo M. Scaccia and William F. Galvin (Secretary of the Commonwealth) for legislation to further regulate business corporations. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

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 inserting the words “and series” after the words “shares of all classes” in the
9 definition of “Authorized shares”

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

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

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

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

20 By deleting the definition of “Public corporation” in its entirety and replacing it with the
21 following:

22 “Public corporation,” any corporation to which this chapter applies, and which has shares
23 with voting power registered under the Securities Exchange Act of 1934, as amended; provided,
24 that if a corporation is subject to paragraph (b) of section 8.06 at the time it ceases to have any
25 shares with voting power so registered, such corporation shall nonetheless be deemed to be a
26 public corporation for a period of twelve months following the time it ceased to have such shares
27 registered.

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

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

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

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

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

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

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

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

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

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

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

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

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

61

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

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

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

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

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

75 SECTION 5.01. REGISTERED OFFICE AND REGISTERED AGENT

76 Each corporation shall continuously maintain in the commonwealth:

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

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

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

82 (ii) a domestic business corporation, a domestic nonprofit corporation or a domestic
83 other entity;

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

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

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

89 The articles of organization also shall, before the issuance of any shares of a class or
90 series, prescribe the number of authorized shares of the class or series and its distinguishing
91 designation, preferences, limitations and relative rights. All shares of a class or series must have

92 a distinguishing designation and preferences, limitations and relative rights that are identical with
93 those of other shares of the same class or series.

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

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

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

110 SECTION 19. Section 6.30(a) of chapter 156D is deleted in its entirety and replaced by
111 the following:

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

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

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

119 (2) in the case of a distribution in liquidation by a corporation in dissolution under Part
120 14, the later of (i) the date on which the effect of the challenged distribution would have been
121 measured under subsection (e) or (g) of section 6.40 if it had not been a distribution in
122 liquidation and (ii) 6 months after the end of the 3-year period referred to in subsection (d); or

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

128 SECTION 22. Section 7.04 of chapter 156D is hereby amended as follows:

129 Section 7.04(c) is amended by deleting the words “consent of the required number of
130 shareholders” and inserting in their place the following words: consent of shareholders having
131 the required number of votes.

132 Section 7.04(d) is deleted in its entirety and replaced by the following two subsections:

133 (d) If (1) this chapter requires that notice of a proposed action be given to nonvoting
134 shareholders and the action is to be taken by written consent of the voting shareholders, or (2)

135 action is taken by less than unanimous written consent of the voting shareholders, the
136 corporation shall give its nonvoting shareholders or its non-consenting voting shareholders, as
137 the case may be, written notice of the action not more than 7 days after written consents
138 sufficient to take the action have been delivered to the corporation. The notice must reasonably
139 describe the action taken and contain or be accompanied by the same material that, under any
140 provision of this chapter, would have been required to be sent to nonvoting shareholders or to
141 voting shareholders, as the case may be, in a notice of a meeting at which the proposed action
142 would have been submitted to the shareholders for action.

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

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

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

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

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

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

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

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

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

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

178 the matter and entitled to be counted under this clause (3) constitute a quorum for the purpose of
179 this clause.

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

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

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

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

194 By deleting the portion of the first sentence that begins with the word “unless”
195 and inserting in its place the following phrase: unless (i) the board of directors of the
196 public corporation shall have elected to be exempt from the provisions of subsection (b), or (ii)
197 holders of shares of each class or series of the corporation that has voting power, voting as
198 separate voting groups if required by the articles of organization, at a meeting duly called for the

199 purpose, shall have so elected by vote of two-thirds of all the votes entitled to be cast by the
200 voting group.

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

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

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

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

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

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

219 Section 8.21. ACTION WITHOUT MEETING

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

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

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

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

231 (e) A committee may not, however:

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

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

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

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

239 (5) adopt, amend or repeal bylaws.

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

242 (d) For purposes of clause (2) of subsection (a), a conflict of interest transaction is
243 authorized, approved, or ratified if at a meeting at which a quorum exists it receives the
244 affirmative vote of a majority of all the votes entitled to be cast on the matter and counted under
245 this subsection. The votes of shares owned by or voted under the control of a director who has a
246 direct or indirect interest in the transaction, and of shares owned by or voted under the control of
247 an entity described in clause (1) of subsection (b), may not be counted in a vote of shareholders
248 to determine whether to authorize, approve, or ratify a conflict of interest transaction under
249 clause (2) of subsection (a). The vote of those shares, however, is counted in determining
250 whether the transaction is approved under other sections of this chapter. Shares entitled to cast a
251 majority of all the votes entitled to be counted in a vote under this subsection constitute a
252 quorum for the purpose of this section.

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

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

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

261

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

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

265 By deleting the words "articles of incorporation" and inserting in their place the
266 following words: articles of organization

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

269 SECTION 43. Section 9.21(5) of chapter 156D is deleted in its entirety and replaced by
270 the following:

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

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

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

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

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

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

297 (5) Unless (i) a greater percentage vote is required by the articles of organization,
298 pursuant to section 7.27(a), by the bylaws, pursuant to section 10.21, or by the board of directors,
299 acting pursuant to paragraph (3) of this section, or (ii) the articles provide for a lesser percentage
300 vote, in accordance with subsection (b) of section 7.27, approval of the plan of entity conversion
301 requires (i) the affirmative vote of two-thirds of all the votes entitled generally to be cast on the

302 plan by the articles of organization and, in addition, (ii) the affirmative vote of two-thirds of all
303 the votes entitled to be cast by any voting group entitled to vote separately on the plan by this
304 chapter, by the articles, by the bylaws, or by action of the board of directors pursuant to
305 paragraph (3) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

352 subsequently adopted or amended by the shareholders, that provides for (i) a greater or
353 lesser quorum requirement for shareholders than is provided by this chapter or (ii) a greater
354 voting requirement for shareholders (or for more voting groups of shareholders) than is provided
355 by this chapter may not be amended or repealed by the board of directors unless the bylaw
356 otherwise provides.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

427 (iv) in the case of a plan of merger, the shares of any class or series of shares of such
428 corporation to be issued or delivered pursuant to the plan of merger (including any shares

429 issuable upon conversion of convertible securities or exercise of rights issued or delivered
430 pursuant to the plan of merger) does not exceed 20 per cent of the shares of such corporation of
431 the same class or series outstanding immediately before the effective date of the merger.

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

437 SECTION 65. Section 11.05(a) of chapter 156D is deleted in its entirety and replaced by
438 the following:

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

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

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

452 SECTION 68. Section 12.01(a)(3) of chapter 156D is deleted in its entirety and replaced
453 by the following:

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

457 SECTION 69. Section 12.02(e) of chapter 156D is deleted in its entirety and replaced by
458 the following:

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

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

470 “Marketable securities”,

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

473 (1) listed on a national securities exchange; or

474 (2) listed on a regional securities exchange or traded in an interdealer quotation or other
475 trading system and are of a class or series that has at least 250,000 shares outstanding with a
476 market value of at least \$5,000,000, excluding in each case shares owned by officers, directors
477 and affiliates; or

478 (b) securities issued by an open end management investment company registered under
479 the Investment Company Act of 1940 that may be redeemed at the option of the holder at net
480 asset value.

481 SECTION 71. Section 13.02(a) of chapter 156D is deleted in its entirety and replaced by
482 the following:

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

485 (1) consummation of a plan of merger to which the corporation is a party if shareholder
486 approval is required for the merger by section 11.04 or the articles of organization or if the
487 corporation is a subsidiary and the merger is governed by section 11.05, unless, in either case,
488 (A) all shareholders are to receive only cash for their shares in amounts proportionate to what
489 they would receive upon a dissolution of the corporation or, in the case of shareholders already
490 holding marketable securities in the merging corporation, only marketable securities of the

491 surviving corporation, marketable securities of the parent in the case of a merger with a
492 subsidiary and/or cash and (B) no director, officer or controlling shareholder has a direct or
493 indirect material financial interest in the merger other than (i) in his capacity as a shareholder of
494 the corporation, (ii) in his capacity as a director, officer, employee or consultant of either the
495 merging or the surviving corporation or of any affiliate of the surviving corporation if his
496 financial interest is pursuant to bona fide arrangements with either corporation or any such
497 affiliate, or (iii) in any other capacity provided that the shareholder does not own shares entitled
498 to cast more than five percent of all votes entitled to be cast by holders of all classes and series of
499 shares either generally or on the plan of merger;

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

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

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

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

516 (iii) in the case of a disposition of all, or substantially all, of the property of the
517 corporation subject to section 12.02, approval of shareholders for the disposition is conditioned
518 upon the dissolution of the corporation and the distribution in cash or, if his shares are
519 marketable securities, in marketable securities and/or cash, of substantially all of its net assets, in
520 excess of a reasonable amount reserved to meet unknown claims under section 14.07, to the
521 shareholders in accordance with their respective interests within one year after the disposition
522 and no director, officer or controlling shareholder has a direct or indirect material financial
523 interest in the disposition other than (i) in his capacity as a shareholder of the corporation, (ii) in
524 his capacity as a director, officer, employee or consultant of either the corporation or the
525 acquiring corporation or of any affiliate of the acquiring corporation if his financial interest is
526 pursuant to bona fide arrangements with either corporation or any such affiliate, or (iii) in any
527 other capacity provided that the shareholder does not own shares entitled to cast more than five
528 percent of all votes entitled to be cast by holders of all classes and series of shares either
529 generally or on the disposition;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

569 And by deleting the word "deserved" and inserting in its place the following word:
570 described.

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

573

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

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

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

584 SECTION 80. Section 14.33(b) of chapter 156D is hereby amended by deleting the
585 phrase “sections 14.06 and 14.07.” and inserting in its place the following phrase: sections 14.06,
586 14.07 and 14.08.

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

590

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

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

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

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

599 By deleting the word "corporation" and inserting in its place the following word:

600 corporation's

601 And by deleting the word "stockholders" and inserting in its place the following word:

602 shareholders.

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

605 Section 15.07. REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN
606 CORPORATION

607 Each foreign corporation authorized to transact business in the commonwealth shall
608 continuously maintain in the commonwealth:

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

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

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

- 615 (ii) a domestic business corporation or a domestic nonprofit corporation;
- 616 (iii) a foreign business or nonprofit corporation authorized to transact business in the
617 commonwealth; or
- 618 (iv) a domestic other entity or a foreign other entity authorized to transact business in the
619 commonwealth.

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

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

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

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

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

627 And by deleting the word "corporations" and inserting in its place the following word:
628 corporation’s.

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

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

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

634 And by deleting in paragraph (3) the word "corporations" and inserting in its place the
635 following word: corporation's.

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

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

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