Article 11A.

Conversions.

Part 1. Conversion to Corporation.

§ 55-11A-01. Conversion.

A business entity, other than a domestic corporation, may convert to a domestic corporation if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity; and

(2) The converting business entity complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section. (2001-387, s. 17.)

§ 55-11A-02. Plan of conversion.

(a) The converting business entity shall approve a written plan of conversion containing:

(1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the resulting domestic corporation into which the converting business entity shall convert;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the converting business entity into shares, obligations, or other securities of the resulting domestic corporation or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion 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 converting business entity or by any other person, group, or body.

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

(b) The plan of conversion shall be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section, but before articles of incorporation for the resulting domestic corporation become effective, the plan of conversion may be amended or abandoned to the extent permitted by the laws that govern the organization and internal affairs of the converting business entity. (2001-387, s. 17; 2005-268, s. 29.)

§ 55-11A-03. Filing of articles of incorporation by converting entity.

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 55-11A-02, the converting business entity shall deliver articles of incorporation to

the Secretary of State for filing. In addition to the matters required or permitted by G.S. 55-2-02, the articles of incorporation shall contain articles of conversion stating:

(1) That the corporation is being formed pursuant to a conversion of a business entity;

(2) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs; and

(3) That a plan of conversion has been approved by the converting business entity as required by law.

(b) If the plan of conversion is abandoned after the articles of incorporation have been filed with the Secretary of State but before the articles of incorporation become effective, the converting business entity shall deliver to the Secretary of State for filing prior to the time the articles of incorporation become effective an amendment to the articles of incorporation withdrawing the articles of incorporation.

(c) The conversion takes effect when the articles of incorporation become effective.

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1. (2001-387, s. 17.)

§ 55-11A-04. Effects of conversion.

When the conversion takes effect:

(1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic corporation;

(2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic corporation without reversion or impairment;

(3) All liabilities of the converting business entity continue as liabilities of the resulting domestic corporation;

(4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and

(5) The interests in the converting business entity that are to be converted into shares, obligations, or other securities of the resulting domestic corporation or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity. (2001-387, s. 17.)

§§ 55-11A-05 through 55-11A-09. Reserved for future codification purposes.

Part 2. Conversion of Corporation.

§ 55-11A-10. Conversion.

A domestic corporation may convert to a different business entity if:

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

(2) The converting domestic corporation complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section. (2001-387, s. 17.)

§ 55-11A-11. Plan of conversion.

(a) The converting domestic corporation shall approve a written plan of conversion containing all of the following:

(1) The name of the converting domestic corporation.

(2) The name of the resulting business entity into which the domestic corporation shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs.

(3) The terms and conditions of the conversion.

(4) The manner and basis for converting the shares of the domestic corporation into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion 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 converting domestic corporation or by any other person, group, or body.

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

(b) The following requirements shall be met for a plan of conversion to be approved:

(1) The board of directors shall recommend to the shareholders that the plan of conversion be approved, unless one of the following circumstances exist, in which event the board of directors shall communicate the basis for not recommending approval of the plan of conversion to the shareholders at the time it submits the plan of conversion to the shareholders:

a. The board of directors determines that, because of conflict of interest or other special circumstances, it should not make a recommendation that the shareholders approve the plan of conversion.

b. G.S. 55-8-26 applies.

(2) The shareholders entitled to vote shall approve the plan of conversion.

(c) The board of directors may condition its submission of the proposed conversion 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 shall state that the purpose, or one of the purposes, of the meeting is to consider the plan of conversion and contain or be accompanied by a copy 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) of this section, require a greater vote or a vote by voting groups, the plan of conversion to be authorized shall 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 of this Chapter or any provision in the articles of incorporation or bylaws adopted prior to January 1, 2002, a conversion shall be deemed to be included within the term "merger". If any shareholder of the converting domestic corporation has or will have personal liability for any existing or future obligation of the resulting business entity solely as a result of holding an interest in the resulting business entity, then in addition to the requirements of the preceding sentence, approval of the plan of conversion by the domestic corporation shall require the affirmative vote or written consent of that shareholder.

(f) Separate voting by voting groups is required on a plan of conversion 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.

(g) After a plan of conversion has been approved by a domestic corporation but before the articles of conversion become effective, the plan of conversion (i) may be amended as provided in the plan of conversion, or (ii) may be abandoned, subject to any contractual rights, as provided in the plan of conversion or, if there is no such provision, as determined by the board of directors without further shareholder action. (2001-387, s. 17; 2005-268, s. 30; 2013-153, s. 11.)

§ 55-11A-12. Articles of conversion.

(a) After a plan of conversion has been approved by the converting domestic corporation as provided in G.S. 55-11A-11, the converting domestic corporation shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

(1) The name of the converting domestic corporation;

(2) The name of the resulting business entity, its type of business entity, the state or country whose laws govern its organization and internal affairs, and, if the resulting 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; and

(3) That a plan of conversion has been approved by the domestic corporation as required by law.

(b) If the domestic corporation is converting to a business entity whose formation, or whose status as a registered limited liability partnership as defined in G.S. 59-32, requires the filing of a document with the Secretary of State, then notwithstanding subsection (a) of this section, the articles of conversion shall be included as part of that document and shall contain the information required by the laws governing the organization and internal affairs of the resulting business entity.

(c) If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective, the converting domestic corporation shall deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment to the articles of conversion withdrawing the articles of conversion.

(d) The conversion takes effect when the articles of conversion become effective.

(e) Certificates of conversion shall also be registered as provided in G.S. 47-18.1. (2001-387, s. 17; 2001-487, s. 62(d).)

§ 55-11A-13. Effects of conversion.

(a) When the conversion takes effect:

(1) The converting domestic corporation ceases its prior form of organization and continues in existence as the resulting business entity;

(2) The title to all real estate and other property owned by the converting domestic corporation continues vested in the resulting business entity without reversion or impairment;

(3) All liabilities of the converting domestic corporation continue as liabilities of the resulting business entity;

(4) A proceeding pending by or against the converting domestic corporation may be continued as if the conversion did not occur;

(5) The shares in the converting domestic corporation that are to be converted into interests, obligations, or securities of the resulting business entity or into the right to receive cash or other property are thereupon so converted, and the former shareholders of the converting domestic corporation are entitled only to the rights provided in the plan of conversion or any rights they may have under Article 13 of this Chapter; and

(6) The resulting business entity is deemed to agree that it will promptly pay to the former shareholders of the converting 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 domestic corporation.

The conversion shall not affect the liability or absence of liability of any shareholder of the converting domestic corporation for any acts, omissions, or obligations of the converting domestic corporation made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting domestic corporation in its form of organization as a domestic corporation in the conversion shall not constitute a dissolution or termination of the converting domestic corporation.

(b) If the resulting business entity is not a domestic limited liability company or a domestic limited partnership, when the conversion takes effect the resulting business entity is deemed:

(1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting domestic corporation, (ii) the appraisal rights of shareholders of the converting domestic corporation under Article 13 of this Chapter, and (iii) any obligation of the resulting business entity arising from the conversion; and

(2) To have appointed the Secretary of State as its agent for service of process in any proceeding described in subdivision (1) of this subsection. Service on the Secretary of State of any such 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 resulting 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 resulting business entity. If the resulting 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 resulting 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. 55-11A-12(a)(2). (2001-387, s. 17; 2011-347, ss. 10, 11.)