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## SENATE BILL NO. 100

Offered January 13, 2010

Prefiled January 6, 2010

A BILL to amend and reenact §§ 13.1-603, 13.1-604, 13.1-610, 13.1-614, 13.1-624, 13.1-635, 13.1-646, 13.1-656, 13.1-657, 13.1-658, 13.1-660, 13.1-661, 13.1-663, 13.1-664.1, 13.1-672.1, 13.1-675, 13.1-686, 13.1-689, 13.1-699, 13.1-704, 13.1-714, 13.1-718, 13.1-720, 13.1-721.1, 13.1-725, 13.1-730, 13.1-733, 13.1-734, 13.1-770, 13.1-771, 13.1-772, 13.1-773, 13.1-774, and 13.1-779 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 13.1-660.2 and 13.1-669.1, and to repeal § 13.1-681 of the Code of Virginia, relating to the Virginia Stock Corporation Act.

Patron—Stosch

Referred to Committee on Commerce and Labor

## Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-603, 13.1-604, 13.1-610, 13.1-614, 13.1-624, 13.1-635, 13.1-646, 13.1-656, 13.1-657, 13.1-658, 13.1-660, 13.1-661, 13.1-633, 13.1-664.1, 13.1-672.1, 13.1-675, 13.1-686, 13.1-689, 13.1-699, 13.1-704, 13.1-714, 13.1-718, 13.1-720, 13.1-721.1, 13.1-725, 13.1-730, 13.1-733, 13.1-734, 13.1-770, 13.1-771, 13.1-772, 13.1-773, 13.1-774, and 13.1-779 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 13.1-660.2 and 13.1-669.1, as follows:

§ 13.1-603. Definitions.

In this chapter:

"Articles of incorporation" means all documents constituting, at any particular time, the charter of a corporation. It includes the original charter issued by the General Assembly, a court or the Commission and all amendments including certificates of consolidation, serial designation, reduction, correction, and merger, except for a certificate of merger with a subsidiary pursuant to § 13.1-719 that does not include an amendment to the survivor's articles of incorporation. It excludes articles of share exchange filed by an acquiring corporation. When the articles of incorporation have been restated pursuant to any articles of restatement, amendment, domestication, or merger, it includes only the restated articles of incorporation, including any articles of serial designation, without the accompanying articles of restatement, amendment, domestication, or merger.

"Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

"Certificate," when relating to articles filed with the Commission, means the order of the Commission that makes the articles effective, together with the articles.

"Commission" means the State Corporation Commission of Virginia.

"Conspicuous" means so written, *displayed*, or *presented* that a reasonable person against whom the writing is to operate should have noticed it. For example, ~~printing in italics or text that is italicized~~, is in boldface or, contrasting color colors, or ~~typing in~~ capitals, or is underlined, is conspicuous.

"Corporation" or "domestic corporation" means a corporation authorized by law to issue shares, irrespective of the nature of the business to be transacted, organized under this chapter or existing pursuant to the laws of the Commonwealth on January 1, 1986, or which, by virtue of articles of incorporation, amendment, or merger, has become a domestic corporation of the Commonwealth, even though also being a corporation organized under laws other than the laws of the Commonwealth, or which has become a domestic corporation of the Commonwealth pursuant to Article 12.1 (§ 13.1-722.2 et seq.) or Article 12.2 (§ 13.1-722.8 et seq.) of this chapter.

"Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, *if authorized in accordance with § 13.1-610*, electronic transmission.

"Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in Article 8.1 (§ 13.1-672.1 et seq.) of Chapter 9 of this title, a foreign corporation.

"Disinterested director" means, except with respect to Article 14 (§ 13.1-725 et seq.) of this chapter, a director who, at the time action is to be taken under § 13.1-672.4, 13.1-691, 13.1-699 or 13.1-701, does not have (i) a financial interest in a matter that is the subject of such action or (ii) a familial, financial, professional, employment or other relationship with a person who has a financial interest in the matter, either of which would reasonably be expected to affect adversely the objectivity of the director when participating in the action, and if the action is to be taken under § 13.1-699 or 13.1-701,

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59 is also not a party to the proceeding. The presence of one or more of the following circumstances shall  
60 not by itself prevent a person from being a disinterested director: (i) nomination or election of the  
61 director to the current board by any person, acting alone or participating with others, who is so  
62 interested in the matter; (ii) service as a director of another corporation of which an interested person is  
63 also a director; or (iii) at the time action is to be taken under § 13.1-672.4, status as a named defendant,  
64 as a director against whom action is demanded, or as a director who approved the act being challenged.

65 "Distribution" means a direct or indirect transfer of money or other property, except its own shares,  
66 or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any  
67 of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase,  
68 redemption, or other acquisition of shares; a distribution of indebtedness of the corporation; or  
69 otherwise. Distribution does not include acquisition by a corporation of its shares from the estate or  
70 personal representative of a deceased shareholder, or any other shareholder, but only to the extent the  
71 acquisition is effected using the proceeds of insurance on the life of such deceased shareholder and the  
72 board of directors approved the policy and the terms of the redemption prior to the shareholder's death.

73 "Document" means (i) any tangible medium on which information is inscribed, and includes any  
74 writing or written instrument, or (ii) an electronic record.

75 "Domestic business trust" has the same meaning as specified in § 13.1-1201.

76 "Domestic limited liability company" has the same meaning as specified in § 13.1-1002.

77 "Domestic limited partnership" has the same meaning as specified in § 50-73.1.

78 "Domestic nonstock corporation" has the same meaning as "domestic corporation" as specified in  
79 § 13.1-803.

80 "Domestic partnership" means an association of two or more persons to carry on as co-owners a  
81 business for profit formed under § 50-73.88, or predecessor law of the Commonwealth, and includes, for  
82 all purposes of the laws of the Commonwealth, a registered limited liability partnership.

83 "Effective date of notice" is defined in § 13.1-610.

84 "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,  
85 electromagnetic, or similar capabilities.

86 "Electronic record" means information that is stored in an electronic or other medium and is  
87 retrievable in paper form through an automated process used in conventional commercial practice,  
88 unless otherwise authorized in accordance with subsection J of § 13.1-610.

89 "Electronic transmission" or "electronically transmitted" means any form or process of  
90 communication, not directly involving the physical transmission transfer of paper or other tangible  
91 medium, that creates a record that may be retained, retrieved and reviewed (i) is suitable for the  
92 retention, retrieval, and reproduction of information by a the recipient thereof, and that may be directly  
93 reproduced (ii) is retrievable in paper form by such a the recipient through an automated process used in  
94 conventional commercial practice, unless otherwise authorized in accordance with subsection J of  
95 § 13.1-610. Any term used in this definition that is defined in § 59.1-480 shall have the meaning set  
96 forth in such section.

97 "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonstock  
98 corporation.

99 "Eligible interests" means interests or memberships.

100 "Employee" includes, unless otherwise provided in the bylaws, an officer but not a director. A  
101 director may accept duties that make him also an employee.

102 "Entity" includes any domestic or foreign corporation; any domestic or foreign nonstock corporation;  
103 any domestic or foreign unincorporated entity; any estate or trust; and any state, the United States and  
104 any foreign government.

105 "Foreign business trust" has the same meaning as specified in § 13.1-1201.

106 "Foreign corporation" means a corporation authorized by law to issue shares, organized under laws  
107 other than the laws of the Commonwealth.

108 "Foreign limited liability company" has the same meaning as specified in § 13.1-1002.

109 "Foreign limited partnership" has the same meaning as specified in § 50-73.1.

110 "Foreign nonstock corporation" has the same meaning as "foreign corporation" as specified in  
111 § 13.1-803.

112 "Foreign partnership" means an association of two or more persons to carry on as co-owners of a  
113 business for profit formed under the laws of any state or jurisdiction other than the Commonwealth, and  
114 includes, for all purposes of the laws of the Commonwealth, a foreign registered limited liability  
115 partnership.

116 "Foreign registered limited liability partnership" has the same meaning as specified in § 50-73.79.

117 "Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed  
118 by an organic law of a jurisdiction other than the Commonwealth.

119 "Government subdivision" includes authority, county, district, and municipality.

120 "Includes" denotes a partial definition.

"Individual" means a natural person.

"Interest" means either or both of the following rights under the organic law of an unincorporated entity:

1. The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

2. The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy or person responsible for managing its business and affairs.

"Means" denotes an exhaustive definition.

"Membership" means the rights of a member in a domestic or foreign nonstock corporation or limited liability company.

"Notice" is defined in § 13.1-610.

"Organic document" means the document, if any, that is filed of public record to create an unincorporated entity. Where an organic document has been amended or restated, the term means the organic document as last amended or restated.

"Organic law" means the statute governing the internal affairs of a domestic or foreign corporation or eligible entity.

"Person" includes an individual and an entity.

"Principal office" means the office, in or out of the Commonwealth, where the principal executive offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or out of the Commonwealth, so designated by the board of directors. The designation of the principal office in the most recent annual report filed pursuant to § 13.1-775 shall be conclusive for purposes of this chapter.

"Proceeding" includes civil suit and criminal, administrative, and investigatory action conducted by a governmental agency.

"Public corporation" means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

"Record date" means the date established under Article 7 (§ 13.1-638 et seq.) or Article 8 (§ 13.1-654 et seq.) of this chapter on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determination shall be made as of the close of business at the principal office of the corporation on the record date unless another time for doing so is specified when the record date is fixed.

"Shareholder" means the person in whose name shares are registered in the records of the corporation, the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation, or the beneficial owner of shares held in a voting trust.

"Shares" means the units into which the proprietary interests in a corporation are divided.

"Sign" or "signature" means, with present intent to authenticate or adopt a document: (i) to execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature; or (ii) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

"State" when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions; and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

"Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

"Subsidiary" means, as to any corporation, any other corporation of which it owns, directly or indirectly, voting shares entitled to cast a majority of the votes entitled to be cast generally in an election of directors of such other corporation.

"Unincorporated entity" or "domestic unincorporated entity" means a domestic partnership, limited liability company, limited partnership or business trust.

"United States" includes district, authority, bureau, commission, department, and any other agency of the United States.

"Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

"Voting power" means the current power to vote in the election of directors.

"Writing" or "written" means any information in the form of a document.

§ 13.1-604. Filing requirements.

A. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to be filed with the Commission.

B. The document shall be one that this chapter requires or permits to be filed with the Commission.

C. The document shall contain the information required by this chapter. It may contain other information as well.

D. The document shall be typewritten or printed or, if electronically transmitted, shall be in a format that can be retrieved or reproduced in typewritten or printed form. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

E. The document shall be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals. The articles of incorporation, duly authenticated by the official having custody of corporate records in the state or country under whose law the corporation is incorporated, which are required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be ~~executed~~ *signed* in the name of the *domestic or foreign* corporation:

1. By the chairman or any vice-chairman of the board of directors, the president, or any other of its officers authorized to act on behalf of the corporation;

2. If directors have not been selected or the corporation has not been formed, by an incorporator; or

3. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

G. Any annual report required to be filed by § 13.1-775 shall be ~~executed~~ *signed* in the name of the corporation by an officer or director listed in the report.

H. The person ~~executing~~ *signing* the document shall ~~sign it and~~ state beneath or opposite his signature his name and the capacity in which he signs. Any signature may be a facsimile. The document may but need not contain a corporate seal, attestation, acknowledgment, or verification.

I. If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

J. The document shall be delivered to the Commission for filing and shall be accompanied by the required filing fee, and any franchise tax, charter or entrance fee or registration fee required by this chapter.

K. The Commission may accept the electronic filing of any information required or permitted to be filed by this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information pursuant to § 59.1-496.

L. Whenever a provision of this chapter permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

1. The plan or filed document shall specify the nationally recognized news or information medium in which the facts can be found or otherwise state the manner in which the facts can be objectively ascertained. The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

2. The facts may include:

a. Any of the following that are available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates or similar economic or financial data;

b. A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

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

3. As used in this subsection:

a. "Filed document" means a document filed with the Commission under § 13.1-619 or Article 11 (§ 13.1-705 et seq.) or 12 (§ 13.1-715.1 et seq.) of this chapter; and

b. "Plan" means a plan of merger or share exchange.

4. The following terms of a plan or filed document may not be made dependent on facts outside the plan or filed document:

a. The name and address of any person required in a filed document;

b. The registered office of any entity required in a filed document;

c. The registered agent of any entity required in a filed document;

d. The number of authorized shares and designation of each class or series of shares;

e. The effective date of a filed document; and

f. Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

5. If a term of a filed document is made dependent on a fact objectively ascertainable outside of the filed document, and that fact is not objectively ascertainable by reference to a source described in

subdivision 2 a of this subsection or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Commission articles of amendment setting forth the fact promptly after the time when the fact referred to is first objectively ascertainable or thereafter changes. Articles of amendment under this subdivision are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

6. The provisions of subdivisions 1, 2, and 5 of this subsection shall not be considered by the Commission in deciding whether the terms of a plan or filed document comply with the requirements of law.

§ 13.1-610. Notices and other communications.

For purposes of this chapter, except for notice to or from the Commission:

A. Notice shall be in writing except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws. ~~Notice by electronic transmission is written notice.~~

B. ~~Notice~~ *Unless otherwise agreed between the sender and the recipient, words in a notice or other communication shall be in the English language. A notice or other communication may be communicated in person; by mail or other given or sent by any method of delivery; or by telephone, voice mail, or other, except that an electronic means transmission shall be in accordance with this section. If these forms methods of personal notice delivery are impracticable, a notice or other communication may be communicated by publication in a newspaper of general circulation in the area where the notice is intended to be given published, or by radio, television, or other form of public broadcast communication in the area where the notice is intended to be given.*

C. ~~Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective (i) upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, or (ii) when electronically transmitted to the shareholder in a manner authorized by the shareholder.~~

D. ~~Written notice~~ *Notice or other communication to a domestic or foreign corporation, authorized to transact business in the Commonwealth, may be addressed delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet filed delivered an annual report, in its application for a certificate of authority.*

D. *Notice or other communication may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection K.*

E. *Any consent under subsection D may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if (i) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent or other person responsible for the giving of notice or other communications. The inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.*

F. *Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:*

1. *It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission; and*

2. *It is in a form capable of being processed by that system.*

G. *Receipt of an electronic acknowledgment from an information processing system described in subdivision F 1 establishes that an electronic transmission was received. However, such receipt of an electronic acknowledgment, by itself, does not establish that the content sent corresponds to the content received.*

H. *An electronic transmission is received under this section even if no individual is aware of its receipt.*

~~E I. Except as provided in subsection C, written notice~~ *Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:*

1. ~~When received~~ *If in physical form, the earliest of when it is actually received or when it is left at:*
  - a. *A shareholder's address shown on the corporation's record of shareholders maintained by the corporation pursuant to subsection C of § 13.1-770;*
  - b. *A director's residence or usual place of business;*
  - c. *The corporation's principal place of business; or*
  - d. *The corporation's registered office when left with the corporation's registered agent;*

2. Five days after its deposit in the United States mail if mailed postpaid postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail;

3. On the date shown on the return receipt if mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received or: (i) if sent by registered or certified mail, return receipt requested, and the date shown on the receipt, is signed by or on behalf of the addressee; or (ii) five days after it is deposited in the mail;

4. If an electronic transmission, when it is received as provided in subsection F; and

F 5. Oral notice is effective if oral, when communicated if communicated in a comprehensible manner.

J. A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if (i) the electronic transmission is otherwise retrievable in perceivable form, and (ii) the sender and the recipient have consented in writing to the use of such form of electronic transmission.

G K. When If this chapter prescribes notice requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements for notices or other communications not inconsistent with this section or other provisions of this chapter, those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

H. Without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders given by the corporation, under any provision of this chapter, the articles of incorporation or the bylaws, shall be effective if given by a form of electronic transmission consented to by the shareholder to whom the notice is given. Any such consent shall be revocable by the shareholder by written notice to the corporation. Any such consent shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given pursuant to this subsection shall be deemed given: (a) if by facsimile telecommunication, when directed to a number at which the shareholder has consented to receive notice; (b) if by electronic mail, when directed to an electronic mail address at which the shareholder has consented to receive notice; (c) if by a posting on an electronic network together with separate notice to the shareholder of such specific posting when such notice is directed to the record address of the shareholder or to such other address at which the shareholder has consented to receive notice, upon the later of such posting or the giving of such separate notice; and (d) if by any other form of electronic transmission, when consented to by the shareholder. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein. This subsection shall not apply to subsection D of § 13.1-642.

I L. Without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders given by a public corporation, under any provision of this chapter, the articles of incorporation, or the bylaws, shall be effective if given in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations.

§ 13.1-614. Hearing and finality of Commission action; injunctions.

A. The Commission shall have no power to grant a hearing with respect to any certificate issued by the Commission with respect to any articles filed with the Commission except on a petition by a shareholder filed with the Commission and the corporation within 30 days after the effective date of the certificate, in which the shareholder asserts that the certification of corporate action contained in the articles contains a misstatement of a material fact as to compliance with statutory requirements, specifying the particulars thereof. After hearing, on notice in writing to the corporation and the shareholder, the Commission shall determine the issues and revoke or refuse to revoke its order accordingly.

B. No court within or without the Commonwealth shall have jurisdiction to enjoin or delay the holding of any meeting of directors or shareholders for the purpose of authorizing or consummating any amendment, merger, share exchange, domestication, conversion or termination of corporate existence or the execution or filing with the Commission of any articles or other documents for such purpose, except pursuant to subsection D of § 13.1-661 or for fraud. No court within or without the Commonwealth, except the Supreme Court by way of appeal as authorized by law, shall have jurisdiction to review, reverse, correct or annul any action of the Commission, within the scope of its authority, with regard to any articles, certificate, order, objection or petition, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its official duties.

C. Notwithstanding any provision of subsection A to the contrary, the Commission shall have the power to act upon a petition filed by a corporation at any time to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person or persons without authority to act for the corporation.

§ 13.1-624. Bylaws.

A. The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

B. The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

C. The bylaws may contain one or both of the following provisions:

1. A requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to such procedures or conditions as are provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and

2. A requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to such procedures or conditions as are provided in the bylaws, provided that no bylaw so adopted shall apply to elections for which any record date precedes its adoption.

D. Notwithstanding subdivision B 2 of § 13.1-714, the shareholders in amending, repealing, or adopting a bylaw described in subsection C may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in, or to add any procedure or condition to, such a bylaw in order to provide for a reasonable, practicable, and orderly process.

§ 13.1-635. Change of registered office or registered agent.

A. A corporation may change its registered office or registered agent, or both, upon filing in the office of the Commission a statement of change on a form supplied by the Commission that sets forth:

1. The name of the corporation;

2. The address of its current registered office;

3. If the current registered office is to be changed, the post office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;

4. The name of its current registered agent;

5. If the current registered agent is to be changed, the name of the new registered agent; and

6. That after the change or changes are made, the corporation will be in compliance with the requirements of § 13.1-634.

B. A statement of change shall forthwith be filed in the office of the Commission by a corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-634.

C. If (i) the business address of a registered agent changes to another place within this Commonwealth, (ii) the name of a registered agent changes, or (iii) a registered agent merges into an entity that is qualified to serve as a registered agent pursuant to § 13.1-634, the registered agent or surviving entity shall forthwith file a statement as required above except that it need be signed, either manually or in facsimile, only by the registered agent or the surviving entity and must recite that a copy of the statement has been mailed to the corporation on whose behalf it is to be filed.

§ 13.1-646. Share options.

A. Subject to the provisions of § 13.1-651, a corporation may issue rights, options or warrants for the purchase of shares or other securities of the corporation. Unless reserved to the shareholders in the articles of incorporation, the board of directors may authorize the issuance of rights, options or warrants and determine (i) the terms upon which the rights, options or warrants are issued and (ii) the terms, including the consideration for which the shares or other securities are to be issued. The authorization for the corporation to issue such rights, options or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options or warrants are exercisable.

B. Notwithstanding the provisions of subsection A of § 13.1-638, the terms of rights, options or warrants issued by a corporation may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer or receipt thereof by designated persons or classes of persons or that invalidate or void such rights, options, or warrants held by designated persons or classes of persons. Any action or determination by the board of directors with respect to the issuance, the terms of or the redemption of rights, options, or warrants shall be subject to the provisions of § 13.1-690 and shall be valid if taken or determined in compliance therewith.

C. The board of directors may authorize one or more officers to (i) designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares and (ii) determine, within an amount and subject to any other limitations established by the board and, if

428 *applicable, the shareholders, the number of such rights, options, warrants, or other equity compensation*  
429 *awards and the terms thereof to be received by the recipients, provided that an officer may not use such*  
430 *authority to designate himself, or any other person specified by the board of directors, as a recipient of*  
431 *such rights, options, warrants, or other equity compensation awards.*

432 § 13.1-656. Court-ordered meeting.

433 A. The circuit court of the city or county where a corporation's principal office is located or, if none  
434 in the Commonwealth, where its registered office is located, may, after notice to the corporation, order a  
435 meeting of shareholders to be held:

436 1. On petition of any shareholder of the corporation entitled to participate in an annual meeting if an  
437 annual meeting was not held or action by written consent in lieu thereof did not become effective within  
438 15 months after its last annual meeting or, if there has been no annual meeting, the date of its  
439 incorporation; or

440 2. On petition of a shareholder who signed a demand for a special meeting that satisfies the  
441 requirements of § 13.1-655 if:

442 a. Notice of the special meeting was not given within 30 days after the date the demand was  
443 delivered to the corporation's secretary; or

444 b. The special meeting was not held in accordance with the notice.

445 B. The court may fix the time and place of the meeting, determine the shares entitled to participate  
446 in the meeting, specify a record date *or dates* for determining shareholders entitled to notice of and to  
447 vote at the meeting, prescribe the form and content of the meeting notice, and enter other orders  
448 necessary to accomplish the purpose or purposes of the meeting.

449 § 13.1-657. Action without meeting.

450 A. Action required or permitted by this chapter to be adopted or taken at a shareholders' meeting  
451 may be adopted or taken without a meeting if the action is adopted or taken by all the shareholders  
452 entitled to vote on the action, in which case no action by the board of directors shall be required. The  
453 adoption or taking of the action shall be evidenced by one or more written consents describing the  
454 action taken, signed by all the shareholders entitled to vote on the action, bearing the date of each  
455 signature, and delivered to the corporation for inclusion in the minutes or filing with the corporate  
456 records.

457 B. The articles of incorporation may provide that any action required or permitted by this chapter to  
458 be adopted or taken at a shareholders' meeting may be adopted or taken without a meeting, and without  
459 prior notice, if consents in writing setting forth the action so adopted or taken are signed by the holders  
460 of outstanding shares having not less than the minimum number of votes that would be required to  
461 adopt or take the action at a meeting at which all shares entitled to vote on the action were present and  
462 voted. The written consent shall bear the date on which each shareholder signed the consent and be  
463 delivered to the corporation for inclusion in the minutes or filing with the corporate records.

464 C. If not otherwise fixed under § 13.1-656 or 13.1-660 and if prior board action is not required  
465 respecting the action to be adopted or taken without a meeting, the record date for determining the  
466 shareholders entitled to adopt or take action without a meeting shall be the first date on which a signed  
467 written consent is delivered to the corporation. If not otherwise fixed under § 13.1-656 or 13.1-660 and  
468 if prior board action is required respecting the action to be adopted or taken without a meeting, the  
469 record date shall be the close of business on the day the resolution of the board taking such prior action  
470 is adopted. No written consent shall be effective to adopt or take the action referred to therein unless,  
471 within 60 days of the earliest date on which a consent delivered to the corporation as required by this  
472 section was signed, written consents signed by the holders of shares having sufficient votes to adopt or  
473 take the action have been delivered to the corporation. A written consent may be revoked by a writing  
474 to that effect delivered to the corporation before unrevoked written consents sufficient in number to  
475 adopt or take the action are delivered to the corporation.

476 D. A consent signed pursuant to the provisions of this section has the effect of a vote at a meeting  
477 and may be described as such in any document. Unless the articles of incorporation, bylaws or a  
478 resolution of the board of directors provides for a reasonable delay to permit tabulation of written  
479 consents, the action adopted or taken by written consent shall be effective when (i) written consents  
480 signed by the holders of shares having sufficient votes to adopt or take the action are delivered to the  
481 corporation or (ii) if an effective date is specified therein, as of such date provided such consent states  
482 the date of execution by the consenting shareholder.

483 E. If this chapter requires that notice of a proposed action be given to nonvoting shareholders and  
484 the action is to be adopted or taken by written consent of the voting shareholders, the corporation shall  
485 give its nonvoting shareholders written notice of the action not more than 10 days after (i) written  
486 consents sufficient to adopt or take the action have been delivered to the corporation, or (ii) such later  
487 date that tabulation of consents is completed pursuant to an authorization under subsection D. The notice  
488 shall reasonably describe the action adopted or taken and contain or be accompanied by the same  
489 material that under any provision of this chapter would have been required to be sent to nonvoting



shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

F. If action is adopted or taken by less than unanimous written consent of the voting shareholders, the corporation shall give its nonconsenting voting shareholders written notice of the action not more than 10 days after (i) written consents sufficient to adopt or take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection D. The notice shall reasonably describe the action adopted or taken and contain or be accompanied by the same material that under any provision of this chapter would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

G. An electronic transmission may be used to consent to an action, if the electronic transmission contains or is accompanied by information from which the corporation can determine the date on which the electronic transmission was signed and that the electronic transmission was authorized by the shareholder, the shareholder's agent or the shareholder's attorney-in-fact.

H. Delivery of a written consent to the corporation under this section is effected by delivery to the corporation's registered agent at its registered office or to the secretary of the corporation at its principal office.

§ 13.1-658. Notice of meeting.

A. A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting. Such notice shall be given no less than 10 nor more than 60 days before the meeting date except that notice of a shareholders' meeting to act on an amendment of the articles of incorporation, a plan of merger, share exchange, domestication or entity conversion, a proposed sale of assets pursuant to § 13.1-724, or the dissolution of the corporation shall be given not less than 25 nor more than 60 days before the meeting date. *The notice shall include the record date for determining the shareholders entitled to vote at the meeting, if such date is different than the record date for determining shareholders entitled to notice of the meeting.* Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting *as of the record date for determining the shareholders entitled to notice of the meeting.*

B. Unless the articles of incorporation or this chapter requires otherwise, notice of an annual meeting need not state the purpose or purposes for which the meeting is called.

C. Notice of a special meeting shall state the purpose or purposes for which the meeting is called.

D. If not otherwise fixed under § 13.1-656 or 13.1-660, the record date for determining shareholders entitled to notice of and to vote at an annual or special meeting is the day before the effective date of the notice to shareholders.

E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different date, time, or place notice need not be given if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or shall be fixed under § 13.1-660, however, notice of the adjourned meeting shall be given under this section to ~~persons who~~ *are shareholders entitled to vote at such adjourned meeting as of the new record date fixed for notice of such adjourned meeting.*

F. Notwithstanding the foregoing, no notice of a shareholder's meeting need be given to a shareholder if (i) an annual report and proxy statements for two consecutive annual meetings of shareholders or (ii) all, and at least two, checks in payment of dividends or interest on securities during a 12-month period, have been sent by first-class United States mail, addressed to the shareholder at the shareholder's address as it appears on the share transfer books of the corporation, and returned undeliverable. The obligation of the corporation to give notice of shareholders' meetings to any such shareholder shall be reinstated once the corporation has received a new address for such shareholder for entry on its share transfer books.

G. ~~[Repealed.]~~

§ 13.1-660. Record date.

A. The bylaws may fix or provide the manner of fixing in advance the record date *or dates* for one or more voting groups in order to make a determination of shareholders for any purpose. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix as the record date the date on which it takes such action or a future date.

B. A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

C. A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date *or dates*, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

D. If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date ~~continues~~ *or dates continue* in effect or it may fix a new record date *or dates*.

E. *The record date for a shareholders' meeting fixed by or in the manner provided in the bylaws or by the board of directors shall be the record date for determining shareholders entitled to both notice of and to vote at the shareholders' meeting, unless in the case of a record date fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the time it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on or before the date of the meeting to determine the shareholders entitled to vote at the meeting.*

§ 13.1-660.2. Remote participation in annual and special meetings.

A. Shareholders of any class or series may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes such participation for such class or series. Participation by means of remote communication shall be subject to such guidelines and procedures the board of directors adopts, and shall be in conformity with subsection B.

B. Shareholders participating in a shareholders' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to:

1. Verify that each person participating remotely is a shareholder; and
2. Provide such shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate, and to read or hear the proceedings of the meeting, substantially concurrently with such proceedings.

§ 13.1-661. Shareholders' list for meeting.

A. ~~The officer or agent having charge of the share transfer books of~~ *After fixing a record date for a meeting, a corporation shall make, at least ten days before each meeting of shareholders, a complete prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under subsection E of § 13.1-660 to determine the shareholders entitled to vote at such the meeting or any adjournment thereof, with the address of, a corporation shall also prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list shall be arranged by voting group, and within each group by class or series of shares, and show the address of and the number of shares held by each shareholder. The list shall be arranged by voting group and within each voting group by class or series of shares.*

B. ~~For a period of ten days prior to the meeting, the~~ *The shareholders' list of shareholders for notice shall be kept on file at the registered office of the corporation or at its principal office or at the office of its transfer agent or registrar and shall be subject to available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at any time during usual business hours the corporation's principal office or at a place identified in the meeting notice in the county or city where the meeting will be held. Such A shareholders' list for voting shall also be produced and kept open at the time and place of the meeting and shall be subject to the be similarly available for inspection of any shareholder during the whole time of the meeting for the purposes thereof promptly after the record date for voting. The original share transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders. The right of the holder of shares of a corporation any of whose securities are registered under the Securities Exchange Act of 1934, as amended, A shareholder, or the shareholder's agent or attorney, is entitled on written demand to inspect such list prior to a meeting of shareholders shall be and, subject to the limitations requirements set forth in subsection C D of § 13.1-771, to copy a list, during the regular business hours and at the shareholder's expense, during the period it is available for inspection.*

C. *The corporation shall make the list of shareholders entitled to vote available at the meeting, and any shareholder, or the shareholder's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.*

C D. ~~If the requirements of this section have not been substantially complied with, the meeting shall, on the demand of any shareholder in person or by proxy, be adjourned until the requirements are complied with. Refusal or failure corporation refuses to prepare or make available the allow a shareholder, the shareholder's agent, or the shareholder's attorney to inspect a shareholders' list does not affect the validity of action taken at before or at the meeting prior to the making of any such demand, but any action taken by the shareholders after the making of any such demand shall be invalid and of no effect, or to copy a list as permitted by subsection B, the circuit court of the county or city where the corporation's principal office, or if none in the Commonwealth its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.~~

*E. Refusal or failure to prepare or make available a shareholders' list does not affect the validity of action taken at the meeting.*

§ 13.1-663. Proxies.

A. A shareholder may vote the shareholder's shares in person or by proxy.

B. A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission shall contain or be accompanied by information from which one can determine that the shareholder, the shareholder's agent or the shareholder's attorney-in-fact authorized the transmission. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this subsection may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

C. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspectors of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

D. An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

1. A pledgee;
2. A person who purchased or agreed to purchase the shares;
3. A creditor of the corporation who extended it credit under terms requiring the appointment;
4. An employee of the corporation whose employment contract requires the appointment; or
5. A party to a voting agreement created under § 13.1-671.

E. The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

F. An appointment made irrevocable under subsection D is revoked when the interest with which it is coupled is extinguished.

G. A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

H. Subject to § 13.1-665 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

I. Any fiduciary who is entitled to vote any shares may vote such shares by proxy.

§ 13.1-664.1. Voting procedures and inspectors of elections.

A. A public corporation shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders and make a written report of the inspector's determinations. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of shareholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his ability.

B. The inspectors shall (i) ascertain the number of shares outstanding and the voting power of each, (ii) determine the shares represented at a meeting and the validity of proxies and ballots, (iii) count all votes, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares represented at the meeting and their count of all votes. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors. *In any court proceeding there shall be a rebuttable presumption that the report of the inspectors is correct.*

C. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the circuit court of the city or county where the corporation's principal office is located or, if none in this Commonwealth, where its registered office is located, upon application by a shareholder, shall determine otherwise.

D. In determining the validity of proxies and ballots and in counting the votes, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with *subsection B of § 13.1-663 B*, ballots and the regular books and

674 records of the corporation, except that the inspectors may consider other reliable information for the  
675 limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their  
676 nominees or similar persons that represent more votes than the holder of a proxy is authorized by the  
677 record owner to cast or more votes than the shareholder holds of record. If the inspectors consider other  
678 reliable information for the limited purpose permitted herein, the inspectors at the time they make their  
679 certification pursuant to clause (v) of subsection B shall specify the precise information considered by  
680 them including the person or persons from whom they obtained the information, when the information  
681 was obtained, the means by which the information was obtained and the basis for the inspectors' belief  
682 that such information is accurate and reliable.

683 E. If authorized by the board of directors, any shareholder vote to be taken by written ballot may be  
684 satisfied by a ballot submitted by electronic transmission by the shareholder or the shareholder's proxy,  
685 provided that any such electronic transmission shall either set forth or be submitted with information  
686 from which it can be determined that the electronic transmission was authorized by the shareholder or  
687 the shareholder's proxy.

688 § 13.1-669.1. *Judicial review of elections and other matters.*

689 A. Any shareholder, director, or nominee for director aggrieved by an election of directors, after  
690 reasonable notice to the corporation and each director whose election is contested, may apply for relief  
691 to the circuit court in the county or city in which the principal office of the corporation is located, or, if  
692 none in the Commonwealth, in the county or city in which its registered office is located. The court  
693 shall proceed forthwith on an expedited basis to hear and decide the issues and thereupon to determine  
694 the persons elected or order a new election or grant such other relief as may be equitable. Pending  
695 decision the court may require the production of any information and by order may restrain any person  
696 from exercising the powers of a director if such relief is equitable. In any such application, service of  
697 copies of the application upon the registered agent of the corporation shall be deemed to be service  
698 upon the corporation and upon each director whose election is contested and upon each person, if any,  
699 nominated for election as a director, and the registered agent shall forward immediately a copy of the  
700 application to the corporation and to each director whose election is contested and to each person, if  
701 any, nominated for election as a director, in a postpaid, registered letter addressed to such corporation  
702 and each such person at their post office addresses last known to the registered agent or furnished to  
703 the registered agent by the applicant. The court may make such order respecting further or other notice  
704 of such application as it deems proper under the circumstances.

705 B. Any shareholder after prior notice to the corporation, or the corporation itself, may apply for  
706 relief to the circuit court in the county or city in which the principal office of the corporation is located,  
707 or, if none in the Commonwealth, in the county or city in which its registered office is located, to hear  
708 and determine the result of any vote of shareholders upon matters other than the election of directors.  
709 The court shall proceed forthwith on an expedited basis to hear and decide the issues and thereupon to  
710 determine the validity of any vote of shareholders or order a new vote to be held or grant such other  
711 relief as may be equitable. Service of copies of the application upon the registered agent of the  
712 corporation shall be deemed to be service upon the corporation, and no other party need be joined in  
713 order for the court to adjudicate the results of the vote. The court may make such order respecting  
714 notice of such application as it deems proper under the circumstances.

715 C. In any proceeding pursuant to this section in which it is alleged that a proxy or ballot was  
716 submitted by the beneficial owner or other authorized person contrary to applicable instructions given  
717 prior to the closing of the polls, in addition to the information that may be considered by inspectors of  
718 election pursuant to subsection D of § 13.1-664.1, the court may consider other reliable information for  
719 the purpose of determining whether the proxy or ballot should be considered.

720 § 13.1-672.1. *Standing; condition precedent; stay of proceedings.*

721 A. A shareholder shall not commence or maintain a derivative proceeding unless the shareholder:

- 722 1. Was a shareholder of the corporation at the time of the act or omission complained of;  
723 2. Became a shareholder through transfer by operation of law from one who was a shareholder at  
724 that time; or  
725 3. Became a shareholder before public disclosure and without knowledge of the act or omission  
726 complained of; and  
727 4. Fairly and adequately represents the interests of the corporation in enforcing the right of the  
728 corporation.

729 B. No shareholder may commence a derivative proceeding until:

- 730 1. A written demand has been made on the corporation to take suitable action; and  
731 2. Ninety days have expired from the date *delivery of the demand* was made unless (i) the  
732 shareholder has been notified before the expiration of 90 days that the demand has been rejected by the  
733 corporation or (ii) irreparable injury to the corporation would result by waiting until the end of the  
734 90-day period.

735 C. If the corporation commences a review and evaluation of the allegations made in the demand or

complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

§ 13.1-675. Number and election of directors.

A. A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the bylaws, or if not specified in or fixed in accordance with the bylaws, with the number specified in or fixed in accordance with the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation.

B. The shareholders may adopt a bylaw fixing the number of directors and may direct that such bylaw not be amended by the board of directors. If a bylaw states a fixed number of directors and the board of directors has the right to amend the bylaw, it may by amendment to the bylaw increase or decrease by 30 percent or less the number of directors last elected by the shareholders, or, if the directors' terms are staggered pursuant to § 13.1-678, the number of directors of all classes immediately following the most recent election of directors by the shareholders, but only the shareholders may increase or decrease the number by more than 30 percent. The restrictions on the increase or decrease in the number of directors set forth in this subsection shall not apply to a corporation registered as an open-end management investment company registered under the Investment Company Act of 1940.

C. The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or by the board of directors. After shares are issued, only the shareholders may change the range for the size of the board of directors or change from a fixed to a variable-range size board or vice versa.

D. Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under § 13.1-678.

E. No individual shall be named or elected as a director without his prior consent.

§ 13.1-686. Notice of board of directors' meetings.

A. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting.

B. Special meetings of the board of directors shall be held upon such notice as is prescribed in the articles of incorporation or bylaws, or when not inconsistent with the articles of incorporation or bylaws, by resolution of the board of directors. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

C. Notwithstanding any provision of this chapter to the contrary, a notice of the date, time, place or purpose of a regular or special meeting of the board of directors may be given by a form of electronic transmission consented to by the director to whom the notice is given. Any such consent of a director shall be revocable by the director by written notice to the corporation. Any such consent shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or other person responsible for the giving of notice; however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given by electronic transmission shall be deemed given: (a) if by facsimile telecommunication, when directed to a number at which the director has consented to receive notice; (b) if by electronic mail, when directed to an electronic mail address at which the director has consented to receive notice; (c) if by a posting on an electronic network together with separate notice to the director of such specific posting when such notice is directed to an address at which the director has consented to receive notice, upon the later of such posting or the giving of such separate notice; and (d) if by any other form of electronic transmission, when consented to by the director. An affidavit of the secretary or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

§ 13.1-689. Committees.

A. Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee shall have two or more members, who serve at the pleasure of the board of directors.

B. The creation of a committee and appointment of members to it shall be approved by the greater number of (i) a majority of all the directors in office when the action is taken, or (ii) the number of directors required by the articles of incorporation or bylaws to take action under § 13.1-688.

C. Sections 13.1-684 through 13.1-688, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

D. To the extent specified by the board of directors or in the articles of incorporation or bylaws,

797 each committee may exercise the authority of the board of directors under § 13.1-673, except that a  
798 committee may not:

799 1. Approve or recommend to shareholders action that this chapter requires to be approved by  
800 shareholders;

801 2. Fill vacancies on the board or on any of its committees;

802 3. Amend articles of incorporation pursuant to § 13.1-706;

803 4. Adopt, amend, or repeal the bylaws;

804 5. Approve a plan of merger not requiring shareholder approval;

805 6. Authorize or approve a distribution, except according to a general formula or method prescribed  
806 by the board of directors; or

807 7. Authorize or approve the issuance or sale or contract for sale of shares, or determine the  
808 designation and rights, preferences, and limitations of a class or series of shares, except that the board of  
809 directors may (i) authorize a committee, ~~or a senior executive officer of the corporation,~~ to do so subject  
810 to such limits, if any, as may be prescribed by the board of directors, *and (ii) authorize a senior*  
811 *executive officer of the corporation to do so subject to such limits, if any, as may be prescribed by the*  
812 *board of directors or by subsection C of § 13.1-646.*

813 E. The creation of, delegation of authority to, or action by a committee does not alone constitute  
814 compliance by a director with the standards of conduct described in § 13.1-690.

815 F. The board of directors may appoint one or more directors as alternate members of any committee  
816 to replace any absent or disqualified member during the member's absence or disqualification. Unless the  
817 articles of incorporation or the bylaws or the resolution creating the committee provide otherwise, in the  
818 event of the absence or disqualification of a member of a committee, the member or members present at  
819 any meeting and not disqualified from voting, unanimously may appoint another director to act in place  
820 of the absent or disqualified member.

821 § 13.1-699. Advance for expenses.

822 A. A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a  
823 party to a proceeding in advance of final disposition of the proceeding if:

824 1. The director furnishes the corporation a *signed* written statement of his good faith belief that he  
825 has met the standard of conduct described in § 13.1-697; and

826 2. The director furnishes the corporation a *signed* written undertaking, executed personally or on his  
827 behalf, to repay any funds advanced if the director is not entitled to mandatory indemnification under  
828 § 13.1-698 and it is ultimately determined under § 13.1-700.1 or 13.1-701 that the director has not met  
829 the relevant standard of conduct.

830 B. The undertaking required by subdivision A 2 shall be an unlimited general obligation of the  
831 director but need not be secured and may be accepted without reference to financial ability to make  
832 repayment.

833 C. Authorizations of payments under this section shall be made by:

834 1. The board of directors:

835 a. If there are two or more disinterested directors, by a majority vote of all the disinterested directors,  
836 a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a  
837 committee of two or more disinterested directors appointed by such a vote; or

838 b. If there are fewer than two disinterested directors, by the vote necessary for action by the board in  
839 accordance with subsection C of § 13.1-688, in which authorization directors who do not qualify as  
840 disinterested directors may participate; or

841 2. By the shareholders, but shares owned by or voted under the control of a director who at the time  
842 does not qualify as a disinterested director may not be voted on the authorization.

843 § 13.1-704. Application of article.

844 A. Unless the articles of incorporation or bylaws expressly provide otherwise, any authorization of  
845 indemnification or advances or reimbursement of expenses in the articles of incorporation or bylaws  
846 shall not be deemed to prevent the corporation from providing indemnity or advances or reimbursement  
847 of expenses permitted or mandated by this article. *A corporation, by a provision in its articles of*  
848 *incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or*  
849 *shareholders, may obligate itself in advance of the act or omission giving rise to a proceeding to*  
850 *provide indemnification in accordance with § 13.1-697 and advance funds to pay for or reimburse*  
851 *expenses in accordance with § 13.1-699. Any such obligatory provision shall be deemed to satisfy the*  
852 *requirements for authorization referred to in subsection C of § 13.1-699 and subsection C of § 13.1-701.*

853 B. Any corporation shall have power to make any further indemnity, including indemnity with  
854 respect to a proceeding by or in the right of the corporation, and to make additional provision for  
855 advances and reimbursement of expenses, to any director or officer that may be authorized by the  
856 articles of incorporation or any bylaw made by the shareholders or any resolution adopted, before or  
857 after the event, by the shareholders, except an indemnity against (i) his willful misconduct, or (ii) a  
858 knowing violation of the criminal law. *Any such provision that obligates the corporation to provide*

indemnification to the fullest extent permitted by law shall be deemed, unless the articles of incorporation or any such bylaw or resolution expressly provides otherwise, also to obligate the corporation to advance funds to pay for or reimburse expenses to the fullest extent permitted by law in accordance with § 13.1-699 except that the applicable standard shall be conduct that does not constitute willful misconduct or a knowing violation of criminal law, rather than the standard of conduct prescribed in § 13.1-697. Unless the articles of incorporation, or any such bylaw or resolution expressly provide otherwise, any determination as to the right to any further indemnity shall be made in accordance with subsection B of § 13.1-701. Each such indemnity may continue as to a person who has ceased to have the capacity referred to above and may inure to the benefit of the heirs, executors and administrators of such a person.

C. No right provided to any person pursuant to this section may be reduced or eliminated by any amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before such amendment.

D. This article does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his or her appearance as a witness in a proceeding at a time when he or she is not a party.

E. This article does not limit a corporation's power to provide indemnity to, advance or reimburse expenses incurred by, or provide or maintain insurance on behalf of an agent or an employee who is not a director or officer.

§ 13.1-714. Amendment of bylaws by board of directors or shareholders.

A. A corporation's shareholders may amend or repeal the corporation's bylaws.

B. A corporation's board of directors may amend or repeal the corporation's bylaws except to the extent that:

1. The articles of incorporation or ~~§ 13.1-715~~ *this chapter* reserves that power exclusively to the shareholders; or

2. ~~The~~ *Except as provided in subsection D of § 13.1-624*, the shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

§ 13.1-718. Action on a plan of merger or share exchange.

A. In the case of a domestic corporation that is a party to a merger or share exchange:

1. The plan of merger or share exchange shall be adopted by the board of directors.

2. Except as provided in subsections F and G of this section and in §§ 13.1-719 and 13.1-719.1, after adopting the plan of merger or share exchange the board of directors shall submit the plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

B. The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

C. If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and shall contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing domestic or foreign corporation or eligible entity and its shareholders are to receive shares or other interests or the right to receive shares or other interests in the surviving corporation or eligible entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organic document of that corporation or eligible entity. If the corporation is to be merged into a domestic or foreign corporation or eligible entity that is to be created pursuant to the merger and its shareholders are to receive shares or other interests or the right to receive shares or other interests in the surviving corporation or eligible entity, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organic document of the new domestic or foreign corporation or eligible entity.

D. Unless the articles of incorporation, or the board of directors acting pursuant to subsection B, require a greater vote, the plan of merger or share exchange to be authorized shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the transaction at a meeting at which a quorum of the voting group exists.

920 E. Separate voting by voting groups is required:

921 1. ~~On~~ *Except as otherwise provided in the articles of incorporation, on a plan of merger by each*  
922 class or series of shares that:

923 a. Is to be converted under the plan of merger into shares, other securities, eligible interests,  
924 obligations, rights to acquire shares, other securities or eligible interests, cash, other property, or any  
925 combination of the foregoing, *or is proposed to be eliminated without being converted into any of the*  
926 *foregoing*; or

927 b. Would be entitled to vote as a separate group on a provision in the plan that, if contained in a  
928 proposed amendment to articles of incorporation, would require action by separate voting groups under  
929 § 13.1-708;

930 2. On a plan of share exchange, by each class or series of shares included in the exchange, with each  
931 class or series constituting a separate voting group; and

932 3. On a plan of ~~merger or~~ share exchange, if the voting group is entitled under the articles of  
933 incorporation to vote as a voting group to approve a plan of ~~merger or~~ share exchange.

934 F. Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders  
935 of a plan of merger or share exchange is not required if:

936 1. The corporation will survive the merger or is the acquiring corporation in a share exchange;

937 2. Except for amendments permitted by § 13.1-706, its articles of incorporation will not be changed;

938 3. Each shareholder of the corporation whose shares were outstanding immediately before the  
939 effective date of the merger or share exchange will hold the same number of shares, with identical  
940 preferences, limitations, and rights immediately after the effective date of the merger or share exchange;  
941 and

942 4. With respect to shares of the surviving corporation in a merger that are entitled to vote  
943 unconditionally in the election of directors, the number of shares outstanding immediately after the  
944 merger, plus the number of shares issuable as a result of the merger, either by the conversion of  
945 securities issued pursuant to the merger or the exercise of options, rights, and warrants issued pursuant  
946 to the merger, will not exceed by more than 20% the total number of shares of the surviving corporation  
947 outstanding immediately before the merger.

948 G. If a corporation has not yet issued shares and its articles of incorporation do not otherwise  
949 provide, its board of directors may adopt and approve a plan of merger or share exchange on behalf of  
950 the corporation without shareholder action.

951 H. If as a result of a merger or share exchange one or more shareholders of a domestic corporation  
952 would become subject to owner liability for the debts, obligations, or liabilities of any other person or  
953 entity, approval of the plan of merger or share exchange shall require the execution, by each  
954 shareholder, of a separate written consent to become subject to such owner liability.

955 § 13.1-720. Articles of merger or share exchange.

956 A. After a plan of merger or share exchange has been adopted and approved as required by this  
957 chapter, articles of merger or share exchange shall be ~~executed~~ *signed* on behalf of each party to the  
958 merger or share exchange. The articles shall set forth:

959 1. The plan of merger or share exchange, the names of the parties to the merger or share exchange  
960 and, for each party that is a foreign corporation or eligible entity, the name of the state or country under  
961 whose law it is incorporated or formed;

962 2. If the articles of incorporation of a domestic corporation that is the survivor of a merger are  
963 amended, or if a new domestic corporation is created as a result of a merger, as an attachment to the  
964 articles of merger or share exchange, the amendments to the survivor's articles of incorporation or the  
965 articles of incorporation of the new corporation;

966 3. The date the plan of merger or share exchange was adopted by each domestic corporation that was  
967 a party to the merger or share exchange;

968 4. If the plan of merger or share exchange required approval by the shareholders of a domestic  
969 corporation that was a party to the merger or share exchange, either:

970 a. A statement that the plan was approved by the unanimous consent of the shareholders; or

971 b. A statement that the plan was submitted to the shareholders by the board of directors in  
972 accordance with this chapter, and a statement of:

973 (1) The designation, number of outstanding shares, and number of votes entitled to be cast by each  
974 voting group entitled to vote separately on the plan; and

975 (2) Either the total number of votes cast for and against the plan by each voting group entitled to  
976 vote separately on the plan or the total number of undisputed votes cast for the plan separately by each  
977 voting group and a statement that the number cast for the plan by each voting group was sufficient for  
978 approval by that voting group;

979 5. If the plan of merger or share exchange was adopted by the directors without approval by the  
980 shareholders of a domestic corporation that was a party to the merger or share exchange, a statement  
981 that the plan of merger or share exchange was duly approved by the directors including the reason



shareholder approval was not required and, in the case of a merger pursuant to § 13.1-719.1, the additional statements required by subsection D of § 13.1-719.1; and

6. As to each foreign corporation or eligible entity that was a party to the merger or share exchange, a statement that the participation of the foreign corporation or eligible entity was duly authorized as required by the organic law of the corporation or eligible entity.

B. Articles of merger or share exchange shall be filed with the Commission by the survivor of the merger or the acquiring corporation in a share exchange. If the Commission finds that the articles of merger or share exchange comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger or share exchange. Articles of merger or share exchange filed under this section may be combined with any filing required under the organic law of any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

C. In the case of a merger pursuant to § 13.1-719:

1. *The articles shall recite that the merger is being effected pursuant to § 13.1-719;*

2. The articles need only be executed on behalf of the parent corporation; and

3. The certificate of merger shall not be deemed a part of the articles of incorporation.

§ 13.1-721.1. Abandonment of a merger or share exchange.

A. Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign corporation or a domestic or foreign eligible entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by this article, and at any time before the certificate of merger or share exchange has become effective, it may be abandoned by a domestic corporation that is a party thereto without action by shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the merger or share exchange.

B. If a merger or share exchange is abandoned under subsection A after articles of merger or share exchange have been filed with the Commission but before the certificate of merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, ~~executed~~ *signed* on behalf of a party to the merger or share exchange, shall be delivered to the Commission for filing prior to the effective date of the certificate of merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

§ 13.1-725. Definitions.

For purposes of this article:

An "affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

An "affiliated transaction" means any of the following transactions:

1. Any merger of the corporation or any of its subsidiaries with any interested shareholder or with any other corporation that immediately after the merger would be an affiliate of an interested shareholder that was an interested shareholder immediately before the merger;

2. Any share exchange pursuant to § 13.1-717 in which any interested shareholder acquires one or more classes or series of voting shares of the corporation or any of its subsidiaries;

3. Except for transactions in the ordinary course of business, (i) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any interested shareholder of any assets of the corporation or of any of its subsidiaries having an aggregate fair market value in excess of five percent of the corporation's consolidated net worth as of the date of the most recently available financial statements, or (ii) any guaranty by the corporation or any of its subsidiaries (in one transaction or a series of transactions) of indebtedness of any interested shareholder in an amount in excess of five percent of the corporation's consolidated net worth as of the date of the most recently available financial statements;

4. The sale or other disposition by the corporation or any of its subsidiaries to an interested shareholder (in one transaction or a series of transactions) of any voting shares of the corporation or any of its subsidiaries having an aggregate fair market value in excess of five percent of the aggregate fair market value of all outstanding voting shares of the corporation as of the determination date except pursuant to a share dividend or the exercise of rights or warrants distributed or offered on a basis affording substantially proportionate treatment to all holders of the same class or series of voting shares;

5. The dissolution of the corporation if proposed by or on behalf of an interested shareholder; or

6. Any reclassification of securities, including any reverse stock split, or recapitalization of the corporation, or any merger of the corporation with any of its subsidiaries or any distribution or other transaction, whether or not with or into or otherwise involving an interested shareholder, which has the effect, directly or indirectly (in one transaction or a series of transactions), of increasing by more than

1043 five percent the percentage of the outstanding voting shares of the corporation or any of its subsidiaries  
1044 beneficially owned by any interested shareholder.

1045 The "announcement date" means the date of the first general public announcement of the proposed  
1046 affiliated transaction or of the intention to propose an affiliated transaction or the date on which the  
1047 proposed affiliated transaction or the intention to propose an affiliated transaction is first communicated  
1048 generally to shareholders of the corporation, whichever is earlier.

1049 An "associate" means as to any specified person:

1050 1. Any entity, other than the corporation and any of its subsidiaries, of which such person is an  
1051 officer, director, manager, or general partner or is the beneficial owner of 10 percent or more of any  
1052 class of voting shares or other interests;

1053 2. Any trust or other estate in which such person has a substantial beneficial interest or as to which  
1054 such person serves as trustee or in a similar fiduciary capacity; and

1055 3. Any relative or spouse of such person, or any relative of such spouse, who has the same home as  
1056 such person or who is an officer or director of the corporation or any of its affiliates.

1057 A person is deemed to be a "beneficial owner" of voting shares as to which such person and such  
1058 person's affiliates and associates, individually or in the aggregate, have or share directly, or indirectly  
1059 through any contract, arrangement, understanding, relationship, or otherwise:

1060 1. Voting power, which includes the power to vote or to direct the voting of the voting shares, unless  
1061 such power results solely from a revocable proxy given in response to a proxy solicitation made to 10  
1062 or more persons and in accordance with the Securities Exchange Act of 1934;

1063 2. Investment power, which includes the power to dispose or to direct the disposition of the voting  
1064 shares; or

1065 3. The right to acquire voting power or investment power, whether such right is exercisable  
1066 immediately or only after the passage of time, pursuant to any contract, arrangement, or understanding,  
1067 upon the exercise of conversion rights, exchange rights, warrants, or options, or otherwise; provided, that  
1068 (i) a person shall not be deemed to be a beneficial owner of voting shares tendered pursuant to a tender  
1069 or exchange offer made by such person or such person's affiliates or associates until such tendered  
1070 voting shares are accepted for purchase or exchange, (ii) a member of a national securities exchange  
1071 shall not be deemed to be a beneficial owner of shares held directly or indirectly by it on behalf of  
1072 another person solely because such member is the record holder of such securities and, pursuant to the  
1073 rules of such exchange may direct the vote of such shares, without instructions, on other than contested  
1074 matters or matters that may affect substantially the rights or privileges of the holders of the shares to be  
1075 voted but is otherwise precluded by the rules of such exchange from voting without instructions and (iii)  
1076 a director of the corporation shall not be deemed to be a beneficial owner of voting shares beneficially  
1077 owned by another director of the corporation solely by reason of actions undertaken by such persons in  
1078 their capacity as directors of the corporation.

1079 "Control" means the possession, directly or indirectly, through the ownership of voting securities, by  
1080 contract, arrangement, understanding, relationship or otherwise, of the power to direct or cause the  
1081 direction of the management and policies of a person. The beneficial ownership of 10 percent or more  
1082 of a corporation's voting shares shall be deemed to constitute control.

1083 The "determination date" means the date on which an interested shareholder became an interested  
1084 shareholder.

1085 Unless otherwise specified in the articles of incorporation initially filed with the Commission, for  
1086 purposes of this article a "disinterested director" means as to any particular interested shareholder (i) any  
1087 member of the board of directors of the corporation who was a member of the board of directors before  
1088 the later of January 1, 1988, and the determination date and (ii) any member of the board of directors of  
1089 the corporation who was recommended for election by, or was elected to fill a vacancy and received the  
1090 affirmative vote of, a majority of the disinterested directors then on the board.

1091 "Fair market value" means:

1092 1. In the case of shares, the highest closing sale price of a share quoted during the 30-day period  
1093 immediately preceding the date in question on the composite tape for shares listed on the New York  
1094 Stock Exchange, or, if such shares are not quoted on the composite tape on the New York Stock  
1095 Exchange, on the principal United States securities exchange registered under the Securities Exchange  
1096 Act of 1934 on which such shares are listed, or, if such shares are not listed on any such exchange, the  
1097 highest closing bid quotation with respect to a share during the 30-day period preceding the date in  
1098 question on the National Association of Securities Dealers, Inc., automated quotations system or any  
1099 similar system then in general use, or, if no such quotations are available, the fair market value of a  
1100 share on the date in question as determined by a majority of the disinterested directors; and

1101 2. In the case of property other than cash or shares, the fair market value of such property on the  
1102 date in question as determined by a majority of the disinterested directors.

1103 An "interested shareholder" means any person that is:

1104 1. The beneficial owner of more than 10 percent of any class of the outstanding voting shares of the

corporation; however, the term "interested shareholder" shall not include the corporation or any of its subsidiaries, any savings, employee stock ownership, or other employee benefit plan of the corporation or any of its subsidiaries, or any fiduciary with respect to any such plan when acting in such capacity. For the purpose of determining whether a person is an interested shareholder, the number of voting shares deemed to be outstanding shall include shares deemed owned by the interested shareholder through application of subdivision 3 under the definition of "beneficial owner" but shall not include any other voting shares that may be issuable pursuant to any contract, arrangement, or understanding, upon the exercise of any conversion right, exchange right, warrant, or option, or otherwise; or

2. An affiliate or associate of the corporation and at any time within the preceding three years was an interested shareholder of such corporation.

"Valuation date" means, if the affiliated transaction is voted upon by shareholders, the day before the date of the vote of shareholders or, if the affiliated transaction is not voted upon by shareholders, the date of the consummation of the transaction.

"Voting shares" means the outstanding shares of all classes or series of the corporation entitled to vote generally in the election of directors.

§ 13.1-730. Right to appraisal.

A. A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

1. Consummation of a merger to which the corporation is a party (i) if shareholder approval is required for the merger by § 13.1-718 ~~and the shareholder is entitled to vote on the merger~~, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger, or (ii) if the corporation is a subsidiary and the merger is governed by § 13.1-719;

2. Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired ~~if the shareholder is entitled to vote on the exchange~~, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

3. Consummation of a disposition of assets pursuant to § 13.1-724 if the shareholder is entitled to vote on the disposition;

4. An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created; or

5. Any other amendment to the articles of incorporation, *or any other* merger, share exchange or disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the board of directors.

B. Notwithstanding subsection A, the availability of appraisal rights under subdivisions A 1 through A 4 shall be limited in accordance with the following provisions:

1. Appraisal rights shall not be available for the holders of shares of any class or series of shares that is:

a. A covered security under § 18(b)(1)(A) or (B) of the federal Securities Act of 1933, as amended;

b. Traded in an organized market and has at least 2,000 shareholders and a market value of at least \$20 million, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors and beneficial shareholders owning more than 10 percent of such shares; or

c. Issued by an open end management investment company registered with the *United States* Securities and Exchange Commission under the Investment Company Act of 1940 and may be redeemed at the option of the holder at net asset value.

2. The applicability of subdivision 1 of this subsection shall be determined as of:

a. The record date fixed to determine the shareholders entitled to receive notice of, ~~and to vote at,~~ the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

b. The day before the effective date of such corporate action if there is no meeting of shareholders.

3. Subdivision 1 of this subsection shall not be applicable and appraisal rights shall be available pursuant to subsection A for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subdivision 1 of this subsection at the time the corporate action becomes effective.

4. Subdivision 1 of this subsection shall not be applicable and appraisal rights shall be available pursuant to subsection A for the holders of any class or series of shares where the corporate action is an interested transaction.

C. Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred

1166 shares, but any such limitation or elimination contained in an amendment to the articles of incorporation  
1167 that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to  
1168 the effective date of such amendment or that the corporation is or may be required to issue or sell  
1169 thereafter pursuant to any conversion, exchange or other right existing immediately before the effective  
1170 date of such amendment shall not apply to any corporate action that becomes effective within one year  
1171 of that date if such action would otherwise afford appraisal rights.

1172 § 13.1-733. Notice of intent to demand payment.

1173 A. If a corporate action specified in subsection A of § 13.1-730 is submitted to a vote at a  
1174 shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or  
1175 series of shares:

1176 1. Must deliver to the corporation before the vote is taken written notice of the shareholder's intent to  
1177 demand payment if the proposed action is effectuated; and

1178 2. Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the  
1179 proposed action.

1180 B. If a corporate action specified in subsection A of § 13.1-730 is to be approved by less than  
1181 unanimous written consent, a shareholder who wishes to assert appraisal rights with respect to any class  
1182 or series of shares may not ~~execute~~ *sign* a consent in favor of the proposed action with respect to that  
1183 class or series of shares.

1184 C. A shareholder who fails to satisfy the requirements of subsection A or subsection B is not entitled  
1185 to payment under this article.

1186 § 13.1-734. Appraisal notice and form.

1187 A. If proposed corporate action requiring appraisal rights under § 13.1-730 becomes effective, the  
1188 corporation shall deliver a ~~written~~ *an* appraisal notice and *the* form required by subdivision B 1 to all  
1189 shareholders who satisfied the requirements of § 13.1-733. In the case of a merger under § 13.1-719, the  
1190 parent corporation shall deliver a ~~written~~ *an* appraisal notice and form to all record shareholders who  
1191 may be entitled to assert appraisal rights.

1192 B. The appraisal notice shall be sent no earlier than the date the corporate action specified in  
1193 subsection A of § 13.1-730 became effective and no later than 10 days after such date and shall:

1194 1. Supply a form that (i) specifies the first date of any announcement to shareholders made prior to  
1195 the date the corporate action became effective of the principal terms of the proposed corporate action,  
1196 (ii) if such announcement was made, requires the shareholder asserting appraisal rights certify whether  
1197 beneficial ownership of those shares for which appraisal rights are asserted was acquired before that  
1198 date, and (iii) requires the shareholder asserting appraisal rights to certify that such shareholder did not  
1199 vote for or consent to the transaction;

1200 2. State:

1201 a. Where the form must be sent and where certificates for certificated shares must be deposited and  
1202 the date by which those certificates must be deposited, which date may not be earlier than the date for  
1203 receiving the required form under subdivision 2 b of this subsection;

1204 b. A date by which the corporation must receive the form which date may not be fewer than 40 nor  
1205 more than 60 days after the date the subsection A appraisal notice and form were sent, and state that the  
1206 shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is  
1207 received by the corporation by such specified date;

1208 c. The corporation's estimate of the fair value of the shares;

1209 d. That, if requested in writing, the corporation will provide, to the shareholder so requesting, within  
1210 10 days after the date specified in subdivision 2 b of this subsection, the number of shareholders who  
1211 returned the form by the specified date and the total number of shares owned by them; and

1212 e. The date by which the notice to withdraw under § 13.1-735.1 must be received, which date must  
1213 be within 20 days after the date specified in subdivision 2 b of this subsection; and

1214 3. Be accompanied by a copy of this article.

1215 § 13.1-770. Corporate records.

1216 A. A corporation shall keep as permanent records minutes of all meetings of its shareholders and  
1217 board of directors, a record of all actions taken by the shareholders or board of directors without a  
1218 meeting, and a record of all actions taken by a committee of the board of directors in place of the board  
1219 of directors on behalf of the corporation.

1220 B. A corporation shall maintain appropriate accounting records.

1221 C. A corporation or its agent shall maintain a record of its shareholders, in a form that permits  
1222 preparation of a list of the names and addresses of all shareholders, in alphabetical order by class and  
1223 series, if any, of shares showing the number and class and series, if any, of shares held by each.  
1224 However, the foregoing shall not require the corporation or its agent to maintain, as part of such record  
1225 of shareholders, beneficial owners whose shares are held by a nominee on the shareholder's behalf  
1226 except to the extent that the corporation has established and maintains a procedure for registration of  
1227 such rights under § 13.1-664.

D. A corporation shall maintain its records in ~~written form~~ *the form of a document, including an electronic record*, or in another form capable of conversion into ~~written paper~~ form within a reasonable time.

E. A corporation shall keep a copy of the following records:

1. Its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in subdivision L 5 of § 13.1-604 regarding facts on which a filed document is dependent;

2. Its bylaws or restated bylaws and all amendments to them currently in effect;

3. Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;

4. The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;

5. All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under § 13.1-774;

6. A list of the names and business addresses of its current directors and officers; and

7. Its most recent annual report delivered to the Commission under § 13.1-775.

§ 13.1-771. Inspection of records by shareholders.

A. Subject to subsection C of § 13.1-772, a shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection E of § 13.1-770 if the shareholder gives the corporation a *signed* written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

B. *For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different than the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting, unless the corporation has made such information generally available to shareholders by posting it on its website or by other generally recognized means. Failure of a corporation to provide such information does not affect the validity of action taken at the meeting.*

C. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection ~~C~~ D and gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy:

1. Excerpts from minutes of any meeting of the board of directors; ~~records of any action of or a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or, board of directors, or a committee of the board~~ without a meeting, to the extent not subject to inspection under subsection A;

2. Accounting records of the corporation; and

3. The record of shareholders of record.

~~C~~ D. A shareholder may inspect and copy the records identified in subsection ~~B~~ C only if:

1. The shareholder has been a shareholder for at least six months immediately preceding the shareholder's demand or is the holder of record or beneficial owner of at least five percent of all of the outstanding shares;

2. The shareholder's demand is made in good faith and for a proper purpose;

3. The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

4. The records are directly connected with the shareholder's purpose.

~~D~~ E. The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

~~E~~ F. This section does not affect:

1. The right of a shareholder to inspect records under § 13.1-661 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant;

2. The power of a court, independently of this chapter, to compel the production of corporate records for examination.

~~F~~ G. For purposes of this section, other than subdivision ~~B~~ C 3, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the shareholder's behalf.

§ 13.1-772. Scope of inspection right.

1289 A. A shareholder's agent or attorney has the same inspection and copying rights as the shareholder  
1290 the agent or attorney represents.

1291 B. The right to copy records under § 13.1-771 includes, if reasonable, the right to receive copies by  
1292 xerographic or other means, including copies through an electronic transmission if available and so  
1293 requested by the shareholder.

1294 C. The corporation may impose a reasonable charge, covering the costs of labor and material, for  
1295 copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of  
1296 production, reproduction, and transmission of the records.

1297 D. The corporation may comply with a shareholder's demand to inspect the record of shareholders  
1298 under subdivision B C 3 of § 13.1-771 by providing the shareholder with a list of its shareholders that  
1299 was compiled no earlier than the date of the shareholder's demand.

1300 § 13.1-773. Court-ordered inspection.

1301 A. If a corporation does not allow a shareholder who complies with subsection A of § 13.1-771 to  
1302 inspect and copy any records required by that subsection to be available for inspection, the circuit court  
1303 in the city or county where the corporation's principal office is located, or, if none in this  
1304 Commonwealth, where its registered office is located, may summarily order inspection and copying of  
1305 the records demanded at the corporation's expense upon application of the shareholder.

1306 B. If a corporation does not within a reasonable time allow a shareholder to inspect and copy any  
1307 other record, the shareholder who complies with subsections B C and E D of § 13.1-771 may apply to  
1308 the circuit court in the city or county where the corporation's principal office is located, or, if none in  
1309 this Commonwealth, where its registered office is located, for an order to permit inspection and copying  
1310 of the records demanded. The court shall dispose of an application under this subsection on an expedited  
1311 basis.

1312 C. If the court orders inspection and copying of the records demanded, it may also order the  
1313 corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order  
1314 if the shareholder proves that the corporation refused inspection without a reasonable basis for doubt  
1315 about the right of the shareholder to inspect the records demanded.

1316 D. If the court orders inspection and copying of the records demanded, it may impose reasonable  
1317 restrictions on the use or distribution of the records by the demanding shareholder.

1318 § 13.1-774. Financial statements for shareholders.

1319 A. If requested in writing by any shareholder, a corporation shall furnish the shareholder with the  
1320 financial statements for the most recent fiscal year, which may be consolidated or combined statements  
1321 of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of  
1322 the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders'  
1323 equity for the year unless that information appears elsewhere in the financial statements. If financial  
1324 statements are prepared for the corporation on the basis of generally accepted accounting principles, the  
1325 annual financial statements must also be prepared on that basis.

1326 B. If the annual financial statements are reported upon by a public accountant, the accountant's report  
1327 must accompany them. If the annual financial statements are not reported upon by a public accountant,  
1328 the president or the person responsible for the corporation's accounting records shall provide the  
1329 shareholder with a statement of the basis of accounting used in preparation of the annual financial  
1330 statements and a description of any respects in which the statements were not prepared on a basis of  
1331 accounting consistent with the statements prepared for the preceding year.

1332 C. If a corporation does not comply with a shareholder's request for financial statements within 30  
1333 days of delivery of such request to the corporation, the circuit court in the city or county where the  
1334 corporation's principal office is located, or, if none in the Commonwealth, where its registered office is  
1335 located may, upon application of the shareholder, summarily order the corporation to furnish such  
1336 financial statements.

1337 D. *A public corporation may fulfill its responsibilities under this section by delivering the specified*  
1338 *financial statements, or otherwise making them available, in any manner permitted by the applicable*  
1339 *rules and regulations of the United States Securities and Exchange Commission.*

1340 § 13.1-779. Savings provision.

1341 A. Except as provided in subsection B of this section, the repeal of a statute by this chapter does not  
1342 affect:

1343 1. The operation of the statute or any action taken under it before its repeal;

1344 2. Any ratification, right, remedy, privilege, obligation or liability acquired, accrued, or incurred  
1345 under the statute before its repeal;

1346 3. Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the  
1347 violation, before its repeal; or

1348 4. Any proceeding commenced, or reorganization or dissolution authorized by the board of directors,  
1349 under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed  
1350 in accordance with the statute as if it had not been repealed.

1351 B. If a penalty or punishment imposed for violation of a statute repealed by this Act is reduced by  
1352 this Act, the penalty or punishment if not already imposed shall be imposed in accordance with this  
1353 chapter.

1354 C. *If any provision of this chapter is deemed to modify, limit, or supersede the federal Electronic*  
1355 *Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., the provisions of this*  
1356 *chapter shall control to the maximum extent permitted by 15 U.S.C. § 7002(a)(2).*

1357 **2. That § 13.1-681 of the Code of Virginia is repealed.**