Article 11.

Merger and Share Exchange.

**§ 55-11-01. Merger.**

(a) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders (if required by G.S. 55-11-03) approve a plan of merger.

(b) The plan of merger shall set forth all of the following:

(1) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge.

(2) The terms and conditions of the merger.

(3) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation, or into cash or other property in whole or part, or of cancelling the shares.

(c) The plan of merger may set forth:

(1) Amendments to the articles of incorporation of the surviving corporation; and

(2) Other provisions relating to the merger.

(d) The provisions of the plan of merger, other than the provisions referred to in subdivisions (b)(1) and (c)(1) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document. (1925, c. 77, s. 1; 1939, c. 5; 1943, c. 270; G.S., s. 55-165; 1955, c. 1371, s. 1; 1969, c. 751, s. 37; 1973, c. 469, s. 31; 1989, c. 265, s. 1; 2005-268, s. 16; 2018-45, s. 16.)

**§ 55-11-02. Share exchange.**

(a) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders (if required by G.S. 55-11-03) approve the exchange.

(b) The plan of exchange must set forth:

(1) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(2) The terms and conditions of the exchange;

(3) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(c) The plan of exchange may set forth other provisions relating to the exchange.

(c1) The provisions of the plan of share exchange, other than the provision required by subdivision (b)(1) of this section, may be made dependent on facts objectively ascertainable outside the plan of share exchange if the plan of share exchange sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
(2) A determination or action by the corporation or by any other person, group, or body.
(3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(d) This section does not limit the acquisition of all or part of the shares of one or more classes or series of a corporation through a voluntary exchange or otherwise. (1989, c. 265, s. 1; 2005-268, s. 17.)

**§ 55-11-03. Action on plan.**

(a) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger (except as provided in subsections (g) and (j) of this section and in G.S. 55-11-04) or share exchange for approval by its shareholders.

(b) The following requirements shall be met for a plan of merger or share exchange to be approved:

(1) The board of directors shall recommend that the shareholders approve the plan of merger or share exchange or, in the case of an offer referred to in subdivision (2) of subsection (j) of this section, that the shareholders tender their shares to the offeror in response to the offer, unless one of the following circumstances exist, in which event the board of directors shall communicate to the shareholders the basis for not recommending that the shareholders approve the plan of merger or share exchange or tender their shares to the offeror in response to the offer at the time it submits to the shareholders the plan of merger or share exchange or communicates with the shareholders regarding an offer referred to in subdivision (2) of subsection (j) of this section:
a. The board of directors determines that, because of a conflict of interest or other special circumstances, it should not make a recommendation that the shareholders approve the plan of merger or share exchange or, in the case of an offer referred to in subdivision (2) of subsection (j) of this section, that the shareholders tender their shares to the offeror in response to the offer.
b. G.S. 55-8-26 applies.
(2) The shareholders entitled to vote must approve the plan of merger or share exchange.

(c) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater vote, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote

separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group and, for the purpose of Article 9 or any provision in the articles of incorporation or bylaws adopted prior to July 1, 1990, a merger shall be deemed to include a share exchange. If any shareholder of a merging corporation has or will have personal liability for any existing or future obligation of the surviving corporation in the merger solely as a result of owning one or more shares in the surviving corporation, then, in addition to the requirements of this subsection, authorization of the plan of merger by the merging corporation shall require the affirmative vote or written consent of that shareholder.

(f) Separate voting by voting groups is required for the following:

(1) On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under G.S. 55-10-04, except where the consideration to be received in exchange for the shares of that group consists solely of cash.

(2) On a plan of share exchange by each class or series of shares to be acquired in the exchange, with each class or series constituting a separate voting group.

(g) Unless the articles of incorporation provide otherwise, approval by the surviving corporation's shareholders of a plan of merger is not required if all of the following conditions are met:

(1) Except for amendments permitted by G.S. 55-10-02, its articles of incorporation will not be changed.

(2) Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger will hold the same shares, with identical preferences, limitations, and relative rights, immediately after the effective date of the merger.

(3) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of voting shares of the surviving corporation outstanding immediately before the merger.

(4) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of participating shares outstanding immediately before the merger.

(h) As used in subsection (g):

(1) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(2) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(i) After a plan of merger or share exchange is authorized, but before the articles of merger or share exchange become effective, the plan of merger or share exchange (i) may be amended as provided in the plan of merger or share exchange, or (ii) may be abandoned, subject to any

contractual rights, as provided in the plan of merger or share exchange or, if there is no such provision, as determined by the board of directors without further shareholder action.

(j) Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if all of the following requirements are met:

(1) The plan of merger or share exchange expressly (i) permits or requires the merger or share exchange to be effected under this subsection and (ii) provides that, if the merger or share exchange is to be effected under this subsection, the merger or share exchange shall be effected as soon as practicable following the satisfaction of the requirement set forth in subdivision (6) of this subsection.

(2) Another party to the merger or share exchange, or a parent of another party to the merger or share exchange, makes an offer to purchase, on the terms provided in the plan of merger or share exchange, any and all of the outstanding shares of the corporation that, absent this subsection, would be entitled to vote on the plan of merger or share exchange, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror, or by any wholly owned subsidiary of the corporation, the offeror, or any parent of the offeror.

(3) The offer discloses that the plan of merger or share exchange provides that the merger or share exchange shall be effected as soon as practicable following the satisfaction of the requirement set forth in subdivision (6) of this subsection and that the shares of the corporation that are not tendered in response to the offer shall be treated as set forth in subdivision (8) of this subsection.

(4) The offer remains open for at least 10 days.

(5) The offeror purchases all shares properly tendered in response to the offer and not properly withdrawn.

(6) Any or all of the following types of shares are collectively entitled to cast at least the minimum number of votes on the merger or share exchange that, absent this subsection, would be required by Articles 9 and 11 of this Chapter and by the articles of incorporation of the corporation for the approval of the merger or share exchange by the shareholders and by any other voting group entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote on the approval were present and voted:

a. Shares purchased by the offeror in accordance with the offer.

b. Shares otherwise owned by the offeror or by any parent or wholly owned subsidiary of the offeror.

c. Shares subject to an agreement to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of the offeror in exchange for stock or other equity interests in the offeror, parent, or subsidiary.

(7) The offeror or a wholly owned subsidiary of the offeror merges with or into, or effects a share exchange in which it acquires shares of, the corporation.

(8) Each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer, and that is not purchased in accordance with the offer, is to be converted in the merger into, or into the right to receive, or is to be exchanged in the share exchange for, or for

the right to receive, the same amount and kind of securities, interests, obligations, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in sub-subdivisions b. and c. of subdivision (6) of this subsection need not be converted into or exchanged for the consideration described in this subdivision.

(k) The following definitions apply in subsection (j) of this section:

(1) Offer. – The offer referred to in subdivision (2) of subsection (j) of this section.

(2) Offeror. – The person making the offer.

(3) Parent. – A person that owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares of or interests in an entity.

(4) Purchased. – Shares tendered in response to an offer are deemed to have been purchased in accordance with the offer at the earliest time as of which (i) the offeror has irrevocably accepted those shares for payment and (ii) either of the following has occurred:

a. In the case of shares represented by certificates, the offeror, or the offeror's designated depository or other agent, has physically received the certificates representing those shares.

b. In the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent, or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent.

(5) Wholly owned subsidiary of a person. – An entity of or in which that person owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares or other interests. (1925, c. 77, s. 1; 1939, c. 5; 1943, c. 270; G.S., s. 55-165; 1955, c. 1371, s. 1; 1959, c. 1316, s. 37; 1973, c. 469, s. 33; 1989, c. 265, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 12.17; 1993, c. 552, s. 14; 2005-268, ss. 18, 19, 20; 2013-153, s. 9; 2018-45, s. 17.)

**§ 55-11-04. Merger between parent corporation and subsidiary or between subsidiaries.**

(a) Subject to Article 9, a parent corporation owning shares of a domestic or foreign subsidiary corporation that carry at least ninety percent (90%) of the voting power of each class and series of the outstanding shares of the subsidiary corporation that have the current power to vote in the election of directors may merge the subsidiary into itself or into another such subsidiary without approval of the shareholders of the parent corporation unless the articles of incorporation of the parent corporation require approval of the shareholders or the plan of merger contains one or more amendments to the articles of incorporation of the parent corporation for which shareholder approval is required by G.S. 55-10-03, and without approval of the board of directors or shareholders of the subsidiary corporation unless the articles of incorporation of the subsidiary corporation require approval of the shareholders of the subsidiary corporation, or if the subsidiary is a foreign corporation, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized. Subject to Article 9, a parent corporation owning shares of a domestic or foreign subsidiary corporation that carry at least ninety percent (90%) of the voting power of each class and series of the outstanding shares of the subsidiary corporation that have the current power to vote in the election of directors may merge itself into the

subsidiary corporation without approval of the board of directors or shareholders of the subsidiary corporation unless the articles of incorporation of the subsidiary corporation provide otherwise, the plan of merger contains one or more amendments to the articles of incorporation of the subsidiary corporation for which shareholder approval is required by G.S. 55-10-03, or, if the subsidiary is a foreign corporation, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized. Except as otherwise provided in this subsection, the provisions of G.S. 55-11-01 and G.S. 55-11-03 apply to any merger described in this subsection.

(b) If a merger is consummated without approval of the subsidiary corporation's shareholders, the surviving corporation shall, within 10 days after the effective date of the merger, notify each shareholder of the subsidiary corporation as of the effective date of the merger, that the merger has become effective.

(c) Repealed by Session Laws 2005, c. 268, s. 21.

(d) Repealed by Session Laws 2005, c. 268, s. 21.

(e) Repealed by Session Laws 2005, c. 268, s. 21.

(f) Repealed by Session Laws 2025-33, s. 7(a), effective October 1, 2025. (1955, c. 1371, s. 1; 1959, c. 1316, s. 37; 1973, c. 469, s. 33; 1989, c. 265, s. 1; 1997-485, s. 29; 2005-268, s. 21; 2006-226, s. 16(a); 2013-153, s. 10; 2018-45, s. 18; 2025-33, s. 7(a).)

**§ 55-11-05. Articles of merger or share exchange.**

(a) After a plan of merger or a plan of share exchange for the acquisition of shares of a domestic corporation has been authorized as required by this Chapter, the surviving or acquiring corporation shall deliver to the Secretary of State for filing articles of merger or share exchange.

In the case of a merger, the articles of merger shall set forth (i) the name and state or country of incorporation of each merging corporation, (ii) the name of the merging corporation that will survive the merger and, if the surviving corporation is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address, (iii) any amendments to the articles of incorporation of the surviving corporation provided in the plan of merger if the surviving corporation is a domestic corporation, and (iv) a statement that the plan of merger has been approved by each merging corporation in the manner required by law.

In the case of a share exchange, the articles of share exchange shall set forth (i) the name of the corporation whose shares will be acquired, (ii) the name and state or country of incorporation of the acquiring corporation, (iii) a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address if the acquiring corporation is not authorized to transact business or conduct affairs in this State, and (iv) a statement that the plan of share exchange has been approved by the corporation whose shares will be acquired and by the acquiring corporation in the manner required by law.

(a1) If the plan of merger or share exchange is amended after the articles of merger or share exchange have been filed but before the articles of merger or share exchange become effective and any statement in the articles of merger or share exchange becomes incorrect as a result of the amendment, the surviving or acquiring corporation shall deliver to the Secretary of State for filing prior to the time the articles of merger or share exchange become effective an amendment to the articles of merger or share exchange correcting the incorrect statement. If the articles of merger or share exchange are abandoned after the articles of merger or share exchange are filed but before the articles of merger or share exchange become effective, the surviving or acquiring corporation shall

deliver to the Secretary of State for filing prior to the time the articles of merger or share exchange become effective an amendment reflecting abandonment of the plan of merger or share exchange.

(b) A merger or share exchange takes effect when the articles of merger or share exchange become effective.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(d) In the case of a merger pursuant to G.S. 55-11-07 or a share exchange pursuant to G.S. 55-11-07, references in subsections (a) and (a1) of this section to "corporation" shall include a domestic corporation, a domestic nonprofit corporation, a foreign corporation, and a foreign nonprofit corporation as applicable. (1925, c. 77, s. 1; 1939, c. 5; 1943, c. 270; G.S., s. 55-165; 1955, c. 1371, s. 1; 1967, c. 823, s. 18; 1973, c. 469, s. 34; 1989, c. 265, s. 1; 1991, c. 645, s. 10(b); 2005-268, s. 22; 2006-226, s. 16(b); 2006-259, s. 14.5(a)-(b); 2006-264, s. 44(b).)

**§ 55-11-06. Effect of merger or share exchange.**

(a) When a merger pursuant to G.S. 55-11-01, 55-11-04, 55-11-07, or 55-11-09, or 55-11-20 takes effect:

(1) Each other merging corporation merges into the surviving corporation and the separate existence of each merging corporation except the surviving corporation ceases.

(2) The title to all real estate and other property owned by each merging corporation is vested in the surviving corporation without reversion or impairment.

(3) The surviving corporation has all liabilities of each merging corporation.

(4) A proceeding pending by or against any merging corporation may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for a merging corporation whose separate existence ceases in the merger.

(5) If a domestic corporation survives the merger, its articles of incorporation are amended to the extent provided in the articles of merger.

(6) The shares of each merging corporation that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into the right to receive cash or other property are thereupon converted, and the former holders of the shares are entitled only to the rights provided to them in the plan of merger or, in the case of former holders of shares in a domestic corporation, any right they may have under Article 13 of this Chapter.

(7) If a foreign corporation or foreign nonprofit corporation survives the merger, it is deemed:

a. To agree that it will promptly pay to shareholders of any merging domestic corporation exercising appraisal rights the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

b. To agree that it may be served with process in this State in any proceeding for enforcement (i) of any obligation of any merging domestic corporation, (ii) of the appraisal rights of shareholders of any merging domestic corporation under Article 13 of this Chapter, and (iii) of any obligation of the surviving foreign corporation or foreign nonprofit corporation arising from the merger.

c. To have appointed the Secretary of State as its agent for service of process in any proceeding for enforcement as specified in sub-subdivision b. of this subdivision. Service of process on the Secretary of State shall be made by delivering to, and leaving with, the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process on behalf of a surviving foreign corporation or foreign nonprofit corporation in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving foreign corporation or foreign nonprofit corporation. If the surviving foreign corporation or foreign nonprofit corporation is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office, or, if there is no principal office on file, its registered office. If the surviving foreign corporation or foreign nonprofit corporation is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55-11-05(a).

(b) When a share exchange for the acquisition of shares of a domestic corporation pursuant to G.S. 55-11-02 or G.S. 55-11-07 takes effect:

(1) The shares of the acquired corporation are exchanged as provided in the plan of share exchange, and the former holders of the shares are entitled only to the exchange rights provided in the plan of share exchange or any right they may have under Article 13 of this Chapter.

(2) If the acquiring corporation is not a domestic corporation, it is deemed to agree that it will promptly pay to shareholders of the acquired corporation exercising appraisal rights the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were an acquiring domestic corporation in the share exchange.

(3) If the acquiring corporation is not a domestic corporation, the acquiring corporation is deemed:

a. To agree that it may be served with process in this State in any proceeding for enforcement (i) of the appraisal rights of shareholders of the acquired corporation under Article 13 of this Chapter and (ii) of any obligation of the acquiring corporation arising from the share exchange; and

b. To have appointed the Secretary of State as its agent for service of process in any proceeding for enforcement as specified in sub-subdivision a. of this subdivision. Service of process on the Secretary of State shall be made by delivering to, and leaving with, the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process on

behalf of an acquiring corporation in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the acquiring corporation. If the acquiring corporation is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the acquiring corporation is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55-11-05(a).

(c) In the case of a merger pursuant to G.S. 55-11-07 or G.S. 55-11-09 or a share exchange pursuant to G.S. 55-11-07, references in subsections (a) and (b) of this section to "corporation " shall include a domestic corporation, a domestic nonprofit corporation, a foreign corporation, and a foreign nonprofit corporation as applicable. (1925, c. 77, s. 1; 1943, c. 270; G.S., s. 55-166; 1955, c. 1371, s. 1; 1967, c. 950, s. 1; 1989, c. 265, s. 1; 1999-369, s. 1.7; 2005-268, s. 23; 2006-264, s. 44(c); 2011-347, ss. 6, 7; 2014-102, s. 6(b); 2018-45, s. 19.)

**§ 55-11-07. Merger or share exchange with foreign corporation.**

(a) One or more foreign corporations may merge with one or more domestic corporations, and a foreign corporation may enter into a share exchange with a domestic corporation if:

(1) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and, to the extent applicable, each domestic or foreign corporation complies with that law in effecting the merger;

(2) In a share exchange, if the corporation whose shares will be acquired is a foreign corporation, the share exchange is permitted by the law of the state or country under whose law the foreign corporation is incorporated and the foreign corporation and the acquiring domestic corporation comply with that law in effecting the share exchange;

(3) The foreign corporation complies with G.S. 55-11-05 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(4) Each domestic corporation complies with the applicable provisions of G.S. 55-11-01 through G.S. 55-11-04 and, if it is the surviving corporation of the merger with G.S. 55-11-05.

(b) Repealed by Session Laws 2005, c. 268, s. 24.

(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise, or the power of a domestic corporation to acquire all or part of the shares of one or more classes or series of a foreign corporation through a voluntary exchange or otherwise. (1925, c. 77, s. 1; 1939, c. 5; 1943, c. 270; G.S., s. 55-165; 1955, c. 1371, s. 1; 1973, c. 469, s. 35; 1989, c. 265, s. 1; 2001-387, ss. 18, 19; 2005-268, s. 24.)

**§ 55-11-08. Article 9 to control.**

Nothing in this Article shall be construed to modify in any manner the provisions or applicability of Article 9. (1989, c. 265, s. 1.)

**§ 55-11-09. Merger with nonprofit corporation.**

(a) One or more domestic or foreign nonprofit corporations may merge with one or more domestic corporations if:

(1) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03;

(2) In a merger involving one or more foreign nonprofit corporations, the merger is permitted by law of the state or country under whose law each foreign nonprofit corporation is incorporated and, to the extent applicable, each domestic corporation and each domestic or foreign nonprofit corporation complies with that law in effecting the merger;

(3) The domestic or foreign nonprofit corporation complies with G.S. 55-11-05 if it is the surviving corporation; and

(4) Each domestic corporation complies with the applicable provisions of G.S. 55-11-01, 55-11-03, and 55-11-04 and, if it is the surviving corporation, with G.S. 55-11-05.

(b) Repealed by Session Laws 2005, c. 268, s. 25.

(c) This section does not limit the power of a domestic or foreign nonprofit corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise. (1995, c. 400, s. 13; 2001-387, ss. 20, 21; 2005-268, s. 25.)

**§ 55-11-10. Merger with unincorporated entity.**

(a) Repealed by Session Laws 2001-387, s. 22, effective January 1, 2002.

(b) One or more domestic corporations may merge with one or more unincorporated entities and, if desired, one or more foreign corporations, domestic nonprofit corporations, or foreign nonprofit corporations if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic corporation and each other merging business entity comply with the requirements of this section and, to the extent applicable, the laws referred to in subdivision (1) of this subsection.

(c) Each merging domestic corporation and each other merging business entity shall approve a written plan of merger containing all of the following:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs.

(2) The name of the merging business entity that shall survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(3) The terms and conditions of the merger.

(4) The manner and basis of converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity, or into cash or other property in whole or in part, or of cancelling the interests.

(5) If the surviving business entity is a domestic corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

(c1) The plan of merger may contain other provisions relating to the merger.

(c2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (c) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(c3) In the case of a domestic corporation, approval of the plan of merger requires that the plan of merger be adopted by its board of directors as provided in G.S. 55-11-03 and, unless shareholder approval is not required under subsection (g) of G.S. 55-11-03, be approved by its shareholders as provided in G.S. 55-11-03. If any shareholder of a merging domestic corporation has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic corporation shall require the affirmative vote or written consent of that shareholder. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of that merging business entity.

(c4) After a plan of merger has been approved by a domestic corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or, if there is no such provision, as determined by the board of directors without further shareholder action.

(d) After a plan of merger has been approved by each merging domestic corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth all of the following:

(1) Repealed by Session Laws 2005, c. 268, s. 27.

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs.

(3) The name of the merging business entity that shall survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(3a) If the surviving business entity is a domestic corporation, any amendment to its articles of incorporation as provided in the plan of merger.

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law.

(5) Repealed by Session Laws 2005, c. 268, s. 27.

If the plan of merger is amended after the articles of merger have been filed but before the articles of merger become effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(e) Repealed by Session Laws 2018-45, s. 21, effective October 1, 2018.

(e1) Repealed by Session Laws 2018-45, s. 21, effective October 1, 2018.

(f) This section does not apply to a merger that does not include a merging unincorporated entity. (1999-369, s. 1.8; 2000-140, s. 45; 2001-387, ss. 22, 23, 24, 25; 2005-268, ss. 26, 27, 28; 2007-385, s. 2; 2011-347, ss. 8, 9; 2018-45, ss. 20, 21.)

**§ 55-11-11: Recodified as G.S. 55-11-20 by Session Laws 2018-45, s. 22, effective October 1, 2018.**

**§ 55-11-12. Merger between parent unincorporated entity and subsidiary corporation or corporations.**

(a) Subject to the other provisions of this section and Article 9 of this Chapter, a parent unincorporated entity owning shares of a domestic subsidiary corporation that carry at least ninety percent (90%) of the voting power of each class and series of the outstanding shares of the subsidiary corporation and that have the power to vote in the election of directors at the time of a merger under this section may merge the subsidiary corporation or corporations into itself, or merge itself and one or more subsidiary corporations into another subsidiary corporation, without approval of the board of directors or shareholders of the subsidiary corporation or corporations, unless the articles of incorporation of the subsidiary corporation or corporations require approval of the shareholders of the subsidiary corporation or corporations, if all of the following requirements are met:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each merging business entity.

(2) Each merging business entity complies with the requirements of this section and, to the extent applicable, the laws referred to in subdivision (1) of this subsection.

(3) The parent unincorporated entity approves, in the manner required by laws of the state or country governing the organization and internal affairs of the parent unincorporated entity, a written plan of merger containing all of the provisions required by G.S. 55-11-10(c).

(b) If any shareholder of the domestic subsidiary corporation, other than the parent unincorporated entity, has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then the plan of merger under subsection (a) of this section shall require the affirmative approval, by vote or written consent, of that shareholder.

(c) If the parent unincorporated entity does not own all the outstanding stock of the subsidiary corporation, the surviving business entity shall, within 10 days after the effective date of

the merger, notify each shareholder of the subsidiary corporation as of the effective date of the merger, that the merger has become effective.

(d) The surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth all of the following:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs.

(2), (3) Repealed by Session Laws 2025-33, s. 7(b), effective October 1, 2025.

(4) The name of the merging business entity that shall survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(5) If the surviving business entity is a domestic corporation, any amendment to its articles of incorporation as provided in a plan of merger.

(6) A statement that the plan of merger has been approved by each merging business entity in the manner required by law.

(e) The provisions of G.S. 55-11-10(c1) and (c2) apply to any merger described in this section.

(f) A merger takes effect when the articles of merger become effective. (2018-45, s. 23; 2025-33, s. 7(b).)

**§ 55-11-13. Effect of merger with unincorporated entity.**

(a) Upon taking effect, a merger pursuant to G.S. 55-11-10 or 55-11-12 shall have all of the following effects:

(1) Each other merging business entity merges into the surviving business entity, and the separate existence of each merging business entity, except the surviving business entity, ceases.

(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment.

(3) The surviving business entity has all liabilities of each merging business entity.

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose separate existence ceases in the merger.

(5) If a domestic corporation is the surviving business entity, its articles of incorporation shall be amended to the extent provided in the articles of merger.

(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity, or into the right to receive cash or other property, are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the plan of merger, resolution, or, in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of this Chapter.

(7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the shareholders

of any merging domestic corporation exercising appraisal rights the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 of this Chapter as if it were a surviving domestic corporation in the merger.

(b) The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of the merging business entity.

(c) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, when the merger takes effect the surviving business entity is deemed to have done both of the following:

(1) Agreed that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the appraisal rights of shareholders of any merging domestic corporation under Article 13 of this Chapter, and (iii) any obligation of the surviving business entity arising from the merger.

(2) Appointed the Secretary of State as its agent for service of process in the proceeding. Service on the Secretary of State of process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process on behalf of a surviving business entity in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55-11-10(c)(2) or G.S. 55-11-12(d)(4). (2018-45, s. 23.)

**§ 55-11-14: Reserved for future codification purposes.**

**§ 55-11-15: Reserved for future codification purposes.**

**§ 55-11-16: Reserved for future codification purposes.**

**§ 55-11-17: Reserved for future codification purposes.**

**§ 55-11-18: Reserved for future codification purposes.**

**§ 55-11-19: Reserved for future codification purposes.**

**§ 55-11-20. Merger to effect a holding company reorganization.**

(a) The following definitions apply in this section:

(1) "Company official" has the same meaning as in G.S. 57D-1-03.

(2) "Constituent corporation" means the original corporation incorporated under the laws of this State or limited liability company organized under the laws of this State that is a party to a merger that is intended to create a holding company structure under a plan of merger that satisfies the requirements of this section.

(3) "Holding company" means a corporation incorporated under the laws of this State or limited liability company organized under the laws of this State that from its incorporation or organization until consummation of a merger governed by this section was at all times a direct or indirect wholly owned subsidiary of the constituent corporation and whose capital stock is issued in the merger.

(4) "Manager" has the same meaning as in G.S. 57D-1-03.

(5) "Organizational documents" means the articles of incorporation of a corporation or the articles of organization of a limited liability company.

(6) "Surviving entity" means the corporation incorporated under the laws of this State or limited liability company organized under the laws of this State that is the surviving entity in a merger of a constituent corporation with or into a single direct or indirect wholly owned subsidiary of the constituent corporation, which immediately following the merger is a direct or indirect wholly owned subsidiary of the holding company.

(b) Notwithstanding the requirements of G.S. 55-11-03, unless expressly required by its articles of incorporation, no vote of shareholders of a constituent corporation is required to authorize a merger with or into a single direct or indirect wholly owned subsidiary of the constituent corporation if all of the following conditions are satisfied:

(1) The constituent corporation and the direct or indirect wholly owned subsidiary of the constituent corporation are the only constituent entities to the merger.

(2) Each share or fraction of a share of the capital stock of the constituent corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or equal fraction of a share of capital stock of a holding company having the same designations, rights, powers, and preferences, and the qualifications, limitations, and restrictions thereof, as the share or fraction of a share of the capital stock of the constituent corporation being converted in the merger.

(3) The holding company and the constituent corporation are both corporations of this State and the direct or indirect wholly owned subsidiary that is the other constituent entity to the merger is a corporation or limited liability company of this State.

(4) The articles of incorporation and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the articles of incorporation and bylaws of the constituent corporation immediately prior to the effective time of the merger other than provisions, if any, regarding any of the following:

a. The incorporator or incorporators.
b. The corporate name.
c. The registered office and agent.
d. The initial board of directors and the initial subscribers for shares.
e. Any provisions contained in any amendment to the articles of incorporation that were necessary to effect a change, exchange, reclassification, subdivision, combination, or cancellation of stock, if the change, exchange, reclassification, subdivision, combination, or cancellation has become effective.

(5) As a result of the merger the constituent corporation or its successor becomes or remains a direct or indirect wholly owned subsidiary of the holding company.

(6) The directors of the constituent corporation become or remain the directors of the holding company upon the effective time of the merger.

(7) Except as provided in subsections (c) and (d) of this section, the organizational documents of the surviving entity immediately following the effective time of the merger contain provisions identical to the articles of incorporation of the constituent corporation immediately prior to the effective time of the merger other than provisions, if any, regarding any of the following:
a. The incorporator or incorporators.
b. The corporate or entity name.
c. The registered office and agent.
d. The initial board of directors and the initial subscribers for shares.
e. References to members rather than stockholders or shareholders.
f. References to interests, units, or other similar terms rather than stock or shares.
g. References to managers, managing members, or other members of the governing body rather than directors.
h. Any provisions contained in any amendment to the articles of incorporation that were necessary to effect a change, exchange, reclassification, subdivision, combination, or cancellation of stock, if the change, exchange, reclassification, subdivision, combination, or cancellation has become effective.

(8) The shareholders of the constituent corporation do not recognize gain or loss for United States federal income tax purposes as determined by the board of directors of the constituent corporation.

(c) Notwithstanding the provisions of subdivision (7) of subsection (b) of this section, if the organizational documents of the surviving entity do not contain the following provisions, they shall be amended in the merger to contain provisions requiring all of the following:

(1) Any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members, or other members of the governing body of the surviving entity, that requires for its adoption under this Chapter or its organizational documents the approval of the shareholders or members of the surviving entity shall, by specific reference to this subsection, require, in addition, the approval of the shareholders of the holding company, or any successor by merger, by the same vote as is required by this Chapter or by the organizational documents of the surviving entity. For

purposes of this subdivision, any surviving entity that is not a corporation shall include in the amendment a requirement that the approval of the shareholders of the holding company be obtained for any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members, or other members of the governing body of the surviving entity, which would require the approval of the shareholders of the surviving entity if the surviving entity were a corporation subject to this Chapter.

(2) Any amendment of the organizational documents of a surviving entity that is not a corporation that would, if adopted by a corporation subject to this Chapter, be required to be included in the articles of incorporation of the corporation shall, by specific reference to this subsection, require, in addition, the approval of the shareholders of the holding company, or any successor by merger, by the same vote as is required by this Chapter or by the organizational documents of the surviving entity.

(3) The business and affairs of a surviving entity that is not a corporation shall be managed by or under the direction of a board of directors, board of managers, or other governing body consisting of individuals who are subject to the same fiduciary duties applicable to, and who are liable for breach of those duties to the same extent as, directors of a corporation subject to this Chapter.

(d) Notwithstanding the provisions of subdivision (7) of subsection (b) of this section, the organizational documents of the surviving entity may be amended in the merger to reduce the number of classes and shares of capital stock or other equity interests or units that the surviving entity is authorized to issue and to eliminate any provision authorized by G.S. 55-8-06.

(e) Neither subsection (c) of this section nor any provision of a surviving entity's organizational documents required by this section shall be deemed or construed to require approval of the shareholders of the holding company to elect or remove directors or managers, managing members, or other members of the governing body of the surviving entity.

(f) From and after the effective time of a merger adopted by a constituent corporation by action of its board of directors and without any vote of shareholders pursuant to this section, the following provisions apply:

(1) To the extent the restrictions of Articles 9 and 9A of this Chapter applied to the constituent corporation and its shareholders at the effective time of the merger, such restrictions shall apply to the holding company and its shareholders immediately after the effective time of the merger as though it were the constituent corporation.

(2) If the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of the constituent corporation immediately prior to the effective time of the merger, the shares of capital stock of the holding company into which the shares of capital stock of the constituent corporation are converted in the merger shall be represented by the stock certificates that previously represented shares of capital stock of the constituent corporation.

(3) To the extent a shareholder of the constituent corporation immediately prior to the merger had standing to institute or maintain derivative litigation on behalf of the constituent corporation, nothing in this section limits or extinguishes that standing.

(g) If a plan of merger is adopted by a constituent corporation by action of its board of directors and without any vote of shareholders pursuant to this section, but otherwise in accordance with G.S. 55-11-01, the secretary or assistant secretary of the constituent corporation shall certify on the plan of merger that the plan has been adopted pursuant to this section and that the conditions specified in subsection (b) of this section have been satisfied. This certification on the plan of merger is not required if a certificate of merger or consolidation is registered in lieu of filing the plan of merger. The plan so adopted and certified shall then be filed and become effective, in accordance with G.S. 55-11-05. That filing is a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately prior to the filing.

(h) Except as otherwise provided in this section:

(1) The provisions of G.S. 55-11-06(a) and G.S. 55-11-06(c) shall apply to any merger effected pursuant to this section.

(2) The provisions of Article 13 of this Chapter shall not apply to any merger effected pursuant to this section. (2014-102, s. 6(a); 2018-45, s. 22.)