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**SENATE BILL NO. 50**

Offered January 11, 2012

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*A BILL to amend and reenact §§ 13.1-654, 13.1-655, 13.1-657, 13.1-661, 13.1-674, 13.1-711, 13.1-732, 13.1-734, 13.1-737, 13.1-749.1, 13.1-838, 13.1-839, and 13.1-1023 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 10 of Title 13.1 an article numbered 17.1, consisting of sections numbered 13.1-944.1 through 13.1-944.7, and by adding a section numbered 13.1-1047.1, relating to corporations and limited liability companies; conversion and dissolution.*

Patron—Watkins

Referred to Committee on Commerce and Labor

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

**1. That §§ 13.1-654, 13.1-655, 13.1-657, 13.1-661, 13.1-674, 13.1-711, 13.1-732, 13.1-734, 13.1-737, 13.1-749.1, 13.1-838, 13.1-839, and 13.1-1023 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 10 of Title 13.1 an article numbered 17.1, consisting of sections numbered 13.1-944.1 through 13.1-944.7, and by adding a section numbered 13.1-1047.1 as follows:**

**§ 13.1-654. Annual meeting.**

A. Unless directors are elected by written consent in lieu of an annual meeting as permitted by § 13.1-657, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws, except that a corporation registered under the Investment Company Act of 1940 is not required to hold an annual meeting in any year in which the election of directors is not required to be held under the Investment Company Act of 1940 unless the articles of incorporation or bylaws of the corporation require an annual meeting to be held.

B. Annual shareholders' meetings may be held at such place, in or out of the Commonwealth, as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

~~C. If the articles of incorporation or bylaws so provide, shareholders may participate in an annual meeting by use of any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.~~

~~D. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.~~

**§ 13.1-655. Special meeting.**

A. A corporation shall hold a special meeting of shareholders:

1. On call of the chairman of the board of directors, the president, the board of directors, or the person or persons authorized to do so by the articles of incorporation or bylaws; or

2. In the case of corporations having 35 or fewer shareholders of record, if the holders of at least 20 percent of all votes entitled to be cast on any issue proposed to be considered at the special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held. The articles of incorporation may provide for an increase or decrease in the percentage stated in this subdivision.

B. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing, including an electronic transmission, to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

C. If not otherwise fixed under § 13.1-656 or 13.1-660, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

D. Special shareholders' meetings may be held at such place in or out of this Commonwealth as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

~~E. If the articles of incorporation or bylaws so provide, shareholders may participate in a special shareholders' meeting by use of any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.~~

F. Only business within the purpose or purposes described in the meeting notice required by subsection C of § 13.1-658 may be conducted at a special shareholders' meeting.

**§ 13.1-657. Action without meeting.**

A. Action required or permitted by this chapter to be adopted or taken at a shareholders' meeting

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59 may be adopted or taken without a meeting if the action is adopted or taken by all the shareholders  
60 entitled to vote on the action, in which case no action by the board of directors shall be required. The  
61 adoption or taking of the action shall be evidenced by one or more written consents describing the  
62 action taken, signed by all the shareholders entitled to vote on the action, bearing the date of each  
63 signature, and delivered to the corporation for inclusion in the minutes or filing with the corporate  
64 records.

65 B. The articles of incorporation may provide that any authorize action required or permitted by this  
66 chapter to be adopted or taken at a shareholders' meeting may be adopted or taken without a meeting,  
67 and without prior notice, if consents in writing setting forth the action so adopted or taken are signed by  
68 the holders of outstanding shares having not less than the minimum number of votes that would be  
69 required to adopt or take the action at a meeting at which all shares entitled to vote on the action were  
70 present and voted by shareholders by less than unanimous written consent provided that the taking of  
71 such action is consistent with any requirements that may be set forth in the corporation's articles of  
72 incorporation, the bylaws, or this section. For such action to be valid:

73 1. It shall be an action that this chapter requires or permits to be adopted or taken at a  
74 shareholder's meeting;

75 2. The corporation's articles of incorporation shall authorize action by shareholders by less than  
76 unanimous written consent and, if a public corporation, the inclusion of the authorization in the articles  
77 of corporation shall have been approved by each voting group entitled to vote by the greater of:

78 a. The vote of that voting group required by the corporation's articles of incorporation; and

79 b. More than two-thirds of all votes that the voting group is entitled to cast;

80 3. Before the holders of more than 10 percent of the outstanding shares of any voting group entitled  
81 to vote on the action to be adopted or taken have executed the written consent, the corporation's  
82 secretary shall have received a copy of the form of written consent setting forth the action to be adopted  
83 or taken; and

84 4. The holders of not less than the minimum number of outstanding shares of each voting group  
85 entitled to vote on the action that would be required to adopt or take the action at a shareholders'  
86 meeting at which all shares of each voting group entitled to vote on the action were present and voted  
87 shall have signed written consents setting forth the action to be adopted or taken.

88 The written consent shall bear the date on which each shareholder signed the consent and be  
89 delivered to the corporation for inclusion in the minutes or filing with the corporate records.

90 C. If not otherwise fixed under § 13.1-656 or 13.1-660 and if prior board action is not required  
91 respecting the action to be adopted or taken without a meeting, the record date for determining the  
92 shareholders entitled to adopt or take action without a meeting shall be the first date on which a signed  
93 written consent is delivered to the corporation. If not otherwise fixed under § 13.1-656 or 13.1-660 and  
94 if prior board action is required respecting the action to be adopted or taken without a meeting, the  
95 record date shall be the close of business on the day the resolution of the board taking such prior action  
96 is adopted. No written consent shall be effective to adopt or take the action referred to therein unless,  
97 within 60 days of the earliest date on which a consent delivered to the corporation as required by this  
98 section was signed, written consents signed by the holders of shares having sufficient votes to adopt or  
99 take the action have been delivered to the corporation. A written consent may be revoked by a writing  
100 to that effect delivered to the corporation before unrevoked written consents sufficient in number to  
101 adopt or take the action are delivered to the corporation.

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

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

118 F. If action is adopted or taken by less than unanimous written consent of the voting shareholders,  
119 the corporation shall give its nonconsenting voting shareholders written notice of the action not more  
120 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.

§ 13.1-661. Shareholders' list for meeting.

A. After fixing a record date for a meeting, a corporation shall 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 the meeting, 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 number of shares held by each shareholder.

B. The shareholders' list for notice shall be 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 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. A shareholders' list for voting shall be similarly available for inspection 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 to vote at any meeting of shareholders.* A shareholder, or the shareholder's agent or attorney, is entitled on written demand to inspect and, subject to the requirements set forth in subsection 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.

D. If the corporation refuses to allow a shareholder, the shareholder's agent, or the shareholder's attorney to inspect a shareholders' list before or at the meeting, 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.

§ 13.1-674. Qualification of directors.

The articles of incorporation or bylaws may prescribe qualifications ~~for~~ *to be* directors *or to be nominated as directors*. A director need not be a resident of this Commonwealth or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

§ 13.1-711. Restated articles of incorporation.

A. A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder approval.

B. The restatement may include one or more new amendments to the articles. If the restatement includes a *one or more new amendment amendments* requiring shareholder approval, ~~if the new amendment or amendments~~ shall be adopted and approved as provided in § 13.1-707.

C. If the board of directors submits a restatement for shareholder approval, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 13.1-658. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any new amendment it would make in the articles.

D. A corporation restating its articles of incorporation shall file with the Commission articles of restatement setting forth:

1. The name of the corporation immediately prior to restatement;
2. Whether the restatement contains a new amendment to the articles;
3. The text of the restated articles of incorporation or amended and restated articles of incorporation, as the case may be;
4. If the restatement includes a new amendment that provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment, which may be made dependent upon facts objectively ascertainable outside the articles of restatement in accordance with subsection L of § 13.1-604;
5. The date of the restatement's adoption;
6. If the restatement does not contain a new amendment to the articles, that the board of directors

182 adopted the restatement;

183 7. If the restatement contains a new amendment to the articles not requiring shareholder approval, the  
184 information required by subdivision A 5 of § 13.1-710; and

185 8. If the restatement contains a new amendment to the articles requiring shareholder approval, the  
186 information required by subdivision A 6 of § 13.1-710.

187 E. If the Commission finds that the articles of restatement comply with the requirements of law and  
188 that all required fees have been paid, it shall issue a certificate of restatement. When the certificate of  
189 restatement is effective the restated articles of incorporation or amended and restated articles of  
190 incorporation supersede the original articles of incorporation and all amendments to them.

191 F. The Commission may certify restated articles of incorporation or amended and restated articles of  
192 incorporation as the articles of incorporation currently in effect.

193 § 13.1-732. Notice of appraisal rights.

194 A. Where any corporate action specified in subsection A of § 13.1-730 is to be submitted to a vote at  
195 a shareholders' meeting, the meeting notice shall state that the corporation has concluded that  
196 shareholders are, are not or may be entitled to assert appraisal rights under this article.

197 If the corporation concludes that appraisal rights are or may be available, a copy of this article and a  
198 statement of the corporation's position as to the availability of appraisal rights shall accompany the  
199 meeting notice sent to those record shareholders entitled to exercise appraisal rights.

200 B. In a merger pursuant to § 13.1-719, the parent corporation shall notify in writing all record  
201 shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became  
202 effective. Such notice shall be sent within 10 days after the corporate action became effective and  
203 include the materials described in § 13.1-734.

204 C. Where any corporate action specified in subsection A of § 13.1-730 is to be approved by written  
205 consent of the shareholders pursuant to § 13.1-657:

206 1. Written notice that appraisal rights are, are not, or may be available must be given to each record  
207 shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited  
208 and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied  
209 by a copy of this article; and

210 2. Written notice that appraisal rights are, are not, or may be available must be delivered together  
211 with the notice to nonconsenting and nonvoting shareholders required by subsections E and F of  
212 § 13.1-657, may include the materials described in § 13.1-734, and, if the corporation has concluded that  
213 appraisal rights are or may be available, must be accompanied by a copy of this article.

214 D. Where corporate action described in subsection A of § 13.1-730 is proposed, or a merger pursuant  
215 to § 13.1-719 is effected, the notice referred to in subsection A or C, if the corporation concludes that  
216 appraisal rights are or may be available, and in subsection B shall be accompanied by:

217 1. The annual financial statements specified in subsection A of § 13.1-774 of the corporation that  
218 issued the shares that may be subject to appraisal, which shall be as of a date ending not more than 16  
219 months before the date of the notice and shall comply with subsection B of § 13.1-774; provided that, if  
220 such annual financial statements are not reasonably available, the corporation shall provide reasonably  
221 equivalent financial information; and

222 2. The latest available quarterly financial statements of such corporation, if any.

223 E. *A public corporation, or a corporation that ceased to be a public corporation as a result of the*  
224 *corporate action specified in subsection A of § 13.1-730, may fulfill its responsibilities under subsection*  
225 *D by delivering the specified financial statements, or otherwise making them available, in any manner*  
226 *permitted by the applicable rules and regulations of the U.S. Securities and Exchange Commission if the*  
227 *corporation was a public corporation as of the date of the specified financial statements.*

228 E F. The right to receive the information described in subsection D may be waived in writing by a  
229 shareholder before or after the corporate action.

230 § 13.1-734. Appraisal notice and form.

231 A. If proposed corporate action requiring appraisal rights under § 13.1-730 becomes effective, the  
232 corporation shall deliver an appraisal notice and the form required by subdivision B 1 to all shareholders  
233 who satisfied the requirements of § 13.1-733. In the case of a merger under § 13.1-719, the parent  
234 corporation shall deliver an appraisal notice and form to all record shareholders who may be entitled to  
235 assert appraisal rights.

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

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

## 2. State:

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

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

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

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

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

3. Be accompanied by a copy of this article.

## § 13.1-737. Payment.

A. Except as provided in § 13.1-738, within 30 days after the form required by subsection B 2 b of § 13.1-734 is due, the corporation shall pay in cash to those shareholders who complied with subsection A of § 13.1-735.1 the amount the corporation estimates to be the fair value of their shares plus interest.

B. The payment to each shareholder pursuant to subsection A shall be accompanied by:

1. The (i) annual financial statements specified in subsection A of § 13.1-774 of the corporation that issued the shares to be appraised, which shall be as of a date ending not more than 16 months before the date of payment and shall comply with subsection B of § 13.1-774; provided that, if such annual financial statements are not available, the corporation shall provide reasonably equivalent information, and (ii) the latest available quarterly financial statements of such corporation, if any;

2. A statement of the corporation's estimate of the fair value of the shares, which estimate shall equal or exceed the corporation's estimate given pursuant to subdivision B 2 c of § 13.1-734; and

3. A statement that shareholders described in subsection A have the right to demand further payment under § 13.1-739 and that if any such shareholder does not do so within the time period specified therein, such shareholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under this article.

*C. A public corporation, or a corporation that ceased to be a public corporation as a result of the corporate action specified in subsection A of § 13.1-730, may fulfill its responsibilities under subdivision B 1 by delivering the specified financial statements, or otherwise making them available, in any manner permitted by the applicable rules and regulations of the U.S. Securities and Exchange Commission if the corporation was a public corporation as of the date of the specified financial statements.*

## § 13.1-749.1. Election to purchase in lieu of dissolution.

A. Unless otherwise provided in the articles of incorporation, in a proceeding under subdivision A 1 of § 13.1-747 to dissolve a corporation, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

B. An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition under subdivision A 1 of § 13.1-747 or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days thereafter, give written notice to all shareholders, other than the petitioner. The notice shall state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and shall advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate shall file notice of their intention to join in the purchase no later than 30 days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under subdivision A 1 of § 13.1-747 may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of the petitioner's shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

C. If, within 60 days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the

purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

D. If the parties are unable to reach an agreement as provided for in subsection C, the court, upon application of any party, shall stay the proceedings under subdivision A 1 of § 13.1-747 and determine the fair value of the petitioner's shares as of the day before the date on which the petition under subdivision A 1 of § 13.1-747 was filed or as of such other date as the court deems appropriate under the circumstances. In determining the fair value, the court may, in its discretion, select an appraiser to appraise the fair value of the petitioner's shares and shall assess the cost of any such appraisal to the parties, to the corporation, or both, as the equities may appear to the court.

E. Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under subdivision A 1 b or d of § 13.1-747, it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by the shareholder.

F. Upon entry of an order under subsection C or E, the court shall dismiss the petition to dissolve the corporation under subdivision A 1 of § 13.1-747 and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him by the order of the court, which shall be enforceable in the same manner as any other judgment.

G. The purchase ordered pursuant to subsection E shall be made within 10 days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt a proposal to dissolve pursuant to § 13.1-742, in which event articles of dissolution must be filed within 50 days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with the provisions of this article, and the order entered pursuant to subsection E shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of the last sentence of subsection E and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

H. Any payment by the corporation pursuant to an order under subsection C or E, other than an award of fees and expenses pursuant to subsection E, is subject to the provisions of § 13.1-653.

§ 13.1-838. Annual meeting.

A. A corporation shall hold a meeting of members annually at a time stated in or fixed in accordance with the bylaws.

B. Annual meetings of members may be held at such place, in or out of the Commonwealth, as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

C. If the articles of incorporation or bylaws so provide, members may participate in an annual meeting by use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

D. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

§ 13.1-839. Special meeting.

A. A corporation shall hold a special meeting of members:

1. On call of the chairman of the board of directors, the president, the board of directors, or the person or persons authorized to do so by the articles of incorporation or bylaws; or

2. In the absence of a provision in the articles of incorporation or bylaws stating who may call a special meeting of members, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

B. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing, including an electronic transmission, to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

C. If not otherwise fixed under § 13.1-840 or 13.1-844, the record date for determining members entitled to demand a special meeting is the date the first member signs the demand.

D. Special members' meetings may be held at such place in or out of the Commonwealth as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

E. If the articles of incorporation or bylaws so provide, members may participate in a special meeting of members by use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

F. Only business within the purpose or purposes described in the meeting notice required by subsection C of § 13.1-842 may be conducted at a special members' meeting.

#### Article 17.1.

#### Conversion to a Limited Liability Company.

##### § 13.1-944.1. Definitions.

In this article:

"Articles of organization" has the same meaning specified in § 13.1-1002.

"Converting entity" means the domestic corporation that adopts a plan of entity conversion pursuant to this article.

"Corporation" has the same meaning specified in § 13.1-803.

"Limited liability company" has the same meaning specified in § 13.1-1002.

"LLC membership interest" has the same meaning as membership interest in § 13.1-1002.

"Member" when used with respect to a corporation has the meaning as specified in § 13.1-803, and when used with respect to a limited liability company has the same meaning specified in § 13.1-1002.

"Membership interest" has the same meaning specified in § 13.1-803.

"Person" has the same meaning specified in § 13.1-803.

"Resulting entity" means the corporation or limited liability company that is in existence immediately after consummation of an entity conversion pursuant to this article.

##### § 13.1-944.2. Entity conversion.

A corporation may become a limited liability company pursuant to a plan of entity conversion. Such a plan shall be adopted and approved by the corporation in accordance with the procedures of this article.

##### § 13.1-944.3. Plan of entity conversion.

A. A plan of entity conversion shall set forth:

1. The terms and conditions of the conversion, including the manner and basis of converting the membership interests, if any, of the corporation into LLC membership interests of the resulting entity;

2. Where the corporation has no members, the plan of entity conversion shall provide for the designation of the persons who are to become a member of the limited liability company upon conversion. No person shall be designated as a member of the resulting entity without the person's prior consent;

3. As a separate attachment to the plan, the full text of the articles of organization of the resulting entity as they will be in effect immediately after consummation of the conversion; and

4. Any other provision relating to the conversion that may be desired.

B. The plan of entity conversion may also include a provision that the board of directors may amend the plan prior to the issuance of the certificate of entity conversion. An amendment made subsequent to the submission of the plan to the members shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the membership interests of the corporation.

##### § 13.1-944.4. Action on plan of entity conversion.

A. Where the corporation has no members, or no members having voting rights, the plan shall be adopted upon receiving the vote of at least two-thirds of the directors in office.

B. Where there are no members of the corporation having voting rights:

1. The plan of entity conversion shall be adopted by the board of directors;

2. After adopting the plan of entity conversion, the board of directors shall submit the plan to the members for their approval. The board of directors shall also transmit to the members a recommendation that the members approve the plan, unless the board of directors determines 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 members the basis for that determination; and

3. The voting members shall approve the plan as provided in subdivision C 3.

C. When a plan of entity conversion is to be approved by the members in accordance with subsection B:

1. The board of directors may condition its submission of the plan of entity conversion to the members on any basis;

2. The corporation shall notify each member, whether or not entitled to vote, of the proposed members' meeting in accordance with § 13.1-842 at which the plan of entity conversion is to be submitted for approval. The notice shall also 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 of the plan; and

3. Unless this chapter or the board of directors, acting pursuant to subdivision 1, requires a greater vote, the plan of entity conversion 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 plan at a meeting at which a quorum of the voting group exists.

§ 13.1-944.5. Articles of entity conversion.

A. After the conversion of a corporation into a limited liability company has been adopted and approved as required by this article, the converting entity shall file with the Commission articles of entity conversion setting forth:

1. The name of the corporation immediately prior to the filing of the articles of entity conversion and the name to which the name of the converting entity is to be changed, which name shall satisfy the requirements of the laws of the Commonwealth;

2. The plan of entity conversion, including the full text of the articles of organization of the resulting entity that comply with the requirements of Chapter 12 (§ 13.1-1000 et seq.), as they will be in effect immediately after consummation of the conversion;

3. A statement:

a. That the plan was adopted by the vote of at least two-thirds of the directors, including the reason member approval was not required;

b. That the plan was adopted by the unanimous consent of the members having voting rights; or

c. That the plan was proposed by the board of directors and submitted to the members in accordance with this chapter, and a statement of:

(1) The existence of a quorum of each voting group entitled to vote separately on the plan; and

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

B. If the Commission finds that the articles of entity conversion comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of entity conversion.

§ 13.1-944.6. Effect of entity conversion.

When an entity conversion under this article becomes effective, with respect to that entity:

1. The title to all real estate and other property remains in the resulting entity without reversion or impairment;

2. The liabilities remain the liabilities of the resulting entity;

3. A proceeding pending may be continued by or against the resulting entity as if the conversion did not occur;

4. The articles of organization attached to the articles of conversion constitute the articles of organization of the resulting entity;

5. The membership interests, if any, of the corporation are reclassified into LLC membership interests in accordance with the plan of entity conversion; and the members of the corporation are entitled only to the rights provided in the plan of entity conversion; and

6. The resulting entity is deemed to:

a. Be a limited liability company for all purposes;

b. Be the same entity without interruption as the converting entity that existed prior to the conversion; and

c. Have been organized on the date that the converting entity was originally incorporated; and

7. The corporation shall cease to be a corporation when the certificate of entity conversion becomes effective.

§ 13.1-944.7. Abandonment of entity conversion.

A. Unless a plan of entity conversion of a corporation prohibits abandonment of the conversion without member approval, after the conversion has been authorized, and at any time before the certificate of entity conversion has become effective, the conversion may be abandoned without further member action in accordance with the procedure set forth in the plan or, if none is set forth, in the manner determined by the board of directors.

B. If an entity conversion is abandoned under subsection A after articles of entity conversion have been filed with the Commission but before the certificate of entity conversion has become effective, written notice that the entity conversion has been abandoned in accordance with this section shall be filed with the Commission prior to the effective date of the certificate of entity conversion. The notice shall take effect upon filing and the entity conversion shall be deemed abandoned and shall not become effective.

§ 13.1-1023. Operating agreement.



A. Authority.

1. The members of a limited liability company may enter into any operating agreement to regulate or establish the affairs of the limited liability company, the conduct of its business and the relations of its members. A limited liability company is bound by its operating agreement whether or not the limited liability company executes the operating agreement. An operating agreement may contain any provisions regarding the affairs of a limited liability company and the conduct of its business to the extent that such provisions are not inconsistent with the laws of the Commonwealth or the articles of organization. An operating agreement may provide rights to any person, including a person who is not a party to the operating agreement, to the extent set forth in the operating agreement.

2. If a limited liability company has only one member, an operating agreement shall be deemed to include:

a. Any writing signed by the member, without regard to whether the writing constitutes an agreement, that relates to the affairs of the limited liability company and the conduct of its business.

b. Any agreement, regardless of whether the agreement is in writing, between the member and the limited liability company, that relates to the affairs of the limited liability company and the conduct of its business, provided that the limited liability company has a manager that is a person other than the member.

B. Adoption and amendment.

1. An operating agreement must initially be agreed to by all of the members. Unless the articles of organization or a written operating agreement specifically requires otherwise, an operating agreement need not be in writing.

2. If the articles of organization or an operating agreement does not provide for the manner by which an operating agreement may be amended, then all of the members must agree to any amendment of an operating agreement.

3. If the articles of organization or the operating agreement provide for the manner by which an operating agreement may be amended, including by requiring the approval of a person who is not a party to the ~~articles of organization~~ *operating agreement* or requiring the satisfaction of conditions, an operating agreement may be amended only in that manner or as otherwise permitted by law; provided that (i) the approval of any person may be waived by that person and (ii) any conditions may be waived by all persons for whose benefit the conditions were intended.

C. Enforcement of operating agreement.

1. A court of equity may enforce an operating agreement by injunction or by such other relief that the court in its discretion determines to be fair and appropriate in the circumstances.

2. As an alternative to injunctive or other equitable relief, when the provisions of § 13.1-1047 are applicable, the court may order dissolution of the limited liability company.

*§ 13.1-1047.1. Waiver of termination.*

*At any time after the dissolution of a limited liability company and before the winding up of its business is completed, all of the members may waive the right to have the limited liability company's business wound up and the limited liability company terminated. In that event:*

*1. The limited liability company resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the limited liability company or a member after the dissolution and before the waiver is determined as if dissolution had never occurred; and*

*2. The rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.*