

SPONSOR:

[HOUSE OF REPRESENTATIVES/DELAWARE STATE SENATE]  
148th GENERAL ASSEMBLY

[HOUSE/SENATE] BILL NO. \_\_\_\_

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO THE GENERAL CORPORATION LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

1           Section 1. Amend § 104, Title 8 of the Delaware Code, by making insertions as shown by underline and  
2 deletions as shown by strike through as follows:

3           § 104. Certificate of incorporation; definition.

4           The term “certificate of incorporation,” as used in this chapter, unless the context requires otherwise,  
5 includes not only the original certificate of incorporation filed to create a corporation but also all other certificates,  
6 agreements of merger or consolidation, plans of reorganization, or other instruments, howsoever designated, which  
7 are filed pursuant to § 102, §§ 133-136, § 151, §§ 241-243, § 245, §§ 251-258, §§ 263-264, § 267, § 303, ~~§§ 311-~~  
8 313, or any other section of this title, and which have the effect of amending or supplementing in some respect a  
9 corporation’s ~~original~~ certificate of incorporation.

10           Section 2. Amend § 111(a), Title 8 of the Delaware Code, by making insertions as shown by underline and  
11 deletions as shown by strike through as follows:

12           § 111. Jurisdiction to interpret, apply, enforce or determine the validity of corporate instruments and  
13 provisions of this title.

14           (a) Any civil action to interpret, apply, enforce or determine the validity of the provisions of:

15                   (1) The certificate of incorporation or the bylaws of a corporation;

16                   (2) Any instrument, document or agreement (i) by which a corporation creates or sells, or offers to  
17 create or sell, any of its stock, or any rights or options respecting its stock, or (ii) to which a  
18 corporation and one or more holders of its stock are parties, and pursuant to which any such  
19 holder or holders sell or offer to sell any of such stock, or (iii) by which a corporation agrees to sell,  
20 lease or exchange any of its property or assets, and which by its terms provides that one or more  
21 holders of its stock approve of or consent to such sale, lease or exchange;

- 22 (3) Any written restrictions on the transfer, registration of transfer or ownership of securities under  
23 § 202 of this title;
- 24 (4) Any proxy under § 212 or § 215 of this title;
- 25 (5) Any voting trust or other voting agreement under § 218 of this title;
- 26 (6) Any agreement, certificate of merger or consolidation, or certificate of ownership and merger  
27 governed by §§ 251-253, §§ 255-258, §§ 263-264, or § 267 of this title;
- 28 (7) Any certificate of conversion under § 265 or § 266 of this title;
- 29 (8) Any certificate of domestication, transfer or continuance under § 388, § 389 or § 390 of this  
30 title; or
- 31 (9) Any other instrument, document, agreement, or certificate required by any provision of this  
32 title;

33 may be brought in the Court of Chancery, except to the extent that a statute confers exclusive jurisdiction  
34 on a court, agency or tribunal other than the Court of Chancery.

35 Section 3. Amend § 141(b), Title 8 of the Delaware Code, by making insertions as shown by underline and  
36 deletions as shown by strike through as follows:

37 (b) The board of directors of a corporation shall consist of 1 or more members, each of whom shall be a  
38 natural person. The number of directors shall be fixed by, or in the manner provided in, the bylaws, unless the  
39 certificate of incorporation fixes the number of directors, in which case a change in the number of directors shall be  
40 made only by amendment of the certificate. Directors need not be stockholders unless so required by the certificate  
41 of incorporation or the bylaws. The certificate of incorporation or bylaws may prescribe other qualifications for  
42 directors. Each director shall hold office until such director's successor is elected and qualified or until such  
43 director's earlier resignation or removal. Any director may resign at any time upon notice given in writing or by  
44 electronic transmission to the corporation. A resignation is effective when the resignation is delivered unless the  
45 resignation specifies a later effective date or an effective date determined upon the happening of an event or events.  
46 A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director  
47 may provide that it is irrevocable. A majority of the total number of directors shall constitute a quorum for the  
48 transaction of business unless the certificate of incorporation or the bylaws require a greater number. Unless the  
49 certificate of incorporation provides otherwise, the bylaws may provide that a number less than a majority shall

50 constitute a quorum which in no case shall be less than 1/3 of the total number of directors ~~except that when a board~~  
51 ~~of 1 director is authorized under this section, then 1 director shall constitute a quorum.~~ The vote of the majority of  
52 the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the  
53 certificate of incorporation or the bylaws shall require a vote of a greater number

54 Section 4. Amend § 141(c), Title 8 of the Delaware Code, by making insertions as shown by underline and  
55 deletions as shown by strike through as follows:

56 (c)(1) All corporations incorporated prior to July 1, 1996, shall be governed by this paragraph (c)(1) of this  
57 section, provided that any such corporation may by a resolution adopted by a majority of the whole board  
58 elect to be governed by paragraph (c)(2) of this section, in which case this paragraph (c)(1) of this section  
59 shall not apply to such corporation. All corporations incorporated on or after July 1, 1996, shall be  
60 governed by paragraph (c)(2) of this section. The board of directors may, by resolution passed by a  
61 majority of the whole board, designate 1 or more committees, each committee to consist of 1 or more of  
62 the directors of the corporation. The board may designate 1 or more directors as alternate members of  
63 any committee, who may replace any absent or disqualified member at any meeting of the committee.  
64 The bylaws may provide that in the absence or disqualification of a member of a committee, the member  
65 or members present at any meeting and not disqualified from voting, whether or not the member or  
66 members present constitute a quorum, may unanimously appoint another member of the board of  
67 directors to act at the meeting in the place of any such absent or disqualified member. Any such  
68 committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the  
69 corporation, shall have and may exercise all the powers and authority of the board of directors in the  
70 management of the business and affairs of the corporation, and may authorize the seal of the corporation  
71 to be affixed to all papers which may require it; but no such committee shall have the power or authority  
72 in reference to amending the certificate of incorporation (except that a committee may, to the extent  
73 authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the  
74 board of directors as provided in § 151(a) of this title, fix the designations and any of the preferences or  
75 rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the  
76 corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes  
77 or any other series of the same or any other class or classes of stock of the corporation or fix the number

78 of shares of any series of stock or authorize the increase or decrease of the shares of any series), adopting  
79 an agreement of merger or consolidation under § 251, § 252, § 254, § 255, § 256, § 257, § 258, § 263 or  
80 § 264 of this title, recommending to the stockholders the sale, lease or exchange of all or substantially all  
81 of the corporation's property and assets, recommending to the stockholders a dissolution of the  
82 corporation or a revocation of a dissolution, or amending the bylaws of the corporation; and, unless the  
83 resolution, bylaws or certificate of incorporation expressly so provides, no such committee shall have the  
84 power or authority to declare a dividend, to authorize the issuance of stock or to adopt a certificate of  
85 ownership and merger pursuant to § 253 of this title.

86 (2) The board of directors may designate 1 or more committees, each committee to consist of 1 or more  
87 of the directors of the corporation. The board may designate 1 or more directors as alternate members of  
88 any committee, who may replace any absent or disqualified member at any meeting of the committee.  
89 The bylaws may provide that in the absence or disqualification of a member of a committee, the member  
90 or members present at any meeting and not disqualified from voting, whether or not such member or  
91 members constitute a quorum, may unanimously appoint another member of the board of directors to act  
92 at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent  
93 provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and  
94 may exercise all the powers and authority of the board of directors in the management of the business  
95 and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers  
96 which may require it; but no such committee shall have the power or authority in reference to the  
97 following matter: (i) approving or adopting, or recommending to the stockholders, any action or matter  
98 (other than the election or removal of directors) expressly required by this chapter to be submitted to  
99 stockholders for approval or (ii) adopting, amending or repealing any bylaw of the corporation.

100 (3) Unless otherwise provided in the certificate of incorporation, the bylaws or the resolution of the  
101 board of directors designating the committee, a committee may create 1 or more subcommittees, each  
102 subcommittee to consist of 1 or more members of the committee, and delegate to a subcommittee any or  
103 all of the powers and authority of the committee. Except for references to committees and members of  
104 committees in subsection (c) of this section, every reference in this chapter to a committee of the board of

105 directors or a member of a committee shall be deemed to include a reference to a subcommittee or  
106 member of a subcommittee.

107 (4) A majority of the directors then serving on a committee of the board of directors or on a  
108 subcommittee of a committee shall constitute a quorum for the transaction of business by the committee  
109 or subcommittee, unless the certificate of incorporation, the bylaws, a resolution of the board of directors  
110 or a resolution of a committee that created the subcommittee requires a greater or lesser number,  
111 provided that in no case shall a quorum be less than 1/3 of the directors then serving on the committee or  
112 subcommittee. The vote of the majority of the members of a committee or subcommittee present at a  
113 meeting at which a quorum is present shall be the act of the committee or subcommittee, unless the  
114 certificate of incorporation, the bylaws, a resolution of the board of directors or a resolution of a  
115 committee that created the subcommittee requires a greater number.

116 Section 5. Amend §141(d), Title 8 of the Delaware Code, by making insertions as shown by underline and  
117 deletions as shown by strike through as follows:

118 (d) The directors of any corporation organized under this chapter may, by the certificate of incorporation  
119 or by an initial bylaw, or by a bylaw adopted by a vote of the stockholders, be divided into 1, 2 or 3 classes; the term  
120 of office of those of the first class to expire at the first annual meeting held after such classification becomes  
121 effective; of the second class 1 year thereafter; of the third class 2 years thereafter; and at each annual election held  
122 after such classification becomes effective, directors shall be chosen for a full term, as the case may be, to succeed  
123 those whose terms expire. The certificate of incorporation or bylaw provision dividing the directors into classes may  
124 authorize the board of directors to assign members of the board already in office to such classes at the time such  
125 classification becomes effective. The certificate of incorporation may confer upon holders of any class or series of  
126 stock the right to elect 1 or more directors who shall serve for such term, and have such voting powers as shall be  
127 stated in the certificate of incorporation. The terms of office and voting powers of the directors elected separately by  
128 the holders of any class or series of stock may be greater than or less than those of any other director or class of  
129 directors. In addition, the certificate of incorporation may confer upon 1 or more directors, whether or not elected  
130 separately by the holders of any class or series of stock, voting powers greater than or less than those of other  
131 directors. Any such provision conferring greater or lesser voting power shall apply to voting in any committee ~~or~~  
132 ~~subcommittee~~, unless otherwise provided in the certificate of incorporation or bylaws. If the certificate of

133 incorporation provides that 1 or more directors shall have more or less than 1 vote per director on any matter, every  
134 reference in this chapter to a majority or other proportion of the directors shall refer to a majority or other proportion  
135 of the votes of the directors.

136 Section 6. Amend § 158, Title 8 of the Delaware Code, by making insertions as shown by underline and  
137 deletions as shown by strike through as follows:

138 § 158. Stock certificates; uncertificated shares.

139 The shares of a corporation shall be represented by certificates, provided that the board of directors of the  
140 corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall  
141 be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such  
142 certificate is surrendered to the corporation. Every holder of stock represented by certificates shall be entitled to  
143 have a certificate signed by, or in the name of, the corporation by ~~the chairperson or vice chairperson of the board of~~  
144 ~~directors, or the president or vice president, and by the treasurer or an assistant treasurer, or the secretary or an~~  
145 ~~assistant secretary of such~~ any two authorized officers of the corporation representing the number of shares  
146 registered in certificate form. Any or all the signatures on the certificate may be a facsimile. In case any officer,  
147 transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have  
148 ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the  
149 corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. A  
150 corporation shall not have power to issue a certificate in bearer form.

151 Section 7. Amend § 251(h), Title 8 of the Delaware Code, by making insertions as shown by underline and  
152 deletions as shown by strike through as follows:

153 (h) Notwithstanding the requirements of subsection (c) of this section, unless expressly required by its  
154 certificate of incorporation, no vote of stockholders of a constituent corporation ~~whose shares are~~ that has a  
155 class or series of stock that is listed on a national securities exchange or held of record by more than 2,000  
156 holders immediately prior to the execution of the agreement of merger by such constituent corporation shall be  
157 necessary to authorize a merger if:

158 (1) The agreement of merger expressly:

159 a. Permits or requires such merger to be effected under this subsection; and

160 b. Provides that such merger shall be effected as soon as practicable following the  
161 consummation of the offer referred to in paragraph (h)(2) of this section if such  
162 merger is effected under this subsection;

163 (2) A corporation consummates a ~~tender or exchange~~ offer for ~~any and~~ all of the outstanding  
164 stock of such constituent corporation on the terms provided in such agreement of merger that,  
165 absent this subsection, would be entitled to vote on the adoption or rejection of the agreement of  
166 merger; provided, however, that such offer may ~~exclude stock of such constituent corporation~~  
167 ~~that is owned at the commencement of such offer by:~~ be conditioned on the tender of a  
168 minimum number or percentage of shares of the stock of such constituent corporation, or of  
169 any class or series thereof, and such offer may exclude any excluded stock and provided  
170 further that the corporation may consummate separate offers for separate classes or series of the  
171 stock of such constituent corporation.

172 ~~a. Such constituent corporation;~~

173 ~~b. The corporation making such offer;~~

174 ~~c. Any person that owns, directly or indirectly, all of the outstanding stock of the~~  
175 ~~corporation making such offer; or~~

176 ~~d. Any direct or indirect wholly owned subsidiary of any of the foregoing;~~

177 (3) ~~Following~~ Immediately following the consummation of the offer referred to in paragraph  
178 (h)(2) of this section, the stock irrevocably accepted for purchase or exchange pursuant to such  
179 offer and received by the depository prior to expiration of such offer, ~~plus~~ together with the  
180 stock otherwise owned by the consummating corporation or its affiliates and any rollover  
181 stock, equals at least such percentage of the shares of stock of such constituent corporation, and  
182 ~~of each class or series thereof, of such constituent corporation~~ that, absent this subsection,  
183 would be required to adopt the agreement of merger by this chapter and by the certificate of  
184 incorporation of such constituent corporation;

185 (4) The corporation consummating the offer referred to in paragraph (h)(2) of this section  
186 merges with or into such constituent corporation pursuant to such agreement; and

187 (5) Each outstanding share (other than shares of excluded stock) of each class or series of stock of  
188 ~~the~~such constituent corporation that is the subject of and is not irrevocably accepted for  
189 purchase or exchange in the offer referred to in paragraph (h)(2) of this section is to be  
190 converted in such merger into, or into the right to receive, the same amount and kind of cash,  
191 property, rights or securities to be paid for shares of such class or series of stock of such  
192 constituent corporation irrevocably accepted for purchase or exchange in such offer.

193 (6) As used in this section only, the term:

194 a. “Affiliate” means, in respect of the corporation making the offer referred to in  
195 paragraph (h)(2) of this section, any person that (i) owns, directly or indirectly, all of the  
196 outstanding stock of such corporation or (ii) is a direct or indirect wholly-owned  
197 subsidiary of such corporation or of any person referred to in clause (i) of this definition;

198 b. “Consummates” (and with correlative meaning, “consummation” and  
199 “consummating”) means irrevocably accepts for purchase or exchange stock tendered  
200 pursuant to a ~~tender or exchange~~an offer;

201 c. “Depository” means an agent, including a depository, appointed to facilitate  
202 consummation of the offer referred to in paragraph (h)(2) of this section;

203 d. “Excluded Stock” means (i) stock of such constituent corporation that is owned at the  
204 commencement of the offer referred to in paragraph (h)(2) of this section by such  
205 constituent corporation, the corporation making the offer referred to in paragraph (h)(2)  
206 of this section, any person that owns, directly or indirectly, all of the outstanding stock  
207 of the corporation making such offer, or any direct or indirect wholly-owned  
208 subsidiary of any of the foregoing and (ii) rollover stock;

209 e. “Person” means any individual, corporation, partnership, limited liability company,  
210 unincorporated association or other entity;~~and~~

211 f. “Received” (solely for purposes of paragraph (h)(3) of this section) means (a) with  
212 respect to certificated shares, physical receipt of a stock certificate ~~in the case of~~  
213 ~~certificated shares and transfer into the depository’s account, or an agent’s message being~~  
214 ~~received by the depository, in the case of uncertificated shares,~~accompanied by an



215 executed letter of transmittal, (b) with respect to uncertificated shares held of record by  
216 a clearing corporation as nominee, transfer into the depository's account by means of an  
217 agent's message, and (c) with respect to uncertificated shares held of record by a person  
218 other than a clearing corporation as nominee, physical receipt of an executed letter of  
219 transmittal by the depository; provided, however, that shares shall cease to be  
220 "received" (i) with respect to certificated shares, if the certificate representing such  
221 shares was canceled prior to consummation of the offer referred to in paragraph (h)(2)  
222 of this section, or (ii) with respect to uncertificated shares, to the extent such  
223 uncertificated shares have been reduced or eliminated due to any sale of such  
224 shares prior to consummation of the offer referred to in paragraph (h)(2) of this  
225 section; and  
226 g. "Rollover stock" means any shares of stock of such constituent corporation that  
227 are the subject of a written agreement requiring such shares to be transferred,  
228 contributed or delivered to the consummating corporation or any of its affiliates in  
229 exchange for stock or other equity interests in such consummating corporation or an  
230 affiliate thereof; provided, however, that such shares of stock shall cease to be rollover  
231 stock for purposes of paragraph (h)(3) of this section if, immediately prior to the time  
232 the merger becomes effective under this chapter, such shares have not been transferred,  
233 contributed or delivered to the consummating corporation or any of its affiliates  
234 pursuant to such written agreement.

235 If an agreement of merger is adopted without the vote of stockholders of a corporation pursuant to this  
236 subsection, the secretary or assistant secretary of the surviving corporation shall certify on the agreement that the  
237 agreement has been adopted pursuant to this subsection and that the conditions specified in this subsection  
238 (other than the condition listed in paragraph (h)(4) of this section) have been satisfied; provided that such  
239 certification on the agreement shall not be required if a certificate of merger is filed in lieu of filing the  
240 agreement. The agreement so adopted and certified shall then be filed and shall become effective, in accordance  
241 with § 103 of this title. Such filing shall constitute a representation by the person who executes the agreement  
242 that the facts stated in the certificate remain true immediately prior to such filing.

243 Section 8. Amend § 262(c), Title 8 of the Delaware Code, by making insertions as shown by underline and  
244 deletions as shown by strike through as follows:

245 (c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section  
246 shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of  
247 incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or  
248 substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the  
249 ~~procedures~~ provisions of this section, including those set forth in subsections (d), ~~and (e), and (g)~~ of this section,  
250 shall apply as nearly as is practicable.

251 Section 9. Amend § 262(d), Title 8 of the Delaware Code, by making insertions as shown by underline and  
252 deletions as shown by strike through as follows:

253 (d) Appraisal rights shall be perfected as follows:

254 (1) If a proposed merger or consolidation for which appraisal rights are provided under this  
255 section is to be submitted for approval at a meeting of stockholders, the corporation, not less than  
256 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date  
257 for notice of such meeting (or such members who received notice in accordance with § 255(c) of  
258 this title) with respect to shares for which appraisal rights are available pursuant to subsection (b)  
259 or (c) of this section that appraisal rights are available for any or all of the shares of the constituent  
260 corporations, and shall include in such notice a copy of this section and, if 1 of the constituent  
261 corporations is a nonstock corporation, a copy of § 114 of this title. Each stockholder electing to  
262 demand the appraisal of such stockholder's shares shall deliver to the corporation, before the  
263 taking of the vote on the merger or consolidation, a written demand for appraisal of such  
264 stockholder's shares. Such demand will be sufficient if it reasonably informs the corporation of the  
265 identity of the stockholder and that the stockholder intends thereby to demand the appraisal of  
266 such stockholder's shares. A proxy or vote against the merger or consolidation shall not constitute  
267 such a demand. A stockholder electing to take such action must do so by a separate written  
268 demand as herein provided. Within 10 days after the effective date of such merger or  
269 consolidation, the surviving or resulting corporation shall notify each stockholder of each  
270 constituent corporation who has complied with this subsection and has not voted in favor of or

271 consented to the merger or consolidation of the date that the merger or consolidation has become  
272 effective; or

273 (2) If the merger or consolidation was approved pursuant to § 228, § 251(h), § 253, or § 267 of  
274 this title, then either a constituent corporation before the effective date of the merger or  
275 consolidation or the surviving or resulting corporation within 10 days thereafter shall notify each  
276 of the holders of any class or series of stock of such constituent corporation who are entitled to  
277 appraisal rights of the approval of the merger or consolidation and that appraisal rights are  
278 available for any or all shares of such class or series of stock of such constituent corporation, and  
279 shall include in such notice a copy of this section and, if 1 of the constituent corporations is a  
280 nonstock corporation, a copy of § 114 of this title. Such notice may, and, if given on or after the  
281 effective date of the merger or consolidation, shall, also notify such stockholders of the effective  
282 date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20  
283 days after the date of mailing of such notice or, in the case of a merger approved pursuant to §  
284 251(h) of this title, within the later of the consummation of the ~~tender or exchange~~ offer  
285 contemplated by § 251(h) of this title and 20 days after the date of mailing of such notice, demand  
286 in writing from the surviving or resulting corporation the appraisal of such holder's shares. Such  
287 demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder  
288 and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such  
289 notice did not notify stockholders of the effective date of the merger or consolidation, either (i)  
290 each such constituent corporation shall send a second notice before the effective date of the  
291 merger or consolidation notifying each of the holders of any class or series of stock of such  
292 constituent corporation that are entitled to appraisal rights of the effective date of the merger or  
293 consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all  
294 such holders on or within 10 days after such effective date; provided, however, that if such second  
295 notice is sent more than 20 days following the sending of the first notice or, in the case of a merger  
296 approved pursuant to § 251(h) of this title, later than the later of the consummation of the ~~tender or~~  
297 ~~exchange~~ offer contemplated by § 251(h) of this title and 20 days following the sending of the first  
298 notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights

299 and who has demanded appraisal of such holder's shares in accordance with this subsection. An  
300 affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is  
301 required to give either notice that such notice has been given shall, in the absence of fraud, be  
302 prima facie evidence of the facts stated therein. For purposes of determining the stockholders  
303 entitled to receive either notice, each constituent corporation may fix, in advance, a record date  
304 that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice  
305 is given on or after the effective date of the merger or consolidation, the record date shall be such  
306 effective date. If no record date is fixed and the notice is given prior to the effective date, the  
307 record date shall be the close of business on the day next preceding the day on which the notice is  
308 given.

309 Section 10. Amend § 262(g), Title 8 of the Delaware Code, by making insertions as shown by underline  
310 and deletions as shown by strike through as follows:

311 (g) At the hearing on such petition, the Court shall determine the stockholders who have complied with  
312 this section and who have become entitled to appraisal rights. The Court may require the stockholders who have  
313 demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of  
314 stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any  
315 stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder. If  
316 immediately before the merger or consolidation the shares of the class or series of stock of the constituent  
317 corporation as to which appraisal rights are available were listed on a national securities exchange, the Court shall  
318 dismiss the proceedings as to all holders of such shares who are otherwise entitled to appraisal rights unless (1) the  
319 total number of shares entitled to appraisal exceeds 1% of the outstanding shares of the class or series eligible for  
320 appraisal, (2) the value of the consideration provided in the merger or consolidation for such total number of shares  
321 exceeds \$1 million, or (3) the merger was approved pursuant to § 253 or § 267 of this title.

322 Section 11. Amend § 262(h), Title 8 of the Delaware Code, by making insertions as shown by underline  
323 and deletions as shown by strike through as follows:

324 (h) After the Court determines the stockholders entitled to an appraisal, the appraisal proceeding shall be  
325 conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing  
326 appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of

327 any element of value arising from the accomplishment or expectation of the merger or consolidation, together with  
328 interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court  
329 shall take into account all relevant factors. Unless the Court in its discretion determines otherwise for good cause  
330 shown, and except as provided in this subsection, interest from the effective date of the merger through the date of  
331 payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount  
332 rate (including any surcharge) as established from time to time during the period between the effective date of the  
333 merger and the date of payment of the judgment. At any time before the entry of judgment in the proceedings, the  
334 surviving corporation may pay to each stockholder entitled to appraisal an amount in cash, in which case interest  
335 shall accrue thereafter as provided herein only upon the sum of (1) the difference, if any, between the amount so  
336 paid and the fair value of the shares as determined by the Court, and (2) interest theretofore accrued, unless paid at  
337 that time. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in  
338 the appraisal proceeding, the Court may, in its discretion, proceed to trial upon the appraisal prior to the final  
339 determination of the stockholders entitled to an appraisal. Any stockholder whose name appears on the list filed by  
340 the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted such  
341 stockholder's certificates of stock to the Register in Chancery, if such is required, may participate fully in all  
342 proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

343 Section 12. Amend § 311, Title 8 of the Delaware Code, by making insertions as shown by underline and  
344 deletions as shown by strike through as follows:

345 § 311. Revocation of voluntary dissolution; restoration of expired certificate of incorporation.

346 (a) At any time prior to the expiration of 3 years following the dissolution of a corporation pursuant to §  
347 275 of this title, ~~or,~~ or such longer period as the Court of Chancery may have directed pursuant to § 278 of this title,  
348 or at any time prior to the expiration of 3 years following the expiration of the time limited for the corporation's  
349 existence as provided in its certificate of incorporation or such longer period as the Court of Chancery may have  
350 directed pursuant to § 278 of this title, a corporation may revoke the dissolution theretofore effected by it or restore  
351 its certificate of incorporation after it has expired by its own limitation in the following manner:

352 (1) For purposes of this section, the term "stockholders" shall mean the stockholders of record on  
353 the date the dissolution became effective or the date of expiration by limitation.

354 (2) The board of directors shall adopt a resolution recommending that the dissolution be revoked  
355 in the case of a dissolution or that the certificate of incorporation be restored in the case of an  
356 expiration by limitation and directing that the question of the revocation or restoration be  
357 submitted to a vote at a special meeting of stockholders.

358 (3) Notice of the special meeting of stockholders shall be given in accordance with § 222 of this  
359 title to each of the stockholders.

360 (4) At the meeting a vote of the stockholders shall be taken on a resolution to revoke the  
361 dissolution in the case of a dissolution or to restore the certificate of incorporation in the case of an  
362 expiration by limitation. If a majority of the stock of the corporation which was outstanding and  
363 entitled to vote upon a dissolution at the time of its dissolution, in the case of a revocation of  
364 dissolution, or which was outstanding and entitled to vote upon an amendment to the certificate of  
365 incorporation to change the period of the corporation's duration at the time of its expiration by  
366 limitation, in the case of a restoration, shall be voted for the resolution, a certificate of revocation  
367 of dissolution or a certificate of restoration shall be executed, ~~and~~ acknowledged and filed in  
368 accordance with § 103 of this title, which shall be specifically designated as a certificate of  
369 revocation of dissolution or a certificate of restoration in its heading and shall state:

- 370 a. The name of the corporation;
- 371 b. The address (which shall be stated in accordance with § 131(c) of this title) of the  
372 corporation's registered office in this State, and the name of its registered agent at such  
373 address;
- 374 c. The names and respective addresses of its officers;
- 375 d. The names and respective addresses of its directors;
- 376 e. That a majority of the stock of the corporation which was outstanding and entitled to  
377 vote upon a dissolution at the time of its dissolution have voted in favor of a resolution to  
378 revoke the dissolution, in the case of a revocation of dissolution, or that a majority of the  
379 stock of the corporation which was outstanding and entitled to vote upon an amendment  
380 to the certificate of incorporation to change the period of the corporation's duration at the  
381 time of its expiration by limitation, in the case of a restoration, have voted in favor of a

382 resolution to restore the certificate of incorporation; or, if it be the fact, that, in lieu of a  
383 meeting and vote of stockholders, the stockholders have given their written consent to the  
384 revocation or restoration in accordance with § 228 of this title-; and

385 f. In the case of a restoration, the new specified date limiting the duration of the  
386 corporation's existence or that the corporation shall have perpetual existence.

387 (b) Upon the effective time of the filing in the office of the Secretary of State of the certificate of  
388 revocation of dissolution, ~~the Secretary of State, upon being satisfied that the requirements of this section have been~~  
389 ~~complied with, shall issue a certificate that the dissolution has been revoked. Upon the issuance of such certificate~~  
390 ~~by the Secretary of the State~~ or the certificate of restoration, the revocation of the dissolution or the restoration of the  
391 corporation shall become effective and the corporation may again carry on its business.

392 (c) Upon the ~~issuance of the certificate by the Secretary of State to which effectiveness of the revocation of~~  
393 ~~the dissolution or the restoration of the corporation as provided in subsection (b) of this section refers,~~ the provisions  
394 of § 211(c) of this title shall govern, and the period of time the corporation was in dissolution or was expired by  
395 limitation shall be included within the calculation of the 30-day and 13-month periods to which § 211(c) of this title  
396 refers. An election of directors, however, may be held at the special meeting of stockholders to which subsection (a)  
397 of this section refers, and in that event, that meeting of stockholders shall be deemed an annual meeting of  
398 stockholders for purposes of § 211(c) of this title.

399 (d) If after the dissolution became effective or after the expiration by limitation any other corporation  
400 organized under the laws of this State shall have adopted the same name as the corporation, or shall have adopted a  
401 name so nearly similar thereto as not to distinguish it from the corporation, or any foreign corporation shall have  
402 qualified to do business in this State under the same name as the corporation or under a name so nearly similar  
403 thereto as not to distinguish it from the corporation, then, in such case, the corporation shall not be reinstated under  
404 the same name which it bore when its dissolution became effective or it expired by limitation, but shall adopt and be  
405 reinstated or restored under some other name, and in such case the certificate to be filed under this section shall set  
406 forth the name borne by the corporation at the time its dissolution became effective or it expired by limitation and  
407 the new name under which the corporation is to be reinstated or restored.

408 (e) Nothing in this section shall be construed to affect the jurisdiction or power of the Court of Chancery  
409 under § 279 or § 280 of this title.

410 (f) At any time prior to the expiration of 3 years following the dissolution of a nonstock corporation  
411 pursuant to § 276 of this title, ~~or, or such longer period as the Court of Chancery may have directed pursuant to §~~  
412 278 of this title, or at any time prior to the expiration of 3 years following the expiration of the time limited for a  
413 nonstock corporation's existence as provided in its certificate of incorporation or such longer period as the Court of  
414 Chancery may have directed pursuant to § 278 of this title, a nonstock corporation may revoke the dissolution  
415 theretofore effected by it or restore its certificate of incorporation after it has expired by limitation in a manner  
416 analogous to that by which the dissolution was authorized or, in the case of a restoration, in the manner in which an  
417 amendment to the certificate of incorporation to change the period of the corporation's duration would have been  
418 authorized at the time of its expiration by limitation including (i) if applicable, a vote of the members entitled to  
419 vote, if any, on the dissolution or the amendment and (ii) the filing of a certificate of revocation of dissolution or a  
420 certificate of restoration containing information comparable to that required by paragraph (a)(4) of this section.  
421 Notwithstanding the foregoing, only subsections (b), (d), and (e) of this section shall apply to nonstock corporations.

422 (g) Any corporation that revokes its dissolution or restores its certificate of incorporation pursuant to this  
423 section shall file all annual franchise tax reports that the corporation would have had to file if it had not dissolved or  
424 expired and shall pay all franchise taxes that the corporation would have had to pay if it had not dissolved or  
425 expired. No payment made pursuant to this subsection shall reduce the amount of franchise tax due under Chapter 5  
426 of this title for the year in which such revocation or restoration is effected.

427 Section 13. Amend § 312, Title 8 of the Delaware Code, by making insertions as shown by underline and  
428 deletions as shown by strike through as follows:

429 § 312. ~~Renewal, revival, extension and restoration~~ Revival of certificate of incorporation.

430 (a) As used in this section, the term "certificate of incorporation" includes the charter of a corporation  
431 organized under any special act or any law of this State.

432 (b) ~~Any corporation may, at any time before the expiration of the time limited for its existence and any~~  
433 ~~corporation whose certificate of incorporation has become forfeited or void pursuant to this title and any corporation~~  
434 ~~whose certificate of incorporation has expired by reason of failure to renew it or whose certificate of incorporation~~  
435 ~~has been renewed~~ revived, but, through failure to comply strictly with the provisions of this chapter, the validity of  
436 whose ~~renewal~~ revival has been brought into question, may at any time procure ~~an extension, restoration, renewal or~~  
437 a revival of its certificate of incorporation, together with all the rights, franchises, privileges and immunities and



438 subject to all of its duties, debts and liabilities which had been secured or imposed by its original certificate of  
439 incorporation and all amendments thereto, by complying with the requirements of this section. Notwithstanding the  
440 foregoing, this section shall not be applicable to a corporation whose certificate of incorporation has been revoked or  
441 forfeited pursuant to § 284 of this title.

442 (c) The ~~extension, restoration, renewal or revival~~ of the certificate of incorporation may be procured as  
443 authorized by the board of directors or members of the governing body of the corporation in accordance with §  
444 312(h) and by executing, acknowledging and filing a certificate of revival in accordance with § 103 of this title.

445 (d) The certificate required by subsection (c) of this section shall state:

446 (1) The ~~name date of filing of the corporation, which shall be the existing corporation's original certificate~~  
447 of incorporation; the name under which the corporation was originally incorporated; the name of the  
448 corporation or at the name it bore when time its certificate of incorporation expired, except as provided in  
449 became forfeited or void pursuant to this title; and the new name under which the corporation is to be  
450 revived to the extent required by subsection (f) of this section, and the date of filing of its original  
451 certificate of incorporation with the Secretary of State;

452 (2) The address (which shall be stated in accordance with § 131(c) of this title) of the corporation's  
453 registered office in this State and the name of its registered agent at such address;

454 (3) ~~Whether or not the renewal, restoration or revival is to be perpetual and if not perpetual the time for~~  
455 ~~which the renewal, restoration or revival is to continue and, in case of renewal before the expiration of the~~  
456 ~~time limited for its existence, the date when the renewal is to commence, which shall be prior to the date of~~  
457 ~~the expiration of the old certificate of incorporation which it is desired to renew;~~

458 (4) ~~(3) That the corporation desiring to be renewed or revived and so renewing or reviving its certificate of~~  
459 ~~incorporation was organized under the laws of this State;~~

460 (5) ~~The date when the certificate of incorporation would expire, if such is the case, or such other facts as~~  
461 ~~may show that the certificate of incorporation has become~~ became ~~forfeited or void pursuant to this title, or~~  
462 ~~that the validity of any renewal revival has been brought into question; and~~

463 (6) ~~(5) That the certificate for renewal or of revival is filed by authority of those who were directors or~~  
464 ~~members of the governing body of the corporation at the time its certificate of incorporation expired or who~~

465 ~~were elected the board of~~ directors or members of the governing body of the corporation ~~as provided in~~  
466 ~~subsection (h) in accordance with §312(h)~~ of this section.

467 (e) Upon the filing of the certificate in accordance with § 103 of this title the corporation shall be ~~renewed~~  
468 ~~and~~ revived with the same force and effect as if its certificate of incorporation had not been forfeited or void  
469 pursuant to this title, ~~or had not expired by limitation~~. Such ~~reinstatement~~ revival shall validate all contracts, acts,  
470 matters and things made, done and performed within the scope of its certificate of incorporation by the corporation,  
471 its directors or members of its governing body, officers and, agents and stockholders or members during the time  
472 when its certificate of incorporation was forfeited or void pursuant to this title, ~~or after its expiration by limitation~~,  
473 with the same force and effect and to all intents and purposes as if the certificate of incorporation had at all times  
474 remained in full force and effect. All real and personal property, rights and credits, which belonged to the  
475 corporation at the time its certificate of incorporation became forfeited or void pursuant to this title, ~~or expired by~~  
476 ~~limitation~~, and which were not disposed of prior to the time of its revival ~~or renewal shall be vested in the~~  
477 ~~corporation, after its revival and renewal, as fully and amply as they were held by the corporation at and before the~~  
478 ~~time its certificate of incorporation became forfeited or void pursuant to this title, or expired by limitation, and~~ and  
479 all real and personal property, rights and credits acquired by the corporation after its renewal and certificate of  
480 incorporation became forfeited or void pursuant to this title shall be vested in the corporation, after its revival, as if  
481 its certificate of incorporation had at all times remained in full force and effect, and the corporation after its revival  
482 shall be as exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on  
483 its behalf by its directors or members of its governing body, officers and, agents and stockholders or members prior  
484 to its ~~reinstatement~~ revival, as if its certificate of incorporation had at all times remained in full force and effect.

485 (f) If, since the certificate of incorporation became forfeited or void pursuant to this title, ~~or expired by~~  
486 ~~limitation~~, any other corporation organized under the laws of this State shall have adopted the same name as the  
487 corporation sought to be ~~renewed or~~ revived or shall have adopted a name so nearly similar thereto as not to  
488 distinguish it from the corporation to be ~~renewed or~~ revived or any foreign corporation qualified in accordance with  
489 § 371 of this title shall have adopted the same name as the corporation sought to be ~~renewed or~~ revived or shall have  
490 adopted a name so nearly similar thereto as not to distinguish it from the corporation to be ~~renewed or~~ revived, then  
491 in such case the corporation to be ~~renewed or~~ revived shall not be ~~renewed~~ revived under the same name which it  
492 bore when its certificate of incorporation became forfeited or void pursuant to this title, ~~or expired~~ but shall adopt or

493 ~~be renewed~~ be revived under some other name ~~and in such case as set forth in~~ the certificate to be filed ~~under the~~  
494 ~~provisions of this section shall set forth the name borne by the corporation at the time its certificate of incorporation~~  
495 ~~became forfeited or void pursuant to this title, or expired and the new name under which the corporation is to be~~  
496 ~~renewed or revived~~ pursuant to subsection (c) of this section.

497 (g) Any corporation that ~~renews or~~ revives its certificate of incorporation under this chapter shall pay to this  
498 State a sum equal to all franchise taxes, penalties and interest thereon due at the time its certificate of incorporation  
499 became forfeited or void pursuant to this title, ~~or expired by limitation or otherwise~~; provided, however, that any  
500 corporation that ~~renews or~~ revives its certificate of incorporation under this chapter whose certificate of  
501 incorporation has been forfeited, or ~~void or expired~~ for more than 5 years shall, in lieu of the payment of the  
502 franchise taxes and penalties otherwise required by this subsection, pay a sum equal to 3 times the amount of the  
503 annual franchise tax that would be due and payable by such corporation for the year in which the ~~renewal or~~ revival  
504 is effected, computed at the then current rate of taxation. No payment made pursuant to this subsection shall reduce  
505 the amount of franchise tax due under Chapter 5 of this title for the year in which the ~~renewal or~~ revival is effected.

506 (h) ~~If a sufficient number of the last acting officers of any corporation desiring to renew or revive its~~  
507 ~~certificate of incorporation are not available by reason of death, unknown address or refusal or neglect to act, the~~  
508 ~~directors of the corporation or those remaining on the board, even if only 1, may elect successors to such~~  
509 ~~officers.~~ For purposes of this section and § 502(a) of this title, the board of directors or governing body of the  
510 corporation shall be comprised of the persons, who, but for the certificate of incorporation having become forfeited  
511 or void pursuant to this title, would be the duly elected or appointed directors or members of the governing body of  
512 the corporation. The requirement for authorization by the board of directors under subsection (c) of this section  
513 shall be satisfied if a majority of the directors or members of the governing body then in office, even though less  
514 than a quorum, or the sole director or member of the governing body then in office, authorizes the revival of the  
515 certificate of incorporation of the corporation and the filing of the certificate required by subsection (c) of this  
516 section. In any case where there shall be no directors of the corporation available for the purposes aforesaid, the  
517 stockholders may elect a full board of directors, as provided by the bylaws of the corporation, and the board ~~shall~~  
518 ~~then elect such officers as are provided by law, by so elected may then authorize the revival of the certificate of~~  
519 ~~incorporation or by the bylaws to carry on the business and affairs of the corporation and the filing of the certificate~~  
520 ~~required by subsection (c) of this section.~~ A special meeting of the stockholders for the ~~purposes~~ purpose of electing

521 directors may be called by any officer, ~~director~~ or stockholder upon notice given in accordance with § 222 of this  
522 title. For purposes of this section, the bylaws shall be the bylaws of the corporation that, but for the certificate of  
523 incorporation having become forfeited or void pursuant to this title, would be the duly adopted bylaws of the  
524 corporation.

525 (i) After a ~~renewal or~~ revival of the certificate of incorporation of the corporation shall have been effected,  
526 the provisions of § 211(c) of this title shall govern and the period of time during which the certificate of  
527 incorporation of the corporation was forfeited or void pursuant to this title, ~~or after its expiration by limitation,~~ shall  
528 be included within the calculation of the 30-day and 13-month periods to which § 211(c) of this title refers. A  
529 special meeting of stockholders held in accordance with subsection (h) of this section shall be deemed an annual  
530 meeting of stockholders for purposes of § 211(c) of this title.

531 (j) Except as otherwise provided in § 313 of this title, whenever it shall be desired to ~~renew or~~ revive the  
532 certificate of incorporation of any nonstock corporation, the governing body shall perform all the acts necessary for  
533 the ~~renewal or~~ revival of the ~~charter~~ certificate of incorporation of the corporation which are performed by the board  
534 of directors in the case of a corporation having capital stock, and the members of any nonstock corporation who are  
535 entitled to vote for the election of members of its governing body and any other members entitled to vote for  
536 dissolution under the certificate of incorporation or the bylaws of such corporation, shall perform all the acts  
537 necessary for the ~~renewal or~~ revival of the certificate of incorporation of the corporation which are performed by the  
538 stockholders in the case of a corporation having capital stock. Except as otherwise provided in § 313 of this title, in  
539 all other respects, the procedure for the ~~renewal or~~ revival of the certificate of incorporation of a nonstock  
540 corporation shall conform, as nearly as may be applicable, to the procedure prescribed in this section for the ~~renewal~~  
541 ~~or~~ revival of the certificate of incorporation of a corporation having capital stock; provided, however, that subsection  
542 (i) of this section shall not apply to nonstock corporations.

543 Section 14. Amend § 313, Title 8 of the Delaware Code, by making insertions as shown by underline and  
544 deletions as shown by strike through as follows:

545 § 313. ~~Renewal~~ Revival of certificate of incorporation or charter of exempt corporations.

546 (a) Every exempt corporation whose certificate of incorporation or charter has become inoperative and  
547 void, by operation of § 510 of this title for failure to file annual franchise tax reports required, and for failure to pay  
548 taxes or penalties from which it would have been exempt if the reports had been filed, shall be deemed to have filed

549 all the reports and be relieved of all the taxes and penalties, upon satisfactory proof submitted to the Secretary of  
550 State of its right to be classified as an exempt corporation pursuant to § 501(b) of this title, and upon filing with the  
551 Secretary of State a certificate of ~~renewal and~~ revival in manner and form as required by § 312 of this title.

552 (b) Upon the filing by the corporation of the proof of classification as required by subsection (a) of this  
553 section, the filing of the certificate of ~~renewal and~~ revival and payment of the required filing fees, the Secretary of  
554 State shall issue a certificate that the corporation's certificate of incorporation or charter has been ~~renewed and~~  
555 revived as of the date of the certificate and the corporation shall be ~~renewed and~~ revived with the same force and  
556 effect as provided in § 312(e) of this title for other corporations.

557 (c) As used in this section, the term "exempt corporation" shall have the meaning given to it in § 501(b) of  
558 this title. Nothing contained in this section relieves any exempt corporation from filing the annual report required by  
559 § 502 of this title.

560 Section 15. Amend § 314, Title 8 of the Delaware Code, by making insertions as shown by underline and  
561 deletions as shown by strike through as follows:

562 § 314. Status of corporation.

563 Any corporation desiring to renew, extend and continue its corporate existence, ~~shall~~ upon complying  
564 with applicable constitutional provisions of this State, continue for the time stated as provided in its certificate of  
565 ~~renewal, effecting the foregoing as~~ a corporation and shall, in addition to the rights, privileges and immunities  
566 conferred by its charter, possess and enjoy all the benefits of this chapter, which are applicable to the nature of its  
567 business, and shall be subject to the restrictions and liabilities by this chapter imposed on such corporations.

568 Section 16. Sections 1 through 6 and 12 through 15 shall be effective on August 1, 2016.

569 Section 17. Section 7 shall be effective only with respect to merger agreements entered into on or after  
570 August 1, 2016.

571 Section 18. Sections 8 through 11 shall be effective only with respect to transactions consummated  
572 pursuant to agreements entered into on or after August 1, 2016 (or, in the case of mergers pursuant to Section 253,  
573 resolutions of the board of directors adopted on or after August 1, 2016 or, in the case of mergers pursuant to  
574 Section 267, authorizations provided on or after August 1, 2016 in accordance with an entity's (as defined in Section  
575 267) governing documents (as defined in Section 267) and the laws of the jurisdiction under which such entity is  
576 formed or organized), and appraisal proceedings arising out of such transactions.

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**SYNOPSIS**

Section 1. Section 104 is amended in connection with the amendments to Sections 311, 312 and 313.

Section 2. The amendment to Section 111(a)(2) permits the Court of Chancery to exercise subject matter jurisdiction over civil actions involving certain instruments, documents, or agreements, including (i) those to which a Delaware corporation is a party and pursuant to which one or more holders of the corporation’s stock sell or offer to sell any of such stock, and (ii) those by which a Delaware corporation agrees, subject to specified conditions, to sell, lease or exchange any of its property or assets.

Section 3. Section 141(b) is being amended to eliminate surplus language that addresses the minimum quorum requirement for a one-person board of directors.

Section 4. Section 141(c) is being amended to specify default quorum and voting requirements for committees of a board of directors and subcommittees of committees of a board. Section 141(c)(3) is being amended to clarify that references in the General Corporation Law to board committees (and committee members) will be deemed to include references to subcommittees (and subcommittee members).

Section 5. Section 141(d) is being amended to eliminate the express reference to subcommittees of committees of a board. The eliminated reference is unnecessary given the amendments to Section 141(c)(3).

Section 6. The amendment to Section 158 provides that any two officers of the corporation who are authorized to do so may execute stock certificates on behalf of the corporation. The amendment is not intended to change the existing law that the signatures on a stock certificate may be the signatures of the same person, so long as each signature is made in a separate officer capacity of such person.

Section 7. Section 7 amends Section 251(h) in several respects. It clarifies that Section 251(h) is applicable to a constituent corporation that has a class or series of stock that is listed on a national securities exchange or held of record by more than 2,000 holders immediately prior to the execution of the agreement of merger, even if not all classes or series of stock of such constituent corporation are so listed or held. Relatedly, Section 7 clarifies that the offer contemplated by paragraph (2) (the “Offer”) may be effected through separate offers for separate classes or series of stock.

The amendments to Section 251(h) also clarify that the Offer may be conditioned on the tender of a minimum number or percentage of the shares of the stock of the constituent corporation, or of any class or series thereof.

605 Section 7 permits, for purposes of determining whether the requirement in paragraph (3) (the “Statutory  
606 Minimum Tender Condition”) is satisfied, the inclusion of shares of stock of the constituent corporation held by any  
607 person that owns, directly or indirectly, all of the outstanding stock of the corporation making the Offer (the  
608 “Offeror”), or that is a direct or indirect wholly-owned subsidiary of such person or persons or of the Offeror (such  
609 owners and such subsidiaries, collectively, the “Offeror Affiliates”). Section 251(h), as amended, similarly permits  
610 shares of stock of the constituent corporation that are the subject of a written agreement requiring such shares to be  
611 transferred, contributed or delivered to the Offeror or any Offeror Affiliate in exchange for stock or other equity  
612 interests in the Offeror or any Offeror Affiliate to be counted for purposes of determining satisfaction of the  
613 Statutory Minimum Tender Condition, so long as such shares are in fact so transferred, contributed or delivered  
614 prior to the effective time of the merger (such shares in fact so transferred, contributed or delivered, “Rollover  
615 Stock”).

616 Further, Section 7 provides that Rollover Stock and shares of the constituent corporation held by such  
617 constituent corporation in treasury, by any direct or indirect wholly-owned subsidiary of such constituent  
618 corporation, or by the Offer or Offeror Affiliates are excluded from the requirement that they be converted in the  
619 merger into, or into the right to receive, the same consideration paid in the Offer.

620 Finally, Section 7 clarifies the methods by which shares of stock of the constituent corporation may be  
621 “received” for purposes of the Statutory Minimum Tender Condition. With respect to certificated shares, such  
622 shares will be “received” upon physical receipt of a stock certificate accompanied by an executed letter of  
623 transmittal so long as the certificate representing such shares was not cancelled prior to consummation of the Offer.  
624 With respect to uncertificated shares held of record by a clearing corporation as nominee, such shares will be  
625 “received” by transfer into the depository’s account by means of an agent’s message. With respect to uncertificated  
626 shares not so held, such shares will be “received” by physical receipt of an executed letter of transmittal by the  
627 depository. Regardless of how uncertificated shares are held, they will cease to be “received” to the extent such  
628 uncertificated shares have been reduced or eliminated due to any sale of such shares prior to the consummation of  
629 the Offer. For purposes of the foregoing, an “agent’s message” is a message transmitted by the clearing corporation  
630 acting as nominee, received by the depository, and forming part of the book-entry confirmation, which states that  
631 such clearing corporation has received an express acknowledgment from a stockholder that such stockholder has

632 received the Offer and agrees to be bound by the terms of the Offer, and that the Offeror may enforce such  
633 agreement against such stockholder.

634 Section 8. The amendment to Section 262(c) is intended to clarify that where a provision of the certificate  
635 of incorporation confers appraisal rights where those rights otherwise do not exist, an appraisal proceeding must be  
636 dismissed under the new provisions of subsection (g) of Section 262, if applicable.

637 Section 9. The amendments to Section 262(d) conform to Section 251(h) as amended.

638 Section 10. The amendment to Section 262(g) limits the availability of a judicial determination and award  
639 of fair value where the corporation's shares had been traded on a national securities exchange. In that circumstance  
640 appraisal rights are essentially precluded unless the dispute with regard to valuation is substantial and involves little  
641 risk that the petition for appraisal will be used to achieve a settlement because of the nuisance value of discovery  
642 and other burdens of litigation. In a short-form merger under Section 253 or Section 267, however, there is no  
643 requirement of approval by the corporation's board of directors and therefore no obligation on the part of directors to  
644 approve and recommend the merger, and appraisal may be the only remedy. Accordingly, the limitation in new  
645 subsection (g) also is not applicable to mergers accomplished pursuant to Section 253 or Section 267.

646 Section 11. The amendment to Section 262(h) provides an option to the surviving corporation to pay to the  
647 stockholders seeking appraisal a sum of money, the amount of which is to be determined in the sole discretion of the  
648 surviving corporation, at any time before judgment is entered in the appraisal proceeding, with the result of avoiding  
649 the need to pay subsequently accruing interest on that sum. There is no requirement or inference that the amount so  
650 paid by the surviving corporation is equal to, greater than, or less than the fair value of the shares to be appraised.  
651 Where one or more stockholders' entitlement to appraisal is contested in good faith, the corporation may elect to pay  
652 such amount only to those stockholders whose entitlement to appraisal is uncontested.

653 Section 12. Section 311 is amended to include a procedure to restore a corporation's certificate of  
654 incorporation after it has expired by limitation. This change is consistent with Section 278 which provides that  
655 Sections 279 through 282, relating to dissolved corporations, apply to any corporation that has expired by its own  
656 limitation. Section 311 is also amended to clarify that a corporation desiring to revoke its dissolution or restore its  
657 certificate of incorporation must file all annual franchise tax reports that the corporation would have had to file if it  
658 had not dissolved or expired by limitation and pay all franchise taxes that the corporation would have had to pay if it  
659 had not dissolved or expired.



660 Section 13. Section 312 is amended to distinguish the procedure to extend the term of a corporation's  
661 certificate of incorporation or to restore a corporation's certificate of incorporation if it has expired by limitation  
662 from the procedure to revive a corporation's certificate of incorporation when it has become forfeited or void.  
663 Section 312, as amended, only applies to a corporation whose certificate of incorporation has become forfeited or  
664 void and now uses only the term "revival" to reflect this process. The terms "renewal", "extension" and  
665 "restoration" have been eliminated. The amendment to Section 312, however, does not invalidate or otherwise  
666 change the effect of filings to "revive", "renew", "restore" or "extend" a corporation that were made pursuant to  
667 Section 312 prior to the effective time of the amendment to Section 312. The amendment to Section 312 also does  
668 not affect the procedure for a corporation formed by a special act of the General Assembly to renew, revive and  
669 continue its corporate existence.

670 The procedure to extend a corporation's duration is now solely governed by Section 242 which sets forth  
671 the manner in which a corporation's certificate of incorporation is amended, including for the purpose of changing  
672 the period of duration of the corporation. Section 311 as amended sets forth the procedure to restore a corporation's  
673 certificate of incorporation that has expired by limitation.

674 The other amendments to Section 312 clarify and simplify the procedures to be followed by a Delaware  
675 corporation to revive its certificate of incorporation which became forfeited or void. The amendments clarify that  
676 the provisions of Section 312 do not apply to a corporation whose certificate of incorporation has been forfeited or  
677 revoked by the Court of Chancery pursuant to Section 284. Amended Section 312 also clarifies and streamlines the  
678 process to approve a revival of the certificate of incorporation by providing that a majority of the directors then in  
679 office, even if less than a quorum, or the sole director in office, may authorize the revival of the certificate of  
680 incorporation. Further, Section 312 identifies such directors as those who, but for the certificate of incorporation  
681 having become forfeited or void, would be the duly elected or appointed directors of the corporation. The  
682 amendments also clarify the process for elections of directors if none are in office and the effect of a revival with  
683 respect to actions taken by the corporation's directors or members of the governing body, officers, agents and  
684 stockholders or members.

685 Section 14. The amendments to Section 313 conform to the amendments to Section 312 which provide that  
686 a corporation files a certificate of revival when its certificate of incorporation has become void or forfeited.

687 Section 15. Section 314 is amended in connection with the amendments to Sections 311, 312 and 313.

688           Sections 16, 17 and 18. Section 16 provides that the effective date of Sections 1 through 6 and 12 through  
689 15 is August 1, 2016. Section 17 provides that Section 7 shall be effective only with respect to merger agreements  
690 entered into on or after August 1, 2016. Pursuant to Section 18, Sections 8 through 11 shall be effective only with  
691 respect to transactions consummated pursuant to agreements entered into on or after August 1, 2016 (or, in the case  
692 of mergers pursuant to Section 253, resolutions of the board of directors adopted on or after August 1, 2016 or, in  
693 the case of mergers pursuant to Section 267, authorizations provided on or after August 1, 2016 in accordance with  
694 an entity's (as defined in Section 267) governing documents (as defined in Section 267) and the laws of the  
695 jurisdiction under which such entity is formed or organized), and appraisal proceedings arising out of such  
696 transactions.  
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