

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 324
Judiciary I Committee Substitute Adopted 4/13/05

Short Title: Revise Business Corporation Act.

(Public)

Sponsors:

Referred to:

March 3, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA
3 BUSINESS CORPORATION ACT AND TO MAKE CONFORMING CHANGES
4 TO THE OTHER ENTITY ACTS.

5 The General Assembly of North Carolina enacts:

6 **PART I. AMENDMENTS TO THE NORTH CAROLINA BUSINESS**
7 **CORPORATION ACT.**

8 **SECTION 1.** G.S. 55-6-31 reads as rewritten:

9 "**§ 55-6-31. Corporation's acquisition of its own shares.**

10 (a) A corporation may acquire its own shares and shares so acquired constitute
11 authorized but unissued shares.

12 (b) If the articles of incorporation prohibit the reissue of the acquired shares, the
13 number of authorized shares is reduced by the number of shares acquired, effective
14 upon amendment of the articles of incorporation.

15 ~~(c) Articles of amendment required by subsection (b) may be adopted by the~~
16 ~~board of directors without shareholder action and shall be delivered to the Secretary of~~
17 ~~State for filing. The articles must set forth:~~

18 (1) ~~The name of the corporation;~~

19 (2) ~~The reduction in the number of authorized shares, itemized by class~~
20 ~~and series; and~~

21 (3) ~~The total number of authorized shares, itemized by class and series,~~
22 ~~remaining after reduction of the shares."~~

23 **SECTION 2.** G.S. 55-7-04(a) reads as rewritten:

24 "(a) Action required or permitted by this Chapter to be taken at a shareholders'
25 meeting may be taken without a meeting and without prior notice except as required by
26 subsection (d) of this section, if the action is taken by all the shareholders entitled to
27 vote on the action or, subject to subsection (a1) of this section, if so provided in the
28 articles of incorporation of a corporation that is not a public corporation at the time the
29 action is taken, by shareholders having not less than the minimum number of votes that

1 would be necessary to take the action at a meeting at which all shareholders entitled to
2 vote were present and voted. The action must be evidenced by one or more unrevoked
3 written consents bearing the date of signature and signed by ~~the number of~~ shareholders
4 sufficient to take the action without a meeting, before or after such action, describing
5 the action taken and delivered to the corporation for inclusion in the minutes or filing
6 with the corporate records. To the extent the corporation has agreed pursuant to
7 G.S. 55-1-50, a shareholder's consent to action taken without meeting or revocation
8 thereof may be in electronic form and delivered by electronic means."

9 **SECTION 3.** G.S. 55-7-04(b) reads as rewritten:

10 "(b) A shareholder's written consent to action to be taken without a meeting shall
11 cease to be effective on the sixty-first day after the date of signature appearing on the
12 consent unless prior to the sixty-first day the corporation has received unrevoked written
13 consents sufficient under subsection (a) of this section to take the action without
14 meeting. If not otherwise fixed under G.S. 55-7-03 or G.S. 55-7-07, the record date for
15 determining shareholders entitled to take action without a meeting is the earliest date of
16 signature appearing on any consent that is to be counted in satisfying the requirements
17 of subsection (a) of this section. A shareholder may only revoke a written consent if
18 such shareholder delivers to the corporation a written revocation prior to the
19 corporation's receipt of unrevoked written consents sufficient under subsection (a) of
20 this section to take the action."

21 **SECTION 4.** G.S. 55-7-24(b)(4) reads as rewritten:

22 "(4) The name signed purports to be that of a ~~beneficial owner-pledgee,~~
23 beneficial owner, or attorney-in-fact of the shareholder and, if the
24 corporation requests, evidence acceptable to the corporation of the
25 signatory's authority to sign for the shareholder has been presented
26 with respect to the vote, consent, waiver, or proxy appointment;"

27 **SECTION 5.** G.S. 55-7-24(d) reads as rewritten:

28 "(d) The corporation and its officer or agent who accepts or rejects a vote,
29 consent, waiver, or proxy appointment in good faith and in accordance with the
30 standards of this section or G.S. 55-7-22(b) are not liable in damages to the shareholder
31 for the consequences of the acceptance or rejection."

32 **SECTION 6.** G.S. 55-8-01(b) reads as rewritten:

33 "(b) All corporate powers shall be exercised by or under the authority of, and the
34 business and affairs of the corporation managed by or under the direction of, its board of
35 directors, except as otherwise provided in the articles of incorporation or in an
36 agreement valid under G.S. 55-7-31(b)."

37 **SECTION 7.** G.S. 55-8-03 reads as rewritten:

38 "**§ 55-8-03. Number and election of directors.**

39 (a) A board of directors must consist of one or more individuals, with the number
40 specified in or fixed in accordance with the articles of incorporation or bylaws.

41 (b) ~~The shareholders may from time to time increase or decrease the number of~~
42 ~~directors by amendment to the articles of incorporation or the bylaws, but no such~~
43 ~~decrease shall be made~~ The number of directors may be increased or decreased from
44 time to time by amendment to, or in the manner provided in, the articles of

1 incorporation or the bylaws, but for a corporation to which G.S. 55-7-28(e) is applicable
2 when applies, the number of directors shall not be decreased unless one of the following
3 applies:

4 (1) The decrease is approved by the shareholders in a vote in which the
5 number of shares voting against the proposal for decrease would not be
6 sufficient to elect a director by cumulative voting if such shares are
7 entitled to be voted cumulatively for the election of directors.voting.

8 (2) If a board of directors has power under the articles of incorporation or
9 bylaws to fix or change the number of directors and if the shareholders
10 do not have the right to cumulate their votes for directors, the board
11 may increase or decrease the number of directors by not more than
12 thirty percent (30%) during any 12-month period.The decrease is made
13 pursuant to a provision of the articles of incorporation or bylaws fixing
14 a minimum and maximum number of directors and authorizing the
15 number of directors to be fixed or changed from time to time, within
16 the maximum and the minimum, by the shareholders or, unless the
17 articles of incorporation or an agreement valid under G.S. 55-7-31
18 provides otherwise, the board of directors.

19 (e) The articles of incorporation or bylaws may establish a variable range for the
20 size of the board of directors by fixing a minimum and maximum number of directors.
21 If a variable range is established, the number of directors may be fixed or changed from
22 time to time, within the minimum and maximum, by the shareholders or (unless the
23 articles of incorporation or an agreement valid under G.S. 55 7 31 shall otherwise
24 provide) the board of directors. After shares are issued, only the shareholders may
25 change the range for the size of the board or change from a fixed to a variable range
26 size board or vice versa.

27 (d) Directors are elected at the first annual shareholders' meeting and at each
28 annual meeting thereafter unless their terms are staggered under G.S. 55-8-06."

29 **SECTION 8.** G.S. 55-8-06 reads as rewritten:

30 **"§ 55-8-06. Staggered terms for directors.**

31 ~~If the number of directors is fixed at nine or more directors, the~~ The articles of
32 incorporation or bylaws adopted by the shareholders may provide for staggering ~~their~~
33 the terms of directors by dividing the total number of directors into two, three, or four
34 groups, with each group containing one-half, one-third, or one-fourth of the total, as
35 near as may be. In that event, the terms of directors in the first group expire at the first
36 annual shareholders' meeting after their election, the terms of the second group expire at
37 the second annual shareholders' meeting after their election, the terms of the third group,
38 if any, expire at the third annual shareholders' meeting after their election, and the terms
39 of the fourth group, if any, expire at the fourth annual shareholders' meeting after their
40 election. At each annual shareholders' meeting held thereafter, directors shall be chosen
41 for a term of two, three, or four years, as the case may be, to succeed those whose terms
42 expire."

43 **SECTION 9.** G.S. 55-8-21 reads as rewritten:

44 **"§ 55-8-21. Action without meeting.**

1 (a) Unless the articles of incorporation or bylaws provide otherwise, action
2 required or permitted by this Chapter to be taken at a board of directors' meeting may be
3 taken without a meeting if the action is taken by all members of the board. The action
4 must be evidenced by one or more unrevoked written consents signed by each director
5 before or after such action, describing the action taken, and included in the minutes or
6 filed with the corporate records. To the extent the corporation has agreed pursuant to
7 G.S. 55-1-50, a director's consent to action taken without meeting or revocation thereof
8 may be in electronic form and delivered by electronic means.

9 (b) Action taken under this section is effective when ~~the last director signs the~~
10 ~~consent,~~ one or more unrevoked consents signed by all of the directors are delivered to
11 the corporation, unless the ~~consent specifies~~ consents specify a different effective date.
12 A director's consent to action may be revoked in a writing signed by the director and
13 delivered to the corporation prior to the action becoming effective.

14 (c) A consent signed under this section has the effect of a meeting vote and may
15 be described as such in any document."

16 **SECTION 10.** G.S. 55-8-25 reads as rewritten:

17 "**§ 55-8-25. Committees.**

18 (a) Unless this Chapter, the articles of ~~incorporation-incorporation,~~ or the bylaws
19 provide otherwise, a board of directors may create one or more committees and appoint
20 one or more members of the board of directors to serve on ~~them.~~ Each committee must
21 have two or more members, who serve at the pleasure of the board of directors. any
22 such committee.

23 (b) ~~The~~ Unless this Chapter provides otherwise, the creation of a committee and
24 appointment of members to it must be approved by the greater of:

25 (1) A majority of all the directors in office when the action is taken; or

26 (2) The number of directors required by the articles of incorporation or
27 bylaws to take action under G.S. 55-8-24.

28 (b1) The creation and appointment of a committee pursuant to G.S. 55-7-44(b)(2)
29 may be approved in the manner set forth in G.S. 55-7-44(b)(2).

30 (c) G.S. 55-8-20 through ~~G.S. 55-8-24,~~ which govern meetings, action without
31 meetings, notice and waiver of notice, and quorum and voting requirements of the board
32 of directors, ~~G.S. 55-8-24~~ apply both to committees of the board of directors and to their
33 members as well. members.

34 (d) To the extent specified by the board of directors or in the articles of
35 incorporation or bylaws, each committee may exercise the authority of the board of
36 directors under G.S. 55-8-01.

37 (e) A committee ~~may not, however:~~ shall not, however, do any of the following:

38 (1) Authorize ~~distributions;~~ distributions.

39 (2) Approve or propose to shareholders action that this act requires be
40 approved by ~~shareholders;~~ shareholders.

41 (3) Fill vacancies on the board of directors or on any of its ~~committees;~~
42 committees.

43 (4) Amend articles of incorporation pursuant to ~~G.S. 55-10-02;~~
44 G.S. 55-10-02.

- 1 (5) Adopt, amend, or repeal ~~bylaws;~~ bylaws.
2 (6) Approve a plan of merger not requiring shareholder ~~approval;~~
3 approval.
4 (7) ~~Authorize or approve reacquisition of shares, except according to a~~
5 ~~formula or method prescribed by the board of directors; or~~
6 (8) ~~Authorize or approve the issuance or sale or contract for sale of shares,~~
7 ~~or determine the designation and relative rights, preferences, and~~
8 ~~limitations of a class or series of shares, except that the board of~~
9 ~~directors may authorize a committee (or a senior executive officer of~~
10 ~~the corporation) to do so within limits specifically prescribed by the~~
11 ~~board of directors.~~

12 (f) The creation of, delegation of authority to, or action by a committee does not
13 alone constitute compliance by a director with the standards of conduct described in
14 G.S. 55-8-30."

15 **SECTION 11.** G.S. 55-8-31(c) reads as rewritten:

16 "(c) For purposes of subsection (a)(1) of this section, a conflict of interest
17 transaction is authorized, approved, or ratified if it receives the affirmative vote of a
18 majority of the directors on the board of directors (or on the committee) who have no
19 direct or indirect interest in the ~~transaction, but a transaction may not be authorized,~~
20 ~~approved, or ratified under this section by a single director.~~transaction. If a majority of
21 the directors who have no direct or indirect interest in the transaction vote to authorize,
22 approve, or ratify the transaction, a quorum is present for the purpose of taking action
23 under this section. The presence of, or a vote cast by, a director with a direct or indirect
24 interest in the transaction does not affect the validity of any action taken under
25 subsection (a)(1) of this section if the transaction is otherwise authorized, approved, or
26 ratified as provided in that subsection."

27 **SECTION 12.** G.S. 55-8-43 reads as rewritten:

28 "**§ 55-8-43. Resignation and removal of officers.**

29 (a) An officer may resign at any time by communicating his resignation to the
30 corporation. A resignation is effective when it is communicated unless it specifies in
31 writing a later effective ~~date.~~ time. If a resignation is made effective at a later ~~date~~ time
32 and the corporation accepts the future effective ~~date,~~ time, its board of directors or the
33 appointing officer may fill the pending vacancy before the effective ~~date~~ time if the
34 board of directors or the appointing officer provides that the successor does not take
35 office until the effective ~~date.~~ time.

36 (b) ~~A board of directors may remove any officer at any time with or without~~
37 ~~cause.~~ An officer may be removed at any time with or without cause by (i) the board of
38 directors, (ii) the appointing officer, unless the bylaws or the board of directors provide
39 otherwise, or (iii) any other officer if authorized by the bylaws or the board of directors.

40 (c) In this section, "appointing officer" means the officer, including any
41 successor to that officer, who appointed the officer resigning or being removed."

42 **SECTION 13.** G.S. 55-10-02 reads as rewritten:

43 "**§ 55-10-02. Amendment by board of directors.**

1 Unless the articles of incorporation provide otherwise, a corporation's board of
2 directors may adopt ~~one or more~~ any of the following amendments to the corporation's
3 articles of incorporation without shareholder ~~action~~ approval:

- 4 (1) Reserved for future codification ~~purposes~~; purposes.
- 5 (2) To delete the names and addresses of the initial ~~directors~~; directors.
- 6 (3) To delete the name and address of the initial registered agent or
7 registered office, if a statement of change is on file with the Secretary
8 of ~~State~~; State.
- 9 (4) If the corporation has only one class of shares outstanding:
- 10 a. To change each issued and unissued authorized share of an
11 outstanding ~~the~~ class into a greater number of whole shares if
12 the corporation has only shares of that class outstanding; of the
13 class; or
- 14 b. To increase the number of authorized shares of the class to the
15 extent necessary to permit the issuance of shares as a share
16 dividend.
- 17 (5) To change the corporate name by substituting the word "corporation",
18 "incorporated", "company", "limited", or the abbreviation "corp.",
19 "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name,
20 or by adding, deleting, or changing a geographical attribution for the
21 ~~name~~; or name.
- 22 (5a) To reflect a reduction in authorized shares pursuant to G.S. 55-6-31(b)
23 when the corporation has acquired its own shares and the articles of
24 incorporation prohibit the reissue of the acquired shares.
- 25 (5b) To delete a class of shares from the articles of incorporation, as a result
26 of the operation of G.S. 55-6-31(b), when there are no remaining
27 authorized shares of the class because the corporation has acquired all
28 authorized shares of the class and the articles of incorporation prohibit
29 the reissue of the acquired shares.
- 30 (6) To make any other change expressly permitted by this ~~aet~~ Chapter
31 to be made without shareholder ~~action~~ approval."

32 **SECTION 14.** G.S. 55-10-03 reads as rewritten:

33 **"§ 55-10-03. Amendment by board of directors and shareholders.**

34 (a) If a corporation has issued shares, an amendment to the articles of
35 incorporation shall be adopted pursuant to this section. Except as provided in
36 G.S. 55-14A-01, the proposed amendment must be adopted by the board of directors. A
37 corporation's board of directors may propose one or more amendments to the articles of
38 incorporation for submission to the shareholders.

39 (b) ~~For the amendment to be adopted:~~

- 40 (1) ~~The board of directors must recommend the amendment to the~~
41 ~~shareholders unless the board of directors determines that because of~~
42 ~~conflict of interest or other special circumstances it should make no~~
43 ~~recommendation, in which event the board of directors must~~

1 communicate the basis for its lack of a recommendation to the
2 shareholders with the amendment; and

- 3 (2) ~~The shareholders entitled to vote on the amendment must approve the~~
4 ~~amendment as provided in subsection (e).~~

5 Except as provided in G.S. 55-10-02, 55-10-07, and 55-14A-01, after adopting the
6 proposed amendment the board of directors must submit the amendment to the
7 shareholders for their approval. The board of directors must also transmit to the
8 shareholders a recommendation that the shareholders approve the amendment, unless
9 the board of directors determines that, because of conflict of interest or other special
10 circumstances, it should not make such a recommendation, in which event the board of
11 directors must communicate the basis for that determination to the shareholders with the
12 amendment.

13 (c) The board of directors may condition its submission of the ~~proposed~~
14 ~~amendment to the shareholders~~ on any basis.

15 (d) ~~The~~ If the amendment must be approved by the shareholders and the
16 approval is to be given at a meeting, the corporation shall must notify each shareholder,
17 shareholder in accordance with G.S. 55-7-05, whether or not the shareholder is entitled
18 to vote, of the ~~proposed shareholders' meeting in accordance with G.S. 55-7-05. of~~
19 shareholders at which the amendment is to be submitted for approval. The notice of
20 meeting must state that the purpose, or one of the purposes, of the meeting is to consider
21 the ~~proposed~~ amendment and the notice must contain or be accompanied by a copy or
22 summary of the amendment. If the amendment is required to be approved by the
23 shareholders and the approval is to be obtained through action without meeting, the
24 corporation must notify shareholders if required by G.S. 55-7-04(d).

25 (e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the
26 shareholders, or the board of directors (acting pursuant to subsection (c)) require a
27 greater vote or a vote by voting groups, the amendment to be adopted must be approved
28 by:

- 29 (1) A majority of the votes entitled to be cast on the amendment by any
30 voting group with respect to which the amendment would create
31 dissenters' rights; and
32 (2) The votes required by G.S. 55-7-25 and G.S. 55-7-26 by every other
33 voting group entitled to vote on the amendment."

34 **SECTION 15.** G.S. 55-10-07 reads as rewritten:

35 "**§ 55-10-07. Restated articles of incorporation.**

36 (a) A corporation's board of directors may restate its articles of incorporation at
37 any ~~time~~ time, with or without shareholder ~~action~~ approval, to consolidate all
38 amendments into a single document.

39 (b) The restated articles of incorporation may include one or more new
40 amendments to the articles. If the restated articles of incorporation include ~~an~~ a new
41 amendment requiring shareholder approval, it must be adopted and approved as
42 provided in G.S. 55-10-03. The restated articles of incorporation may include a
43 statement of the address of the current registered office and the name of the current
44 registered agent of the corporation, and no other.

1 ~~(e) If the board of directors submits restated articles of incorporation for~~
2 ~~shareholder action, the corporation shall notify each shareholder entitled to vote, of the~~
3 ~~proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice must also~~
4 ~~(i) state that the purpose, or one of the purposes, of the meeting is to consider the~~
5 ~~proposed restated articles of incorporation, (ii) contain or be accompanied by a copy of~~
6 ~~the proposed restated articles of incorporation, and (iii) identify any amendment or other~~
7 ~~change they would make in the articles.~~

8 (d) A corporation restating its articles of incorporation shall deliver to the
9 Secretary of State for filing articles of restatement which shall:

- 10 (1) Set forth the name of the corporation;
11 (2) Attach as an exhibit thereto the text of the restated articles of
12 incorporation;
13 (3) State ~~whether that~~ the restated articles of incorporation ~~contain an~~
14 ~~amendment to the articles requiring shareholder approval and, if they~~
15 ~~do not, that the board of directors adopted the restated articles of~~
16 ~~incorporation; consolidate all amendments into a single document; and~~
17 (4) If the restated articles of incorporation contain ~~an a new~~ amendment to
18 the articles requiring shareholder approval, ~~state that shareholder~~
19 ~~approval was obtained as required by this Chapter. articles, include the~~
20 ~~statements required by G.S. 55-10-06.~~

21 (e) Duly adopted restated articles of incorporation supersede the original articles
22 of incorporation and all amendments ~~to them.~~ to the original articles of incorporation.

23 (f) The Secretary of State may certify restated articles of ~~incorporation,~~
24 incorporation as the articles of incorporation currently in effect, ~~effect~~ without including
25 the other information required by subsection ~~(d).~~ (d) of this section."

26 **SECTION 16.** G.S. 55-11-01 is amended by adding the following new
27 subsection to read:

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

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

40 **SECTION 17.** G.S. 55-11-02 reads as rewritten:

41 "**§ 55-11-02. Share exchange.**

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

1 (b) The plan of exchange must set forth:

- 2 (1) The name of the corporation whose shares will be acquired and the
3 name of the acquiring corporation;
4 (2) The terms and conditions of the exchange;
5 (3) The manner and basis of exchanging the shares to be acquired for
6 shares, obligations, or other securities of the acquiring or any other
7 corporation or for cash or other property in whole or part.

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

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

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

21 (d) This section does not limit ~~the power of a corporation to acquire~~ the
22 acquisition of all or part of the shares of one or more classes or series of ~~another~~ a
23 corporation through a voluntary exchange or otherwise."

24 **SECTION 18.** G.S. 55-11-03(e) reads as rewritten:

25 "(e) ~~Unless this Chapter, the articles of incorporation, a bylaw adopted by the~~
26 ~~shareholders~~ shareholders, or the board of directors (acting pursuant to subsection (c))
27 require a greater ~~vote or a vote by voting groups,~~ vote, the plan of merger or share
28 exchange to be authorized must be approved by each voting group entitled to vote
29 separately on the plan by a majority of all the votes entitled to be cast on the plan by
30 that voting group and, for the purpose of Article 9 or any provision in the articles of
31 incorporation or bylaws adopted prior to July 1, 1990, a merger shall be deemed to
32 include a share exchange. If any shareholder of a merging corporation has or will have
33 personal liability for any existing or future obligation of the surviving corporation in the
34 merger solely as a result of owning one or more shares in the surviving corporation,
35 then, in addition to the requirements of this subsection, authorization of the plan of
36 merger by the merging corporation shall require the affirmative vote or written consent
37 of that shareholder."

38 **SECTION 19.** G.S. 55-11-03(g) reads as rewritten:

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

- 42 (1) ~~The~~ Except for amendments permitted by G.S. 55-10-02, its articles of
43 incorporation of the surviving corporation will not differ (except for

1 amendments enumerated in G.S. 55-10-02) from its articles before the
2 merger; be changed.

3 (2) Each shareholder of the surviving corporation whose shares were
4 outstanding immediately before the effective date of the merger will
5 hold the same shares, with identical ~~designations,~~ preferences,
6 limitations, and relative rights, immediately after the effective date of
7 the ~~merger;~~ merger.

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

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

22 **SECTION 20.** G.S. 55-11-03(i) reads as rewritten:

23 "(i) After a plan of merger or share exchange is authorized, and at any time but
24 before the articles of merger or share exchange are filed, become effective, the planned
25 plan of merger or share exchange (i) may be amended as provided in the plan of merger
26 or share exchange, or (ii) may be abandoned (subject to any contractual rights), without
27 further shareholder action, in accordance with the procedure set forth abandoned,
28 subject to any contractual rights, as provided in the plan of merger or share exchange or,
29 if none is set forth, in the manner there is no such provision, as determined by the board
30 of directors. ~~directors without further shareholder action."~~

31 **SECTION 21.** G.S. 55-11-04 reads as rewritten:

32 "**§ 55-11-04. Merger with subsidiary.**

33 (a) Subject to Article 9, a parent corporation owning at least ~~90~~ ninety percent
34 (90%) of the outstanding shares of each class of a subsidiary corporation may merge the
35 subsidiary into itself without approval of the shareholders of the parent ~~or subsidiary~~
36 corporation unless the articles of incorporation of the parent corporation require
37 approval of the shareholders or the plan of merger contains one or more amendments to
38 the articles of incorporation of the parent corporation for which shareholder approval is
39 required by G.S. 55-10-03, and without approval of the board of directors or
40 shareholders of the subsidiary corporation unless the articles of incorporation of the
41 subsidiary corporation require approval of the shareholders of the subsidiary
42 corporation. Subject to Article 9, a parent corporation owning at least ninety percent
43 (90%) of the outstanding shares of each class of a subsidiary corporation may merge
44 itself into the subsidiary corporation without approval of the board of directors or

1 shareholders of the subsidiary if the merger is approved by the directors and
2 shareholders of the parent corporation in accordance with G.S. 55-11-01 and
3 G.S. 55-11-03. corporation unless the articles of incorporation of the subsidiary
4 corporation provide otherwise or the plan of merger contains one or more amendments
5 to the articles of incorporation of the subsidiary corporation for which shareholder
6 approval is required by G.S. 55-10-03. Except as otherwise provided in this subsection,
7 the provisions of G.S. 55-11-01 and G.S. 55-11-03 apply to any merger described in this
8 subsection.

9 (b) ~~The board of directors of the parent shall adopt a plan of merger that sets~~
10 ~~forth:~~

11 (1) ~~The names of the parent and subsidiary; and~~

12 (2) ~~The manner and basis of converting the shares of each corporation into~~
13 ~~shares, obligations, or other securities of the surviving or any other~~
14 ~~corporation or into cash or other property in whole or part.~~

15 If a merger is consummated without approval of the subsidiary corporation's
16 shareholders, the parent corporation shall, within 10 days after the effective date of the
17 merger, notify each shareholder of the subsidiary corporation as of the effective date of
18 the merger, that the merger has become effective.

19 (c) ~~The parent shall mail a copy or summary of the plan of merger to each~~
20 ~~shareholder of the subsidiary who does not waive the mailing requirement in writing.~~

21 (d) ~~The parent may not deliver articles of merger to the Secretary of State for~~
22 ~~filing until at least 30 days after the date it mailed a copy or summary of the plan of~~
23 ~~merger to each shareholder of the subsidiary who did not waive the mailing~~
24 ~~requirement. This subsection does not apply to a merger in which the subsidiary was a~~
25 ~~public corporation before becoming a subsidiary qualifying for a merger under this~~
26 ~~section and is still a public corporation on the effective date of the merger.~~

27 (e) ~~Articles of merger under this section may not contain amendments to the~~
28 ~~articles of incorporation of the surviving corporation (except for amendments~~
29 ~~enumerated in G.S. 55-10-02).~~

30 (f) ~~The provisions of G.S. 55-13-02(c) do not apply to subsidiary corporations~~
31 ~~that are parties to mergers consummated under this section."~~

32 **SECTION 22.** G.S. 55-11-05 reads as rewritten:

33 **"§ 55-11-05. Articles of merger or share exchange.**

34 (a) ~~After a plan of merger or a plan of share exchange is approved by the~~
35 ~~shareholders, or adopted by the board of directors if shareholder approval is not~~
36 ~~required, for the acquisition of shares of a domestic corporation has been authorized as~~
37 ~~required by this Chapter, the surviving or acquiring corporation shall deliver to the~~
38 ~~Secretary of State for filing articles of merger or share exchange setting forth: exchange.~~

39 (1) ~~The plan of merger or share exchange;~~

40 (2) ~~If shareholder approval was not required, a statement to that effect;~~

41 (3) ~~If approval of the shareholders of one or more corporations party to the~~
42 ~~merger or share exchange was required, a statement that the merger or~~
43 ~~share exchange was approved by the shareholders as required by this~~
44 ~~Chapter.~~

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

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

18 (a1) If the plan of merger or share exchange is amended after the articles of
19 merger or share exchange have been filed but before the articles of merger or share
20 exchange become effective and any statement in the articles of merger or share
21 exchange becomes incorrect as a result of the amendment, the surviving or acquiring
22 corporation shall deliver to the Secretary of State for filing prior to the time the articles
23 of merger or share exchange become effective an amendment to the articles of merger
24 or share exchange correcting the incorrect statement. If the articles of merger or share
25 exchange are abandoned after the articles of merger or share exchange are filed but
26 before the articles of merger or share exchange become effective, the surviving or
27 acquiring corporation shall deliver to the Secretary of State for filing prior to the time
28 the articles of merger or share exchange become effective an amendment reflecting
29 abandonment of the plan of merger or share exchange.

30 (b) A merger or share exchange takes effect ~~upon the effective date of~~ when the
31 articles of merger or share ~~exchange.~~ exchange become effective.

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

33 (d) In the case of a merger or share exchange pursuant to G.S. 55-11-07 or
34 G.S. 55-11-09, references in subsections (a) and (b) of this section to "corporation" shall
35 include a domestic corporation, a domestic nonprofit corporation, a foreign corporation,
36 and a foreign nonprofit corporation as applicable."

37 **SECTION 23.** G.S. 55-11-06 reads as rewritten:

38 **"§ 55-11-06. Effect of merger or share exchange.**

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

41 (1) ~~Every other~~ Each merging corporation party to the merger merges into
42 the surviving corporation and the separate existence of every ~~each~~
43 merging corporation except the surviving corporation ceases; ceases.

- 1 (2) The title to all real estate and other property owned by each merging
2 corporation ~~party to the merger~~ is vested in the surviving corporation
3 without reversion or ~~impairment~~; impairment.
- 4 (3) The surviving corporation has all liabilities of each ~~corporation party~~
5 ~~to the merger~~; merging corporation.
- 6 (4) A proceeding pending by or against any merging corporation ~~party to~~
7 ~~the merger~~ may be continued as if the merger did not occur or the
8 surviving corporation may be substituted in the proceeding for ~~the a~~
9 merging corporation whose separate existence ~~ceased~~; ceases in the
10 merger.
- 11 (5) ~~The~~ If a domestic corporation survives the merger, its articles of
12 incorporation ~~of the surviving corporation~~ are amended to the extent
13 provided in the ~~plan~~ articles of merger; and merger.
- 14 (6) The shares of each merging corporation ~~party to the merger~~ that are to
15 be converted into shares, obligations, or other securities of the
16 surviving or any other corporation or into the right to receive cash or
17 other property are thereupon converted, and the former holders of the
18 shares are entitled only to the rights provided ~~in the articles of merger~~
19 or ~~to their rights under Article 13~~. to them in the plan of merger or, in
20 the case of former holders of shares in a domestic corporation, any
21 right they may have under Article 13 of this Chapter.
- 22 (7) If a foreign corporation or foreign nonprofit corporation survives the
23 merger, it is deemed:
- 24 a. To agree that it will promptly pay to dissenting shareholders of
25 any merging domestic corporation the amount, if any, to which
26 they are entitled under Article 13 of this Chapter and otherwise
27 to comply with the requirements of Article 13 as if it were a
28 surviving domestic corporation in the merger.
- 29 b. To agree that it may be served with process in this State in any
30 proceeding for enforcement (i) of any obligation of any merging
31 domestic corporation, (ii) of the rights of dissenting
32 shareholders of any merging domestic corporation under Article
33 13 of this Chapter, and (iii) of any obligation of the surviving
34 foreign corporation or foreign nonprofit corporation arising
35 from the merger.
- 36 c. To have appointed the Secretary of State as its agent for service
37 of process in any proceeding for enforcement as specified in
38 sub-subdivision b. of this subdivision. Service of process on the
39 Secretary of State shall be made by delivering to, and leaving
40 with, the Secretary of State, or with any clerk authorized by the
41 Secretary of State to accept service of process, duplicate copies
42 of the process and the fee required by G.S. 55-1-22(b). Upon
43 receipt of service of process on behalf of a surviving foreign
44 corporation or foreign nonprofit corporation in the manner

1 provided for in this section, the Secretary of State shall
2 immediately mail a copy of the process by registered or
3 certified mail, return receipt requested, to the surviving foreign
4 corporation or foreign nonprofit corporation. If the surviving
5 foreign corporation or foreign nonprofit corporation is
6 authorized to transact business or conduct affairs in this State,
7 the address for mailing shall be its principal office designated in
8 the latest document filed with the Secretary of State that is
9 authorized by law to designate the principal office, or, if there is
10 no principal office on file, its registered office. If the surviving
11 foreign corporation or foreign nonprofit corporation is not
12 authorized to transact business or conduct affairs in this State,
13 the address for mailing shall be the mailing address designated
14 pursuant to G.S. 55-11-05(a).

15 The merger shall not affect the liability or absence of liability of any holder of shares
16 in a merging corporation for any acts, omissions, or obligations of any merging
17 corporation made or incurred prior to the effectiveness of the merger.

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

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

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

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

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

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

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

14 (c) In the case of a merger pursuant to G.S. 55-11-07 or G.S. 55-11-09 or a share
15 exchange pursuant to G.S. 55-11-07, references in subsections (a) and (b) of this section
16 to "corporation" shall include a domestic corporation, a domestic nonprofit corporation,
17 a foreign corporation, and a foreign nonprofit corporation as applicable."

18 **SECTION 24.** G.S. 55-11-07 reads as rewritten:

19 **"§ 55-11-07. Merger or share exchange with foreign corporation.**

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

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

27 (2) In a share exchange, if the corporation whose shares will be acquired is
28 a ~~domestic-foreign~~ corporation, ~~whether or not a~~ the share exchange is
29 permitted by the law of the state or country under whose law the
30 ~~acquiring-foreign~~ corporation is ~~incorporated;~~ incorporated and the
31 ~~foreign corporation and the acquiring domestic corporation~~ comply
32 with that law in effecting the share exchange;

33 (3) The foreign corporation complies with G.S. 55-11-05 if it is the
34 surviving corporation of the merger or acquiring corporation of the
35 share exchange ~~and, if the foreign corporation is not authorized to~~
36 ~~transact business in this State, includes in the articles of merger or~~
37 ~~articles of share exchange filed pursuant to G.S. 55-11-05 a~~
38 ~~designation of the foreign corporation's mailing address and a~~
39 ~~commitment to file with the Secretary of State a statement of any~~
40 ~~subsequent change in its mailing address;~~ exchange; and

41 (4) Each domestic corporation complies with the applicable provisions of
42 G.S. 55-11-01 through G.S. 55-11-04 and, if it is the surviving
43 corporation of the ~~merger or acquiring corporation of the share~~
44 ~~exchange,~~ merger with G.S. 55-11-05.

1 (b) ~~Upon the merger or share exchange taking effect, the surviving foreign~~
2 ~~corporation of a merger and the acquiring foreign corporation of a share exchange is~~
3 ~~deemed:~~

4 (1) ~~To appoint the Secretary of State as its agent for service of process in a~~
5 ~~proceeding to enforce any obligation or the rights of dissenting~~
6 ~~shareholders of each domestic corporation party to the merger or share~~
7 ~~exchange; and~~

8 (2) ~~To agree that it will promptly pay to the dissenting shareholders of~~
9 ~~each domestic corporation party to the merger or share exchange the~~
10 ~~amount, if any, to which they are entitled under Article 13.~~

11 ~~Service on the Secretary of State of any process authorized by this subsection shall~~
12 ~~be made by delivering to and leaving with the Secretary of State, or with any clerk~~
13 ~~authorized by the Secretary of State to accept service of process, duplicate copies of the~~
14 ~~process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process in~~
15 ~~the manner provided in this subsection, the Secretary of State shall immediately mail a~~
16 ~~copy of the process by registered or certified mail, return receipt requested, to the~~
17 ~~foreign corporation. If the foreign corporation is authorized to transact business in this~~
18 ~~State, the address for mailing shall be its principal office or, if there is no mailing~~
19 ~~address for the principal office on file, its registered office. If the foreign corporation is~~
20 ~~not authorized to transact business in this State, the address for mailing shall be the~~
21 ~~mailing address designated pursuant to subdivision (3) of subsection (a) of this section.~~

22 (c) ~~This section does not limit the power of a foreign corporation to acquire all or~~
23 ~~part of the shares of one or more classes or series of a domestic corporation through a~~
24 ~~voluntary exchange or otherwise. otherwise, or the power of a domestic corporation to~~
25 ~~acquire all or part of the shares of one or more classes or series of a foreign corporation~~
26 ~~through a voluntary exchange or otherwise.~~

27 **SECTION 25.** G.S. 55-11-09 reads as rewritten:

28 "**§ 55-11-09. Merger with nonprofit corporation.**

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

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

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

39 (3) The domestic or foreign nonprofit corporation complies with
40 G.S. 55-11-05 if it is the surviving corporation ~~and, in the case of a~~
41 ~~foreign nonprofit corporation not authorized to conduct affairs in this~~
42 ~~State, includes in the articles of merger filed pursuant to G.S. 55-11-05~~
43 ~~a designation of the foreign nonprofit corporation's mailing address~~

1 and a commitment to file with the Secretary of State a statement of any
2 subsequent change in its mailing address; corporation; and

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

6 (b) ~~Upon the merger taking effect, if a foreign nonprofit corporation is the~~
7 ~~surviving corporation, then it is deemed:~~

- 8 (1) ~~To appoint the Secretary of State as its agent for service of process in a~~
9 ~~proceeding to enforce any obligation or the rights of dissenting~~
10 ~~shareholders of each domestic corporation party to the merger; and~~

- 11 (2) ~~To agree that it will promptly pay to the dissenting shareholders of~~
12 ~~each domestic corporation party to the merger or share exchange the~~
13 ~~amount, if any, to which they are entitled under Article 13 of this~~
14 ~~Chapter.~~

15 ~~Service on the Secretary of State of any process authorized by this subsection shall~~
16 ~~be made by delivering to and leaving with the Secretary of State, or with any clerk~~
17 ~~authorized by the Secretary of State to accept service of process, duplicate copies of the~~
18 ~~process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process in~~
19 ~~the manner provided in this subsection, the Secretary of State shall immediately mail a~~
20 ~~copy of the process by registered or certified mail, return receipt requested, to the~~
21 ~~foreign nonprofit corporation. If the foreign nonprofit corporation is authorized to~~
22 ~~conduct affairs in this State, the address for mailing shall be its principal office as~~
23 ~~defined in G.S. 55A-1-40(20), or, if there is no mailing address for the principal office~~
24 ~~on file, its registered office. If the foreign nonprofit corporation is not authorized to~~
25 ~~conduct affairs in this State, the address for mailing shall be the mailing address~~
26 ~~designated pursuant to subdivision (3) of subsection (a) of this section.~~

27 (c) This section does not limit the power of a domestic or foreign nonprofit
28 corporation to acquire all or part of the shares of one or more classes or series of a
29 domestic corporation through a voluntary exchange or otherwise."

30 **SECTION 26.** G.S. 55-11-10 reads as rewritten:

31 "...

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

- 34 (1) For each merging business entity, its name, type of business entity, and
35 the state or country whose laws govern its organization and internal
36 affairs;
37 (2) The name of the merging business entity that shall survive the merger;
38 (3) The terms and conditions of the merger;
39 (4) The manner and basis for converting the interests in each merging
40 business entity into interests, obligations, or securities of the surviving
41 business entity or into cash or other property in whole or in part; and
42 (5) If the surviving business entity is a domestic corporation, any
43 amendments to its articles of incorporation that are to be made in
44 connection with the merger.

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

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

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

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

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

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

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

31 "

32 **SECTION 27.** G.S. 55-11-10(d) reads as rewritten:

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

37 (1) ~~The plan of merger;~~

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

41 (3) The name of the ~~surviving-merging~~ business entity that shall survive
42 the merger and, if the surviving business entity is not authorized to
43 transact business or conduct affairs in this State, a designation of its

1 mailing address and a commitment to file with the Secretary of State a
2 statement of any subsequent change in its mailing ~~address~~; address.

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

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

8 (5) ~~The effective date and time of merger if it is not to be effective at the~~
9 ~~time of filing of the articles of merger.~~

10 If the plan of merger is amended ~~or abandoned~~ after the articles of merger have
11 been filed but before the articles of merger become ~~effective~~, effective, and any
12 statement in the articles of merger becomes incorrect as a result of the amendment, the
13 surviving business entity shall deliver to the Secretary of State for filing prior to the
14 time the articles of merger become effective an amendment to the articles of merger
15 ~~reflecting the amendment or abandonment of the plan of merger.~~ correcting the
16 incorrect statement. If the articles of merger are abandoned after the articles of merger
17 are filed but before the articles of merger become effective, the surviving business entity
18 shall deliver to the Secretary of State for filing prior to the time the articles of merger
19 become effective an amendment reflecting abandonment of the plan of merger.

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

21 **SECTION 28.** G.S. 55-11-10(e)(5) reads as rewritten:

22 "(5) If a domestic corporation is the surviving business entity, its articles of
23 incorporation shall be amended to the extent provided in the ~~plan~~
24 articles of merger;"

25 **SECTION 29.** G.S. 55-11A-02 reads as rewritten:

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

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

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

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

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

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

40 (a2) The provisions of the plan of conversion, other than the provisions required
41 by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on
42 facts objectively ascertainable outside the plan of conversion if the plan of conversion
43 sets forth the manner in which the facts will operate upon the affected provisions. The
44 facts may include any of the following:

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

9 "

10 **SECTION 30.** G.S. 55-11A-11 reads as rewritten:

11 "(a) The converting domestic corporation shall approve a written plan of
12 conversion containing:

- 13 (1) The name of the converting domestic corporation;
14 (2) The name of the resulting business entity into which the domestic
15 corporation shall convert, its type of business entity, and the state or
16 country whose laws govern its organization and internal affairs;
17 (3) The terms and conditions of the conversion; and
18 (4) The manner and basis for converting the shares of the domestic
19 corporation into interests, obligations, or securities of the resulting
20 business entity or into cash or other property in whole or in part.

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

23 (a2) The provisions of the plan of conversion, other than the provisions required
24 by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on
25 facts objectively ascertainable outside the plan of conversion if the plan of conversion
26 sets forth the manner in which the facts will operate upon the affected provisions. The
27 facts may include any of the following:

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

36 "

37 **SECTION 31.** G.S. 55-14-03 is amended by adding a new subsection to
38 read:

39 "(c) For purposes of this Chapter, a dissolved corporation is a corporation whose
40 articles of dissolution have become effective and includes a successor entity to which
41 the remaining assets of the corporation are transferred subject to its liabilities for
42 purposes of a liquidation."

43 **SECTION 32.** G.S. 55-14-08(a) reads as rewritten:

44 "(a) A claim under G.S. 55-14-06 or G.S. 55-14-07 may be enforced:

- 1 (1) Against the dissolved corporation, to the extent of its undistributed
2 assets, including coverage under any applicable insurance policy, or
3 (2) ~~If Except as provided in G.S. 55-14-09(d),~~ if the assets have been
4 distributed in liquidation, against a shareholder of the dissolved
5 corporation to the extent of ~~his~~ the shareholder's pro rata share of the
6 claim or the corporate assets distributed to ~~him~~ the shareholder in
7 liquidation, whichever is less, but a shareholder's total liability for all
8 claims under this section may not exceed the total amount of assets
9 distributed to ~~him~~ the shareholder."

10 **SECTION 33.** Article 14 of Chapter 55 of the General Statutes is amended
11 by adding a new section to read:

12 **"§ 55-14-09. Court proceedings.**

13 (a) A dissolved corporation that has published a notice under G.S. 55-14-07 may
14 file an application with the superior court of the county where the dissolved
15 corporation's principal office, or its registered office if the corporation does not have a
16 principal office in this State, is located for a determination of the amount and form of
17 security to be provided for payments of claims that are contingent or have not been
18 made known to the dissolved corporation or that are based on an event occurring after
19 the effective date of dissolution but that, based on the facts known to the dissolved
20 corporation, are reasonably estimated to arise after the effective date of dissolution.
21 Provisions need not be made for any claim that is or is reasonably anticipated to be
22 barred under G.S. 55-14-07(c).

23 (b) Within 10 days after the filing of the application, notice of the proceeding
24 shall be given by the dissolved corporation to each claimant holding a contingent claim
25 whose contingent claim is shown on the records of the dissolved corporation.

26 (c) The court may appoint a guardian ad litem to represent all claimants whose
27 identities are unknown in any proceeding brought under this section. The reasonable
28 fees and expenses of the guardian, including all reasonable expert witness fees, shall be
29 paid by the dissolved corporation.

30 (d) Provision by the dissolved corporation for security in the amount and the
31 form ordered by the court under subsection (a) of this section shall satisfy the dissolved
32 corporation's obligations with respect to claims that are contingent, have not been made
33 known to the dissolved corporation, or are based on an event occurring after the
34 effective date of dissolution, and the claims shall not be enforced against a shareholder
35 who received assets in liquidation."

36 **SECTION 34.** G.S. 55-14A-01(b) reads as rewritten:

37 "(b) Any articles of amendment, statement of change of registered office or
38 registered agent, ~~certificate of reduction of capital, restated articles of incorporation,~~
39 articles of restatement, articles of merger or share exchange, articles of conversion,
40 articles of dissolution, or any other document appropriate to complete any action
41 permitted by this section shall be executed and filed in accordance with the provisions
42 of this ~~act~~ Chapter on behalf of the corporation by such person or persons as may be
43 authorized to take such action pursuant to subsection ~~(a)~~(a) of this section. The
44 document shall set forth the statements required by this Chapter to be included in the

1 document, except any statement that the action taken by the document was adopted by
2 the incorporators or board of directors or was approved by the shareholders, and also
3 shall set forth:

4 (1) The date of the court's order or decree approving the action.

5 (2) The title of the reorganization proceeding in which the order or decree
6 was entered.

7 (3) A statement that the court had jurisdiction of the proceeding under a
8 federal statute of the United States."

9 **SECTION 35.** G.S. 55-16-03 reads as rewritten:

10 **"§ 55-16-03. Scope of inspection right.**

11 (a) A shareholder's agent or attorney has the same inspection and copying rights
12 as the shareholder ~~he represents~~.represented.

13 (b) The right to copy records under G.S. 55-16-02 includes, if reasonable, the
14 right to receive copies ~~made by photographic, xerographic, or other means.~~ by
15 xerographic or other means, including copies through an electronic transmission if
16 available and so requested by the shareholder.

17 (c) The corporation may impose a reasonable charge, covering the costs of labor
18 and material, for producing for inspection or copying any records provided to the
19 shareholder. The charge may not exceed the estimated cost of ~~production or~~
20 ~~reproduction~~ production, reproduction, or transmission of the records.

21 (d) The corporation may comply with a shareholder's demand to inspect the
22 record of shareholders under G.S. 55-16-02(b)(3) by providing ~~him~~ the shareholder
23 with a list of its shareholders that was compiled no earlier than the date of the
24 shareholder's demand."

25 **SECTION 36.** Article 16 of Chapter 55 of the General Statutes is amended
26 by adding the following new sections to read:

27 **"§ 55-16-05. Inspection of records by directors.**

28 (a) A director of a corporation is entitled to inspect and copy the books, records,
29 and documents of the corporation at any reasonable time to the extent reasonably related
30 to the performance of the director's duties as a director, including duties as a member of
31 a committee, but not for any other purpose or in any manner that would violate any duty
32 to the corporation.

33 (b) The superior court of the county where the corporation's principal office, or
34 its registered office if the corporation does not have a principal office in this State, is
35 located may order inspection and copying of the books, records, and documents at the
36 corporation's expense, upon application of a director who has been refused inspection
37 rights, unless the corporation establishes that the director is not entitled to inspection
38 rights. The court shall dispose of an application under this subsection on an expedited
39 basis.

40 (c) If an order is issued, the court may include provisions protecting the
41 corporation from undue burden or expense, and prohibiting the director from using
42 information obtained upon exercise of the inspection rights in a manner that would
43 violate a duty to the corporation, and may also order the corporation to reimburse the

1 director for the director's costs, including reasonable counsel fees, incurred in
2 connection with the application.

3 **"§ 55-16-06. Exception to notice requirements.**

4 (a) Whenever notice is required to be given under any provision of this Chapter
5 to a shareholder, the notice shall not be required to be given if either of the following
6 applies:

7 (1) Notice of two consecutive annual meetings, and all notices of meetings
8 during the period between those two consecutive annual meetings,
9 have been sent to the shareholder at the shareholder's address as shown
10 on the records of the corporation and have been returned
11 undeliverable.

12 (2) All, but not less than two, payments of dividends on securities during a
13 12-month period, or two consecutive payments of dividends on
14 securities during a period of more than 12 months, have been sent to
15 the shareholder at the shareholder's address as shown on the records of
16 the corporation and have been returned undeliverable.

17 (b) If a shareholder delivers to the corporation a written notice setting forth that
18 shareholder's current address, the requirement that notice be given to the shareholder
19 shall be reinstated."

20 **SECTION 37.** G.S. 55-16-21 is repealed.

21 **PART II. CONFORMING AMENDMENTS TO CHAPTER 55A, CHAPTER**
22 **57C, AND CHAPTER 59 OF THE GENERAL STATUTES.**

23 **SECTION 38.** G.S. 55A-11-01 is amended by adding the following new
24 subsection to read:

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

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

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

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

37 **SECTION 39.** G.S. 55A-11-03(g) reads as rewritten:

38 "~~(g) After a merger is adopted, and at any time before articles of merger are filed,~~
39 ~~the merger may be abandoned (subject to any contractual rights), without further action~~
40 ~~by members or other persons who approved the plan, in accordance with the procedure~~
41 ~~set forth in the plan of merger or, if none is set forth, in the manner determined by the~~
42 ~~board of directors adopted but before the articles of merger become effective, the plan~~
43 of merger (i) may be amended as provided in the plan of merger, or (ii) may be
44 abandoned, subject to any contractual rights, as provided in the plan of merger, or, if

1 there is no such provision, as determined by the board of directors without further action
2 by the members or other persons who approved the plan of merger."

3 **SECTION 40.** G.S. 55A-11-04 reads as rewritten:

4 **"§ 55A-11-04. Articles of merger.**

5 (a) ~~After a plan of merger is approved by the board of directors, and if required~~
6 ~~by G.S. 55A-11-03, by the members and any other persons, has been authorized as~~
7 required by this Chapter, the surviving corporation shall deliver to the Secretary of State
8 for filing articles of merger setting forth:

9 (1) ~~The plan of merger; name and state or country of incorporation of each~~
10 merging corporation.

11 (2) ~~If approval by members was not required, a statement to that effect and~~
12 ~~a statement that the plan was approved by a sufficient vote of the board~~
13 ~~of directors; The name of the merging corporation that will survive the~~
14 ~~merger and, if the surviving corporation is not authorized to transact~~
15 ~~business or conduct affairs in this State, a designation of its mailing~~
16 ~~address and a commitment to file with the Secretary of State a~~
17 statement of any subsequent change in its mailing address.

18 (3) ~~If approval by members was required, a statement that the merger was~~
19 ~~approved by the members as required by this Chapter; the surviving~~
20 ~~corporation is a domestic corporation, any amendment to the articles of~~
21 ~~incorporation of the corporation provided in the plan of merger.~~

22 (4) ~~If approval by some person or persons other than the members or the~~
23 ~~board was required pursuant to G.S. 55A-11-03(a)(3), a statement that~~
24 ~~the approval was obtained. A statement that the plan of merger has~~
25 ~~been approved by each merging corporation in the manner required by~~
26 law.

27 (a1) If the plan of merger is amended after the articles of merger have been filed
28 but before the articles of merger become effective and any statement in the articles of
29 merger becomes incorrect as a result of the amendment, the surviving corporation shall
30 deliver to the Secretary of State for filing prior to the time the articles of merger become
31 effective an amendment to the articles of merger correcting the incorrect statement. If
32 the articles of merger are abandoned after the articles of merger are filed but before the
33 articles of merger become effective, the surviving corporation shall deliver to the
34 Secretary of State for filing prior to the time the articles of merger become effective an
35 amendment reflecting abandonment of the plan of merger.

36 (b) ~~A merger takes effect upon the effective date of~~ when ~~the articles of merger~~
37 merger become effective.

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

39 (d) In the case of a merger pursuant to G.S. 55A-11-06 or G.S. 55A-11-08,
40 references in subsections (a) and (b) of this section to "corporation", other than
41 references to "domestic corporation", shall include a foreign nonprofit corporation, a
42 domestic business corporation, and a foreign business corporation, as applicable."

43 **SECTION 41.** G.S. 55A-11-05 reads as rewritten:

44 **"§ 55A-11-05. Effect of merger.**

1 When a merger pursuant to G.S. 55A-11-01, 55A-11-06, or 55A-11-08 takes effect:

- 2 (1) ~~Every other~~ Each merging corporation ~~party to the merger~~ merges into
3 the surviving corporation and the separate existence of ~~every each~~
4 merging corporation except the surviving corporation ~~ceases;~~ ceases.
- 5 (2) The title to all real estate and other property owned by each merging
6 corporation ~~party to the merger~~ is vested in the surviving corporation
7 without reversion or impairment subject to any and all conditions to
8 which the property was subject prior to the ~~merger;~~ merger.
- 9 (3) The surviving corporation has all liabilities and obligations of each
10 ~~corporation party to the merger;~~ merging corporation.
- 11 (4) A proceeding pending by or against any merging corporation ~~party to~~
12 ~~the merger~~ may be continued as if the merger did not occur or the
13 surviving corporation may be substituted in the proceeding for ~~the a~~
14 merging corporation whose separate existence ~~ceased;~~ and ceases in
15 the merger.
- 16 (5) ~~The~~ If a domestic corporation survives the merger, its articles of
17 incorporation ~~and bylaws of the surviving corporation~~ are amended to
18 the extent provided in the ~~plan~~ articles of merger.
- 19 (6) If a foreign corporation or a foreign business corporation survives the
20 merger, it is deemed:
- 21 a. To agree that it may be served with process in this State in any
22 proceeding for enforcement (i) of any obligation of any merging
23 domestic corporation and (ii) of any obligation of the surviving
24 foreign corporation or foreign business corporation arising from
25 the merger.
- 26 b. To have appointed the Secretary of State as its agent for service
27 of process in any proceeding for enforcement as specified in
28 sub-subdivision a. of this subdivision. Service of process on the
29 Secretary of State shall be made by delivering to, and leaving
30 with, the Secretary of State, or with any clerk authorized by the
31 Secretary of State to accept service of process, duplicate copies
32 of the process and the fee required by G.S. 55A-1-22(b). Upon
33 receipt of service of process on behalf of a surviving foreign
34 corporation or foreign business corporation in the manner
35 provided for in this section, the Secretary of State shall
36 immediately mail a copy of the process by registered or
37 certified mail, return receipt requested, to the surviving foreign
38 corporation or foreign business corporation. If the surviving
39 foreign corporation or foreign business corporation is
40 authorized to transact business or conduct affairs in this State,
41 the address for mailing shall be its principal office designated in
42 the latest document filed with the Secretary of State that is
43 authorized by law to designate the principal office, or if there is
44 no principal office on file, its registered office. If the surviving

1 foreign corporation or foreign business corporation is not
2 authorized to transact business or conduct affairs in this State,
3 the address for mailing shall be the mailing address designated
4 pursuant to G.S. 55A-11-04(a)(2).

5 The merger shall not affect the liability or absence of liability of any member of a
6 merging corporation for acts, omissions, or obligations of any merging corporation
7 made or incurred prior to the effectiveness of the merger.

8 (b) In the case of a merger pursuant to G.S. 55A-11-06 or G.S. 55A-11-08,
9 references in subsection (a) of this section to "corporation" shall include a domestic
10 corporation, a foreign nonprofit corporation, a domestic business corporation, and a
11 foreign business corporation, as applicable."

12 **SECTION 42.** G.S. 55A-11-06 reads as rewritten:

13 **"§ 55A-11-06. Merger with foreign corporation.**

14 (a) Except as provided in G.S. 55A-11-02, one or more foreign ~~nonprofit~~
15 corporations may merge with one or more domestic nonprofit corporations if:

16 (1) The merger is permitted by the law of the state or country under whose
17 law each foreign corporation is incorporated and each foreign
18 corporation complies with that law in effecting the merger;

19 (2) The foreign corporation complies with G.S. 55A-11-04 if it is the
20 surviving corporation of the merger ~~and, if the foreign corporation is~~
21 ~~not authorized to conduct affairs in this State, includes in the articles of~~
22 ~~merger filed with the Secretary of State pursuant to G.S. 55A-11-04 a~~
23 ~~designation of the foreign corporation's mailing address and a~~
24 ~~commitment to file with the Secretary of State a statement of any~~
25 ~~subsequent change in its mailing address;~~ merger; and

26 (3) Each domestic nonprofit corporation complies with the applicable
27 provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the
28 surviving corporation of the merger, with G.S. 55A-11-04.

29 ~~(b) Upon the merger taking effect, if the surviving corporation is a foreign~~
30 ~~corporation, it shall be deemed to have appointed the Secretary of State as its agent for~~
31 ~~service of process in a proceeding to enforce any obligation of a domestic corporation~~
32 ~~party to the merger. Service on the Secretary of State of any such process shall be made~~
33 ~~by delivering to and leaving with the Secretary of State, or with any clerk authorized by~~
34 ~~the Secretary of State to accept service of process, duplicate copies of the process and~~
35 ~~the fee required by G.S. 55A-1-22(b). Upon receipt of service of process in the manner~~
36 ~~provided in this subsection, the Secretary of State shall immediately mail a copy of the~~
37 ~~process by registered or certified mail, return receipt requested, to the foreign~~
38 ~~corporation. If the foreign corporation is authorized to conduct affairs in this State, the~~
39 ~~address for mailing shall be its principal office or, if there is no mailing address for the~~
40 ~~principal office on file, its registered office. If the foreign corporation is not authorized~~
41 ~~to conduct affairs in this State, the address for mailing shall be the mailing address~~
42 ~~designated pursuant to subdivision (2) of subsection (a) of this section.~~

1 (c) This section does not limit the power of a foreign corporation to acquire all or
2 part of the shares of one or more classes or series of a domestic nonprofit corporation
3 through a voluntary exchange or otherwise."

4 **SECTION 43.** G.S. 55A-11-08 reads as rewritten:

5 **"§ 55A-11-08. Merger with business corporation.**

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

8 (1) Each domestic business corporation complies with the applicable
9 provisions of G.S. 55-11-01, 55-11-03, and 55-11-04;

10 (2) In a merger involving one or more foreign business corporations, the
11 merger is permitted by the law of the state or country under whose law
12 each foreign business corporation is incorporated and each foreign
13 business corporation complies with that law in effecting the merger;

14 (3) The domestic or foreign business corporation complies with
15 G.S. 55A-11-04 if it is the surviving corporation and, in the case of a
16 foreign business corporation not authorized to transact business in this
17 State, includes in the articles of merger filed pursuant to
18 G.S. 55A-11-04 a designation of the foreign business corporation's
19 mailing address and a commitment to file with the Secretary of State a
20 statement of any subsequent change in its mailing address;
21 corporation; and

22 (4) Each domestic nonprofit corporation complies with the applicable
23 provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the
24 surviving corporation, with G.S. 55A-11-04.

25 ~~(b) Upon the merger taking effect, if the surviving corporation is a foreign~~
26 ~~business corporation, it shall be deemed to have appointed the Secretary of State as its~~
27 ~~agent for service of process in a proceeding to enforce any obligation of a domestic~~
28 ~~nonprofit corporation party to the merger. Service on the Secretary of State of any such~~
29 ~~process shall be made by delivering to and leaving with the Secretary of State, or with~~
30 ~~any clerk authorized by the Secretary of State to accept service of process, duplicate~~
31 ~~copies of the process and the fee required by G.S. 55A-1-22(b). Upon receipt of service~~
32 ~~of process in the manner provided in this subsection, the Secretary of State shall~~
33 ~~immediately mail a copy of the process by registered or certified mail, return receipt~~
34 ~~requested, to the foreign business corporation. If the foreign business corporation is~~
35 ~~authorized to transact business in this State, the address for mailing shall be its principal~~
36 ~~office as defined in G.S. 55-1-40(17) or, if there is no mailing address for the principal~~
37 ~~office on file, its registered office. If the foreign business corporation is not authorized~~
38 ~~to transact business in this State, the address for mailing shall be the mailing address~~
39 ~~designated pursuant to subdivision (3) of subsection (a) of this section.~~

40 (c) This section does not limit the power of a domestic or foreign business
41 corporation to acquire all or part of the memberships of one or more classes of a
42 domestic nonprofit corporation through a voluntary exchange or otherwise."

43 **SECTION 44.** G.S. 55A-11-09 reads as rewritten:

44 "...

1 (c) Each merging domestic nonprofit corporation and each other merging
2 business entity shall approve a written plan of merger containing:

- 3 (1) For each merging business entity, its name, type of business entity, and
4 the state or country whose laws govern its organization and internal
5 affairs;
6 (2) The name of the merging business entity that shall survive the merger;
7 (3) The terms and conditions of the merger;
8 (4) The manner and basis for converting the interests in each merging
9 business entity into interests, obligations, or securities of the surviving
10 business entity or into cash or other property in whole or in part; and
11 (5) If the surviving business entity is a domestic nonprofit corporation,
12 any amendments to its articles of incorporation that are to be made in
13 connection with the merger.

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

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

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

28 (c3) In the case of a merging domestic nonprofit corporation, approval of the plan
29 of merger requires that the plan of merger be adopted as provided in G.S. 55A-11-03. If
30 any member of a merging domestic nonprofit corporation has or will have personal
31 liability for any existing or future obligation of the surviving business entity solely as a
32 result of holding an interest in the surviving business entity, then in addition to the
33 requirements of G.S. 55A-11-03, approval of the plan of merger by the domestic
34 nonprofit corporation shall require the affirmative vote or written consent of the
35 member. In the case of each other merging business entity, the plan of merger must be
36 approved in accordance with the laws of the state or country governing the organization
37 and internal affairs of such merging business entity.

38 (c4) After a plan of merger has been approved by a domestic nonprofit corporation
39 but before the articles of merger become effective, the plan of merger (i) may be
40 amended as provided in the plan of merger, or (ii) may be abandoned (subject to any
41 contractual rights) as provided in the plan of merger or, if there is no such provision, as
42 determined by the board of directors.

43"

44 **SECTION 45.** G.S. 55A-11-09(d) reads as rewritten:

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

5 (1) ~~The plan of merger;~~

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

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

14 (3a) If the surviving business entity is a domestic corporation, any
15 amendment to its articles of incorporation as provided in the plan of
16 merger.

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

19 (5) ~~The effective date and time of merger if it is not to be effective at the~~
20 ~~time of filing of the articles of merger.~~

21 If the plan of merger is amended ~~or abandoned~~ after the articles of merger have been
22 filed but before the articles of merger become ~~effective,~~ effective, and any statement in
23 the articles of merger becomes incorrect as a result of the amendment, the surviving
24 business entity shall deliver to the Secretary of State for filing prior to the time the
25 articles of merger become effective an amendment to the articles of merger ~~reflecting~~
26 ~~the amendment or abandonment of the plan of merger.~~ correcting the incorrect
27 statement. If the articles of merger are abandoned after the articles of merger are filed
28 but before the articles of merger become effective, the surviving business entity shall
29 deliver to the Secretary of State for filing prior to the time the articles of merger become
30 effective an amendment reflecting abandonment of the plan of merger.

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

32 **SECTION 46.** G.S. 55A-11-09(e)(5) reads as rewritten:

33 "(5) If a domestic nonprofit corporation is the surviving business entity, its
34 articles of incorporation shall be amended to the extent provided in the
35 ~~plan~~ articles of merger;"

36 **SECTION 47.** G.S. 57C-9A-02 reads as rewritten:

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

39 (1) The name of the resulting domestic limited liability company into
40 which the converting business entity shall convert;

41 (1a) The name of the converting business entity, its type of business entity,
42 and the state or country whose laws govern its organization and
43 internal affairs;

44 (2) The terms and conditions of the conversion; and

1 (3) The manner and basis for converting the interests in the converting
2 business entity into interests, obligations, or securities of the resulting
3 domestic limited liability company or into cash or other property in
4 whole or in part.

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

7 (a2) The provisions of the plan of conversion, other than the provisions required
8 by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on
9 facts objectively ascertainable outside the plan of conversion if the plan of conversion
10 sets forth the manner in which the facts will operate upon the affected provisions. The
11 facts may include any of the following:

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

15 (2) A determination or action by the converting business entity or by any
16 other person, group, or body.

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

20"

21 **SECTION 48.** G.S. 57C-9A-11 reads as rewritten:

22 "(a) The converting domestic limited liability company shall approve a written
23 plan of conversion containing:

24 (1) The name of the converting domestic limited liability company;

25 (2) The name of the resulting business entity into which the domestic
26 limited liability company shall convert, its type of business entity, and
27 the state or country whose laws govern its organization and internal
28 affairs;

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

30 (4) The manner and basis for converting the interests in the domestic
31 limited liability company into interests, obligations, or securities of the
32 resulting business entity or into cash or other property in whole or in
33 part.

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

36 (a2) The provisions of the plan of conversion, other than the provisions required
37 by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on
38 facts objectively ascertainable outside the plan of conversion if the plan of conversion
39 sets forth the manner in which the facts will operate upon the affected provisions. The
40 facts may include any of the following:

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

- 1 (2) A determination or action by the converting domestic limited liability
- 2 company or by any other person, group, or body.
- 3 (3) The terms of, or actions taken under, an agreement to which the
- 4 converting domestic limited liability company is a party, or any other
- 5 agreement or document.

6 "

7 **SECTION 49.** G.S. 57C-9A-21 reads as rewritten:

8 "(a) Each merging domestic limited liability company and each other merging

9 business entity shall approve a written plan of merger containing:

- 10 (1) For each merging business entity, its name, type of business entity, and
- 11 the state or country whose laws govern its organization and internal
- 12 affairs;
- 13 (2) The name of the merging business entity that shall survive the merger;
- 14 (3) The terms and conditions of the merger;
- 15 (4) The manner and basis for converting the interests in each merging
- 16 business entity into interests, obligations, or securities of the surviving
- 17 business entity or into cash or other property in whole or in part; and
- 18 (5) If the surviving business entity is a domestic limited liability company,
- 19 any amendments to its articles of organization that are to be made in
- 20 connection with the merger.

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

22 (a2) The provisions of the plan of merger, other than the provisions referred to in

23 subdivisions (1), (2), and (5) of subsection (a) of this section, may be made dependent

24 on facts objectively ascertainable outside the plan of merger if the plan of merger sets

25 forth the manner in which the facts will operate upon the affected provisions. The facts

26 may include any of the following:

- 27 (1) Statistical or market indices, market prices of any security or group of
- 28 securities, interest rates, currency exchange rates, or similar economic
- 29 or financial data.
- 30 (2) A determination or action by the domestic limited liability company or
- 31 by any other person, group, or body.
- 32 (3) The terms of, or actions taken under, an agreement to which the
- 33 domestic limited liability company is a party, or any other agreement
- 34 or document.

35 "

36 **SECTION 50.** G.S. 57C-9A-22(a) reads as rewritten:

37 "(a) After a plan of merger has been approved by each merging domestic limited

38 liability company and each other merging business entity as provided in

39 G.S. 57C-9A-21, the surviving business entity shall deliver articles of merger to the

40 Secretary of State for filing. The articles of merger shall set forth:

- 41 ~~(1) The plan of merger;~~
- 42 (2) For each merging business entity, its name, type of business entity, and
- 43 the state or country whose laws govern its organization and internal
- 44 ~~affairs;~~affairs.

- 1 (3) The name of the ~~surviving-merging~~ business entity that will survive the
2 merger and, if the surviving business entity is not authorized to
3 transact business or conduct affairs in this State, a designation of its
4 mailing address and a commitment to file with the Secretary of State a
5 statement of any subsequent change in its mailing ~~address~~; address.
6 (3a) If the surviving business entity is a domestic limited liability company,
7 any amendment to its articles of organization as provided in the plan of
8 merger.
9 (4) A statement that the plan of merger has been approved by each
10 merging business entity in the manner required by ~~law~~; and law.
11 (5) ~~The effective date and time of the merger if it is not to be effective at~~
12 ~~the time of filing of the articles of merger.~~

13 If the plan of merger is amended ~~or abandoned~~ after the articles of merger have been
14 filed but before the articles of merger become ~~effective~~, effective, and any statement in
15 the articles of merger becomes incorrect as a result of the amendment, the surviving
16 business entity shall deliver to the Secretary of State for filing prior to the time the
17 articles of merger become effective an amendment to the articles of merger ~~reflecting~~
18 ~~the amendment or abandonment of the plan of merger.~~ correcting the incorrect
19 statement. If the articles of merger are abandoned after the articles of merger are filed
20 but before the articles of merger become effective, the surviving business entity shall
21 deliver to the Secretary of State for filing prior to the time the articles of merger become
22 effective an amendment reflecting abandonment of the plan of merger."

23 **SECTION 51.** G.S. 57C-9A-23(a)(5) reads as rewritten:

24 "(5) If a domestic limited liability company is the surviving business entity,
25 its articles of organization shall be amended to the extent provided in
26 the ~~plan~~-articles of merger;".

27 **SECTION 52.** G.S. 59-73.11 reads as rewritten:

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

- 30 (1) The name of the converting business entity, its type of business entity,
31 and the state or country whose laws govern its organization and
32 internal affairs;
33 (2) The name of the resulting domestic partnership into which the
34 converting business entity shall convert;
35 (3) The terms and conditions of the conversion; and
36 (4) The manner and basis for converting the interests in the converting
37 business entity into interests, obligations, or securities of the resulting
38 domestic partnership or into cash or other property in whole or in part.

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

41 (a2) The provisions of the plan of conversion, other than the provisions required
42 by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on
43 facts objectively ascertainable outside the plan of conversion if the plan of conversion

1 sets forth the manner in which the facts will operate upon the affected provisions. The
2 facts may include any of the following:

- 3 (1) Statistical or market indices, market prices of any security or group of
4 securities, interest rates, currency exchange rates, or similar economic
5 or financial data.
- 6 (2) A determination or action by the converting business entity or by any
7 other person, group.
- 8 (3) The terms of, or actions taken under, an agreement to which the
9 converting business entity is a party, or any other agreement or
10 document.

11"

12 **SECTION 53.** G.S. 59-73.21 reads as rewritten:

13 "(a) The converting domestic partnership shall approve a written plan of
14 conversion containing:

- 15 (1) The name of the converting domestic partnership;
- 16 (2) The name of the resulting business entity into which the domestic
17 partnership shall convert, its type of business entity, and the state or
18 country whose laws govern its organization and internal affairs;
- 19 (3) The terms and conditions of the conversion; and
- 20 (4) The manner and basis for converting the interests in the domestic
21 partnership into interests, obligations, or securities of the resulting
22 business entity or into cash or other property in whole or in part.

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

25 (a2) The provisions of the plan of conversion, other than the provisions required
26 by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on
27 facts objectively ascertainable outside the plan of conversion if the plan of conversion
28 sets forth the manner in which the facts will operate upon the affected provisions. The
29 facts may include any of the following:

- 30 (1) Statistical or market indices, market prices of any security or group of
31 securities, interest rates, currency exchange rates, or similar economic
32 or financial data.
- 33 (2) A determination or action by the converting domestic partnership or by
34 any other person, group, or body.
- 35 (3) The terms of, or actions taken under, an agreement to which the
36 converting domestic partnership is a party, or any other agreement or
37 document.

38"

39 **SECTION 54.** G.S. 59-73.31 reads as rewritten:

40 "(a) Each merging domestic partnership and each other merging business entity
41 shall approve a written plan of merger containing:

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

- 1 (2) The name of the merging business entity that shall survive the merger;
 2 (3) The terms and conditions of the merger; and
 3 (4) The manner and basis for converting the interests in each merging
 4 business entity into interests, obligations, or securities of the surviving
 5 business entity or into cash or other property in whole or in part.

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

7 (a2) The provisions of the plan of merger, other than the provisions referred to in
 8 subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on
 9 facts objectively ascertainable outside the plan of merger if the plan of merger sets forth
 10 the manner in which the facts will operate upon the affected provisions. The facts may
 11 include any of the following:

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

19 "

20 **SECTION 55.** G.S. 59-73.32(a) reads as rewritten:

21 "(a) After a plan of merger has been approved by each merging domestic
 22 partnership and each other merging business entity as provided in G.S. 59-73.31, the
 23 surviving business entity shall deliver articles of merger to the Secretary of State for
 24 filing. The articles of merger shall set forth:

- 25 (1) ~~The plan of merger;~~
 26 (2) For each merging business entity, its name, type of business entity, and
 27 the state or country whose laws govern its organization and internal
 28 ~~affairs;~~ affairs.
 29 (3) The name of the ~~surviving~~ merging business entity that will survive
 30 the merger and, if the surviving business entity is not authorized to
 31 transact business or conduct affairs in this State, a designation of its
 32 mailing address and a commitment to file with the Secretary of State a
 33 statement of any subsequent change in its mailing ~~address;~~ address.
 34 (4) A statement that the plan of merger has been approved by each
 35 merging business entity in the manner required by ~~law;~~ and law.
 36 (5) ~~The effective date and time of the merger if it is not to be effective at~~
 37 ~~the time of filing of the articles of merger.~~

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

1 are filed but before the articles of merger become effective, the surviving business entity
2 shall deliver to the Secretary of State for filing prior to the time the articles of merger
3 become effective an amendment reflecting the abandonment of the plan of merger."

4 **SECTION 56.** G.S. 59-1051 reads as rewritten:

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

- 7 (1) The name of the converting business entity, its type of business entity,
8 and the state or country whose laws govern its organization and
9 internal affairs;
- 10 (2) The name of the resulting domestic limited partnership into which the
11 converting business entity shall convert;
- 12 (3) The terms and conditions of the conversion; and
- 13 (4) The manner and basis for converting the interests in the converting
14 business entity into interests, obligations, or securities of the resulting
15 domestic limited partnership or into cash or other property in whole or
16 in part.

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

19 (a2) The provisions of the plan of conversion, other than the provisions required
20 by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on
21 facts objectively ascertainable outside the plan of conversion if the plan of conversion
22 sets forth the manner in which the facts will operate upon the affected provisions. The
23 facts may include any of the following:

- 24 (1) Statistical or market indices, market prices of any security or group of
25 securities, interest rates, currency exchange rates, or similar economic
26 or financial data.
- 27 (2) A determination or action by the converting business entity or by any
28 other person, group, or body.
- 29 (3) The terms of, or actions taken under, an agreement to which the
30 converting business entity is a party, or any other agreement or
31 document.

32"

33 **SECTION 57.** G.S. 59-1061 reads as rewritten:

34 "(a) The converting domestic limited partnership shall approve a written plan of
35 conversion containing:

- 36 (1) The name of the converting domestic limited partnership;
- 37 (2) The name of the resulting business entity into which the domestic
38 limited partnership shall convert, its type of business entity, and the
39 state or country whose laws govern its organization and internal
40 affairs;
- 41 (3) The terms and conditions of the conversion; and
- 42 (4) The manner and basis for converting the interests in the domestic
43 limited partnership into interests, obligations, or securities of the

1 resulting business entity or into cash or other property in whole or in
2 part.

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

5 (a2) The provisions of the plan of conversion, other than the provisions required
6 by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on
7 facts objectively ascertainable outside the plan of conversion if the plan of conversion
8 sets forth the manner in which the facts will operate upon the affected provisions. The
9 facts may include any of the following:

- 10 (1) Statistical or market indices, market prices of any security or group of
11 securities, interest rates, currency exchange rates, or similar economic
12 or financial data.
13 (2) A determination or action by the converting domestic limited
14 partnership or by any other person, group, or body.
15 (3) The terms of, or actions taken under, an agreement to which the
16 converting domestic limited partnership is a party, or any other
17 agreement or document.

18"

19 **SECTION 58.** G.S. 59-1071 reads as rewritten:

20 "(a) Each merging domestic limited partnership and each other merging business
21 entity shall approve a written plan of merger containing:

- 22 (1) For each merging business entity, its name, type of business entity, and
23 the state or country whose laws govern its organization and internal
24 affairs;
25 (2) The name of the merging business entity that shall survive the merger;
26 (3) The terms and conditions of the merger;
27 (4) The manner and basis for converting the interests in each merging
28 business entity into interests, obligations, or securities of the surviving
29 business entity or into cash or other property in whole or in part; and
30 (5) If the surviving business entity is a domestic limited partnership, any
31 amendments to its certificate of limited partnership that are to be made
32 in connection with the merger.

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

34 (a2) The provisions of the plan of merger, other than the provisions referred to in
35 subdivisions (1), (2), and (5) of subsection (a) of this section, may be made dependent
36 on facts objectively ascertainable outside the plan of merger if the plan of merger sets
37 forth the manner in which the facts will operate upon the affected provisions. The facts
38 may include any of the following:

- 39 (1) Statistical or market indices, market prices of any security or group of
40 securities, interest rates, currency exchange rates, or similar economic
41 or financial data.
42 (2) A determination or action by the domestic limited partnership or by
43 any other person, group, or body.

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

4 "

5 **SECTION 59.** G.S. 59-1072(a) reads as rewritten:

6 "(a) After a plan of merger has been approved by each merging domestic limited
7 partnership and each other merging business entity as provided in G.S. 59-1071, the
8 surviving business entity shall deliver articles of merger to the Secretary of State for
9 filing. The articles of merger shall set forth:

10 (1) ~~The plan of merger;~~

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

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

19 (3a) If the surviving business entity is a domestic limited partnership, any
20 amendment to its certificate of limited partnership as provided in the
21 plan of merger.

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

24 (5) ~~The effective date and time of the merger if it is not to be effective at~~
25 ~~the time of filing of the articles of merger.~~

26 If the plan of merger is amended ~~or abandoned~~ after the articles of merger have been
27 filed but before the articles of merger become ~~effective,~~ effective, and any statement in
28 the articles of merger becomes incorrect as a result of the amendment, the surviving
29 business entity promptly shall deliver to the Secretary of State for filing prior to the time
30 the articles of merger become effective an amendment to the articles of merger
31 ~~reflecting the amendment or abandonment of the plan of merger.~~ correcting the
32 incorrect statement. If the articles of merger are abandoned after the articles of merger
33 are filed but before the articles of merger become effective, the surviving business entity
34 shall deliver to the Secretary of State for filing prior to the time the articles of merger
35 become effective an amendment reflecting abandonment of the plan of merger."

36 **SECTION 60.** G.S. 59-1073(a)(5) reads as rewritten:

37 "(5) If a domestic limited partnership is the surviving business entity, its
38 certificate of limited partnership shall be amended to the extent
39 provided in the ~~plan~~ articles of merger;"

40 **SECTION 61.** The Revisor of Statutes may cause to be printed all
41 explanatory comments of the drafters of this act as the Revisor deems appropriate.

42 **SECTION 62.** This act becomes effective October 1, 2005.