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HOUSE BILL NO. 1878

House Amendments in [ ] - January 27, 2015

A BILL to amend and reenact §§ 13.1-603, 13.1-624, 13.1-627, 13.1-649, 13.1-657, 13.1-658, 13.1-664.1, 13.1-665, 13.1-669.1, 13.1-670, 13.1-671.1, 13.1-674, 13.1-685, 13.1-699, 13.1-716 through 13.1-719.1, 13.1-730, 13.1-732, 13.1-733, 13.1-741.1, 13.1-746.1, 13.1-749.1, 13.1-826, 13.1-841, 13.1-842, 13.1-847.1, 13.1-848, 13.1-852.1, 13.1-865, 13.1-878, 13.1-894, 13.1-895, and 13.1-908.1 of the Code of Virginia, relating to stock and nonstock corporations.

Patron Prior to Engrossment—Delegate Kilgore

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-603, 13.1-624, 13.1-627, 13.1-649, 13.1-657, 13.1-658, 13.1-664.1, 13.1-665, 13.1-669.1, 13.1-670, 13.1-671.1, 13.1-674, 13.1-685, 13.1-699, 13.1-716 through 13.1-719.1, 13.1-730, 13.1-732, 13.1-733, 13.1-741.1, 13.1-746.1, 13.1-749.1, 13.1-826, 13.1-841, 13.1-842, 13.1-847.1, 13.1-848, 13.1-852.1, 13.1-865, 13.1-878, 13.1-894, 13.1-895, and 13.1-908.1 of the Code of Virginia are amended and reenacted 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, text that is italicized, is in boldface, contrasting colors, or 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, is also not a party to the proceeding. The presence of one or more of the following circumstances shall not by itself prevent a person from being a disinterested director: (i) nomination or election of the director to the current board by any person, acting alone or participating with others, who is so interested in the matter; (ii) service as a director of another corporation of which an interested person is

also a director; or (iii) at the time action is to be taken under § 13.1-672.4, status as a named defendant, as a director against whom action is demanded, or as a director who approved the act being challenged.

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

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

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

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

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

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

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

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

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

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

"Electronic transmission" or "electronically transmitted" means any form or process of communication, not directly involving the physical transfer of paper or other tangible medium, that (i) is suitable for the retention, retrieval, and reproduction of information by the recipient, and (ii) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection J of § 13.1-610.

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

"Eligible interests" means interests or memberships.

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

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

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

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

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

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

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

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

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

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

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

"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, commonwealth, and the District of Columbia, and their agencies and governmental subdivisions; and a territory or 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.

§ 13.1-624. 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 that is not inconsistent with law or the articles of incorporation.

C. The bylaws may contain one or ~~both~~ *more* 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*; and*

3. A requirement that a circuit court or a federal district court in the Commonwealth or the jurisdiction in which the corporation has its principal office shall be the sole and exclusive forum for (i) any derivative action brought on behalf of the corporation; (ii) any action for breach of duty to the corporation or the corporation's shareholders by any current or former officer or director of the corporation; or (iii) any action against the corporation or any current or former officer or director of the corporation arising pursuant to this chapter or the corporation's articles of incorporation or bylaws.

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.

§ 13.1-627. General powers.

A. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

1. To sue and be sued, complain and defend in its corporate name;

2. To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

3. To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Commonwealth~~, for managing the business and regulating the affairs of the corporation~~;

4. To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

5. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

6. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;

7. To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities or property of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

8. To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

9. To conduct its business, locate offices, and exercise the powers granted by this chapter within or without the Commonwealth;

10. To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

11. To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, share purchase plans and benefit and incentive plans for any or all of the current or former directors, officers, employees, and agents of the corporation or any of its subsidiaries;

12. To make donations for the public welfare or for religious, charitable, scientific, literary or educational purposes, except that corporations subject to regulation as to rates by the Commission shall not have power to make donations in excess of five percent of net income computed before federal and state taxes on income and without taking into account any deduction for gifts;

13. To make payments or donations, or do any other act, not inconsistent with this section or any other applicable law, that furthers the business and affairs of the corporation;

14. To pay compensation, or to pay additional compensation, to any or all directors, officers and employees on account of services previously rendered to the corporation, whether or not an agreement to pay such compensation was made before such services were rendered;

15. To insure for its benefit the life of any of its directors, officers or employees, to insure the life of any shareholder for the purpose of acquiring at his death shares owned by such shareholder and to continue such insurance after the relationship terminates;

16. To cease its corporate activities and surrender its corporate franchise; and

17. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

B. Each corporation other than a public service company, a banking corporation, an insurance corporation, a savings institution or a credit union shall have power to enter into partnership agreements, joint ventures or other associations of any kind with any person or persons. The foregoing limitations on

public service companies, banking corporations, insurance corporations, savings institutions, and credit unions shall not apply to the purchase by any such entity of any security of a limited liability company. The term "public service company" as used in this subsection shall not apply to railroads, which shall have the power given other corporations generally by this subsection. The foregoing limitation on public service companies shall not apply to partnership agreements, joint ventures or other associations where the purposes of such partnerships, joint ventures or other associations are activities that the public service company could lawfully engage in without participation in a partnership, joint venture or association and will require an equity investment by the public service company and debt with recourse to the public service company of an amount not more than one percent of its net equity as measured at the end of the most recent fiscal year so long as all such partnerships, joint ventures and associations collectively will require an equity investment by the public service company and debt with recourse to the public service company of less than five percent of the net equity of the public service company as measured at the end of the most recent fiscal year. Upon application by the public service company, the Commission may approve any partnership agreements, joint ventures or other associations that exceed the equity investment criteria set forth above. The foregoing limitation on public service companies shall not apply to partnership agreements, joint ventures or other associations between telephone companies and telephone companies, whether in corporate or other form, or between telephone companies and commonly owned affiliates of telephone companies for the purpose of providing domestic cellular radio telecommunication service.

C. Privileges and powers conferred and restrictions and requirements imposed by other titles of the Code on railroads or other public service companies, banking corporations, insurance corporations, savings and loan associations, credit unions, industrial loan associations or other special types of corporations, shall not be deemed repealed or amended by any provision of this chapter except where specifically so provided.

D. Each corporation which is deemed a private foundation, as defined in § 509 of the Internal Revenue Code, unless its articles of incorporation expressly provide otherwise, shall distribute its income and, if necessary, principal, for each taxable year at such time and in such manner as not to subject such corporation to tax under § 4942 of the Internal Revenue Code. Such corporation shall not engage in any act of self-dealing, as defined in § 4941(d) of the Internal Revenue Code, retain any excess business holdings, as defined in § 4943(c) of the Internal Revenue Code, make any investments in such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code or make any taxable expenditures, as defined in § 4945(d) of the Internal Revenue Code. This subsection shall apply to any corporation organized after December 31, 1969, under this chapter or under the Virginia Stock Corporation Act (§ 13.1-601 et seq.) enacted by Chapter 428 of the 1956 Acts of General Assembly; and to any corporation organized before January 1, 1970, only for its taxable years beginning on and after January 1, 1972, unless the exceptions provided in § 508(e)(2)(A) or (B) of the Internal Revenue Code shall apply or unless the board of directors of such corporation shall elect that such restrictions as contained in this subsection shall not apply by filing written notice of such election with the Attorney General and the clerk of the Commission on or before December 31, 1971. Each reference to a section of the Internal Revenue Code made in this subsection shall include future amendments to such Code sections and corresponding provisions of future internal revenue laws.

§ 13.1-649. Restriction on transfer of shares and other securities.

A. The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

B. A restriction on the transfer or registration of ~~transfer of~~ shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or ~~is contained~~ in the information statement required by subsection B of § 13.1-648. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

C. A restriction on the transfer or registration of transfer of shares is authorized:

1. To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

2. To preserve exemptions under federal or state securities law; and

3. For any other reasonable purpose.

D. A restriction on the transfer or registration of transfer of shares may:

1. Obligate the shareholder first to offer the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares;

2. Obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire

the restricted shares;

3. Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

4. Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

E. For purposes of this section, "shares" includes any warrants, rights or options to acquire any such shares or any security or other obligation of the corporation convertible into any such shares or into warrants, rights or options to acquire any such shares.

§ 13.1-657. Action without meeting.

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

B. The articles of incorporation may authorize action by shareholders by less than unanimous written consent provided that the taking of such action is consistent with any requirements that may be set forth in the corporation's articles of incorporation, the bylaws, or this section. For such action to be valid:

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

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

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

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

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

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

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

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

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

E. *Any person, whether or not then a shareholder, may provide that a consent in writing as a shareholder shall be effective at a future time, including the time when an event occurs, but such future time shall not be more than 60 days after such provision is made. Any such consent shall be deemed to have been made for purposes of this section at the future time so specified for the consent to be effective, provided that (i) the person is a shareholder at such future time and (ii) the person did not*

revoke the consent prior to such future time. Any such consent may be revoked, in the manner provided in subsection C, prior to its becoming effective.

F. If this chapter requires that notice of a proposed action be given to nonvoting shareholders and the action is to be adopted or taken by written consent of the voting shareholders, the corporation shall give its nonvoting 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 nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

~~F.~~ *G.* 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.

§ 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, *not less than 10 days before the meeting date* notice of the adjourned meeting shall be given under this section to shareholders entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

F. Notwithstanding the foregoing, no notice of a ~~shareholder's~~ *shareholders'* 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.

§ 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~~ *in connection with determining voting results*. Each inspector, before entering upon the discharge of his duties, shall ~~take and sign an oath~~ *certify in writing that the inspector will* 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~~ *proxy appointments* 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 *in a written report* their determination of the number of shares represented at the meeting and their count of ~~all~~ *the* votes. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors *and may rely on information provided by such persons and other persons, including those appointed to tabulate votes, unless the inspectors believe reliance is unwarranted*. 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~~ *performing their duties*, the inspectors ~~shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any~~ *may examine (i) the proxy appointment forms and any other* information provided in accordance with subsection B of § 13.1-663, *(ii) any envelope or related writing submitted with those appointment forms, (iii) any* ballots, *(iv) any evidence or other information specified in § 13.1-665,* and *(v)* the ~~regular~~ *relevant* books and records of the corporation~~, except that the~~ *relating to its shareholders and their entitlement to vote, including any securities position list provided by a depository clearing agency*.

E. The inspectors *also* may consider other ~~reliable~~ information ~~for the limited purpose of~~ *that they believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection B, including for the purpose of evaluating inconsistent, incomplete, or erroneous information and* reconciling ~~proxies and ballots~~ *information* submitted ~~by or~~ on behalf of banks, brokers, their nominees, or similar persons that ~~represent~~ *indicates* more votes *being cast* than ~~the holder of~~ a proxy is authorized by the record ~~owner~~ *shareholder* to cast or more votes *being cast* than the ~~shareholder holds of~~ record *shareholder is entitled to cast*. If the inspectors consider other ~~reliable~~ information ~~for the limited purpose permitted herein, the inspectors at the time~~ *allowed by this subsection,* they ~~make~~ *shall specify in* their ~~certification pursuant to clause (v) of~~ *report under* subsection B ~~shall specify~~ the ~~precise~~ information considered by them, including the *purpose or purposes for which the information was considered, the* person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for the inspectors' belief that such information is ~~accurate~~ *relevant* and reliable.

~~E.~~ *F. Determinations of law by the inspectors shall be subject to de novo review by a court in a proceeding under § 13.1-669.1 or other judicial proceeding.*

G. If authorized by the board of directors, any shareholder vote to be taken by written ballot may be satisfied by a ballot submitted by electronic transmission by the shareholder or the shareholder's proxy, provided that any such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the shareholder or the shareholder's proxy. *A share that is voted by a ballot submitted by electronic transmission is deemed present at the meeting of shareholders.*

§ 13.1-665. Corporation's acceptance of votes.

A. If the name signed on a vote, *ballot,* consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, *ballot,* consent, waiver or proxy appointment and give it effect as the act of the shareholder.

B. If the name signed on a vote, *ballot,* consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, *ballot,* consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

1. The shareholder is an entity and the name signed purports to be that of an officer, partner, or agent of the entity;

2. The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, *ballot,* consent, waiver, or proxy appointment;

3. The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence acceptable to the corporation that such receiver or trustee has been authorized to vote the shares in an order of the court by which such person was appointed has been presented with respect to the vote, *ballot,* consent, waiver, or proxy appointment;

4. The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, *ballot,* consent, waiver, or proxy appointment; or

5. Two or more persons are the shareholder as fiduciaries and the name signed purports to be the

name of at least one of the fiduciaries and the person signing appears to be acting on behalf of all the fiduciaries.

C. Notwithstanding the provisions of subdivisions B 2 and B 5, in any case in which the will, trust agreement, or other instrument under which a fiduciary purports to act contains directions for the voting of shares in any corporation, or for the execution and delivery of proxies for the voting thereof, such directions shall be binding upon the fiduciary and upon the corporation if a copy thereof has been furnished to the corporation.

D. The corporation is entitled to reject a vote, *ballot,* consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to ~~tabulate~~ *count* votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

E. ~~The~~ *Neither the* corporation ~~and its officer or agent~~ *nor the person authorized to count votes, including an inspector under § 13.1-664.1,* who accepts or rejects a vote, *ballot,* consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or subsection B of § 13.1-663 ~~are not~~ *is* liable in damages to the shareholder for the consequences of the acceptance or rejection.

F. Corporate action based on the acceptance or rejection of a vote, *ballot,* consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

§ 13.1-669.1. Judicial determination of corporate officers and review of elections and shareholder votes.

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

1. The validity of the election, appointment, removal, or resignation of a director or officer of the corporation;

2. The right of an individual to hold the office of director or officer of the corporation;

3. The result or validity of an election or vote by the shareholders of the corporation;

4. The right of a director to membership on a committee of the board of directors; and

5. The right of a person to nominate, or an individual to be nominated as, a candidate for election or appointment as a director of the corporation, and any right under a bylaw adopted pursuant to subsection C of § 13.1-624 or any comparable right under any provision of the articles of incorporation, contract, or applicable law.

B. Any *application or proceeding pursuant to subsection A may be filed or commenced by any of the following persons:*

1. The corporation;

2. A shareholder ~~after prior notice to~~ *of* the corporation~~, or~~*;*

3. A director of the corporation ~~itself, may apply for relief to the circuit court in the county or city in which the principal office of the corporation is located, or, if none in the Commonwealth, in the county or city in which its registered office is located, to hear and determine the result of any vote of shareholders upon matters other than the election of directors. The court shall proceed forthwith on an expedited basis to hear and decide the issues and thereupon to determine the validity of any vote of shareholders or order a new vote to be held or grant such other relief as may be equitable. Service of copies of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation, and no other party need be joined in order for the court to adjudicate the results of the vote. The court may make such order respecting notice of such application as it deems proper under the circumstances~~*, an individual claiming the office of director, or a director whose membership on a committee of the board of directors is contested, who, in each case, is seeking a determination of his*

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right to such office or membership;

4. An officer of the corporation or an individual claiming to be an officer of the corporation, in each case who is seeking a determination of his right to such office; or

5. A person claiming a right covered by subdivision A 5 and who is seeking a determination of such right.

C. In *connection with* any *application or* proceeding pursuant to ~~this section in which it is alleged that a proxy or ballot was submitted by the beneficial owner or other authorized person contrary to applicable instructions given prior to the closing of the polls, in addition to the information that may be considered by inspectors of election pursuant to subsection D of § 13.1-664.1, the court may consider other reliable information for the purpose of determining whether the proxy or ballot should be considered~~ *subsection A, the following shall be named as defendants, unless such person made the application or commenced the proceeding:*

1. The corporation;

2. An individual whose right to office or membership on a committee of the board of directors is contested;

3. Any individual claiming the office or membership at issue; and

4. Any person claiming a right covered by subdivision A 5 that is at issue.

D. In connection with any application or proceeding under subsection A, service of process may be made upon each of the persons specified in subsection C either by:

1. Serving on the corporation process addressed to such person in any manner provided by statute of the Commonwealth or by rule of the applicable court for service of process on the corporation; or

2. Serving on such person process in any manner provided by statute of the Commonwealth or by rule of the applicable court.

E. When service of process is made upon a person other than the corporation by service upon the corporation pursuant to subdivision D 1, the plaintiff and the corporation promptly shall provide written notice of such service, together with copies of all process and the application or complaint, to such person at the person's last known residence or business address, or as permitted by statute of the Commonwealth.

F. In connection with any application or proceeding under subsection A, the court shall dispose of the application or proceeding on an expedited basis and also may:

1. Order such additional or further notice as the court deems proper under the circumstances;

2. Order that additional persons be joined as parties to the proceeding if the court determines that such joinder is necessary for a just adjudication of matters before the court;

3. Order an election or meeting be held in accordance with the provisions of § 13.1-656 or otherwise;

4. Appoint a master to conduct an election or meeting;

5. Enter temporary, preliminary, or permanent injunctive relief;

6. Resolve solely for the purposes of the proceeding any legal or factual issues necessary for the resolution of any of the matters specified in subsection A, including the right and power of persons claiming to own shares to vote at any meeting of the shareholders; and

7. Order such relief as the court determines is equitable, just, and proper.

G. It shall not be necessary to make shareholders parties to a proceeding or application pursuant to this section unless the shareholder is a required defendant under subdivision C 4, relief is sought against the shareholder individually, or the court orders joinder pursuant to subdivision F 2.

H. Nothing in this section limits, restricts, or abolishes the subject matter jurisdiction or powers of the court as existed prior to July 1, 2015. An application or proceeding pursuant to this section is not the exclusive remedy or proceeding available with respect to the matters specified in subsection A.

§ 13.1-670. Voting trusts.

A. One or more shareholders may create a voting trust, conferring on a trustee or trustees the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee or trustees. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

B. A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. ~~A~~

C. The duration of a voting trust *shall be as set forth in the voting trust, except that a voting trust that became effective prior to July 1, 2015,* is valid for not more than 10 years after its effective date unless ~~extended under subsection C.~~

~~C. 1. All or~~ some *or all* of the parties to ~~a~~ *the* voting trust ~~may~~ extend it ~~for additional terms of not more than 10 years each~~ by signing a written consent to the extension. ~~An~~

D. Any consent to an extension ~~is valid for not more than 10 years from the date the first~~

~~shareholder signs such a consent~~ *pursuant to subsection C signed by less than all of the parties to the voting trust binds only the parties signing it.*

~~2.~~ *E.* The voting trustee shall deliver copies of ~~the~~ *any* consent to extension and *the* list of beneficial owners to the *secretary at the* corporation's principal office. ~~A consent to extension binds only those parties signing it.~~

§ 13.1-671.1. Shareholder agreements.

A. An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation, even though it is inconsistent with one or more other provisions of this chapter in that it:

1. Eliminates the board of directors or, subject to the requirements of subsection D of § 13.1-647 and subsection A of § 13.1-693, one or more officers or restricts the discretion or powers of the board of directors or one or more officers;

2. Governs the authorization or making of distributions, whether or not in proportion to ownership of shares, subject to the limitations in § 13.1-653;

3. Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

4. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

5. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation, or among any of them;

6. Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

7. Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

8. Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

B. An agreement authorized by this section shall be:

1. a. Set forth in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

b. Set forth in a written agreement that is signed by all persons who are shareholders at the time of the agreement; *and*

2. Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise~~; and~~

~~3. Valid for 10 years, unless the agreement provides otherwise~~.

C. The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by subsection B of § 13.1-648. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

D. An agreement authorized by this section shall cease to be effective when the corporation becomes a public corporation. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

E. An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

F. The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

G. Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares were issued when the agreement was made.

H. No action taken pursuant to this section shall change any requirement to file articles or other documents with the Commission or affect the rights of any creditors or other third parties.

I. The duration of an agreement authorized by this section shall be as set forth in the agreement, except that the duration of an agreement that became effective prior to July 1, 2015, remains 10 years unless the agreement provided otherwise or is subsequently amended to provide otherwise.

J. An agreement among shareholders of a corporation that is consistent with the other provisions of this chapter that does not comply with the provisions of this section shall nonetheless be effective among the shareholders and the corporation.

§ 13.1-674. Qualification of directors or for nomination for director.

A. The articles of incorporation or bylaws may prescribe qualifications ~~to be~~ *for* directors or to be nominated as directors.

B. A requirement that is based on a past, current, or prospective action, or on an expression of an opinion, by a nominee or director that (i) relates to the discharge of a director's duties and (ii) could limit the ability of the nominee or director to discharge his duties as a director is not a permissible qualification for a nominee or director under this section. Permissible qualifications for a nominee or director under this section include the person's not being or having been subject to specified criminal, civil, or regulatory sanctions or not having been removed as a director by judicial action or for cause.

C. 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.

D. A qualification for nomination for director that is prescribed before a person's nomination shall apply to the person at the time of his nomination. A qualification for nomination for director that is prescribed after a person's nomination shall not apply to the person with respect to such nomination.

E. A qualification for directors that is prescribed before the start of a person's nomination for director may provide that it applies (i) only at the start of the director's term or (ii) during that person's term as director. A qualification for directors prescribed during a director's term shall not apply to that director prior to the end of that director's term.

§ 13.1-685. Action without meeting of board of directors.

A. Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

B. Action taken under this section is effective when the last director signs the consent unless the consent specifies a different effective date, in which event the action taken is effective as of the date specified therein provided the consent states the date of execution by each director.

C. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

D. *Any person, whether or not then a director, may provide that a consent to action as a director shall be effective at a future time, including the time when an event occurs, but such future time shall not be more than 60 days after such provision is made. Any such consent shall be deemed to have been made for purposes of this section at the future time so specified for the consent to be effective, provided that (i) the person is a director at such future time and (ii) the person did not revoke the consent prior to such future time. Any such consent may be revoked, in the manner provided in subsection C, prior to its becoming effective.*

E. For purposes of this section, a written consent and the signing thereof may be accomplished by one or more electronic transmissions.

~~E.~~ *F.* A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

§ 13.1-699. Advance for expenses.

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

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

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

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

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

1. The board of directors:

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

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

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

§ 13.1-716. Merger.

A. One or more domestic corporations may merge with one or more domestic or foreign corporations or eligible entities pursuant to a plan of merger, or two or more foreign corporations or domestic or foreign eligible entities may merge into a new domestic [*or foreign*] corporation [*or eligible entity*] to be created in the merger [~~in the manner provided in this chapter~~] . When a domestic corporation is the survivor of a merger with a domestic nonstock corporation, it may become, pursuant to subdivision C 5, a domestic nonstock corporation, provided that the only parties to the merger are domestic corporations and domestic nonstock corporations.

B. A foreign corporation or a foreign eligible entity may be a party to a merger with a domestic corporation, or may be created pursuant to the terms of the plan of merger, only if the merger is permitted by the laws under which the foreign corporation or eligible entity is organized or by which it is governed.

C. The plan of merger shall include:

1. The name of each domestic or foreign corporation or eligible entity that will merge and the name of the domestic or foreign corporation or eligible entity that will be the survivor of the merger;

2. The terms and conditions of the merger;

3. The manner and basis of converting the shares of each merging domestic or foreign corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property or any combination of the foregoing;

4. The manner and basis of converting any rights to acquire the shares of each merging domestic or foreign corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property or any combination of the foregoing;

5. The articles of incorporation of any domestic or foreign corporation or nonstock corporation, or the organic document of any domestic or foreign unincorporated entity, to be created by the merger, or if a new domestic or foreign corporation or nonstock corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organic document; and

6. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organic document of any such party.

D. Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection L of § 13.1-604.

E. The plan of merger may also include a provision that the plan may be amended prior to the effective date of the certificate of merger, but if the shareholders of a domestic corporation that is a party to the merger are required ~~or permitted~~ *by any provision of this chapter* to vote on the plan ~~and amendment of the plan is not conditioned on unanimous shareholder approval~~, the plan ~~must provide that~~ *may not be amended* subsequent to approval of the plan by such shareholders ~~the plan may not be amended~~ to change *any of the following, unless the amendment is approved by the shareholders*:

1. The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash or other property to be received under the plan by the shareholders of or owners of eligible interests in any party to the merger;

2. The articles of incorporation of any domestic or foreign corporation or nonstock corporation, or the organic document of any unincorporated entity, that will survive or be created as a result of the merger, except for changes permitted by § 13.1-706; or

3. Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

F. 1. One or more domestic corporations may merge pursuant to this section into another domestic

corporation if the articles of incorporation of each of them could lawfully contain all the corporate powers and purposes of all of them.

2. Any corporation authorized by its articles of incorporation to engage in a special kind of business enumerated in § 13.1-620 may be merged with another corporation authorized by its articles of incorporation to engage in the same special kind of business, including mergers authorized under § 6.2-1146, whether or not either or both of such corporations are actually engaged in the transaction of such business, and the shareholders of the corporations parties to the merger may receive shares of a corporation not authorized by its articles of incorporation to engage in such special kind of business.

§ 13.1-717. Share exchange.

A. Through a share exchange:

1. A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all of the eligible interests of one or more classes or series of eligible interests of a domestic or foreign eligible entity, as well as rights to acquire any such shares or eligible interests, in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property or any combination of the foregoing, pursuant to a plan of share exchange; or

2. All of the shares of one or more classes or series of shares of a domestic corporation, as well as rights to acquire any such shares or eligible interests, may be acquired by another domestic or foreign corporation or other eligible entity, in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property or any combination of the foregoing, pursuant to a plan of share exchange.

B. A foreign corporation or eligible entity may be a party to a share exchange only if the share exchange is permitted by the laws under which the corporation or eligible entity is organized or by which it is governed.

C. If the organic law of a domestic eligible entity does not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved, and the share exchange effectuated, in accordance with the procedures, if any, for a merger.

D. The plan of share exchange shall include:

1. The name of each domestic or foreign corporation or eligible entity whose shares or eligible interests will be acquired and the name of the domestic or foreign corporation or other eligible entity that will acquire those shares or eligible interests;

2. The terms and conditions of the share exchange;

3. The manner and basis of exchanging shares of a domestic or foreign corporation or eligible interests in an eligible entity whose shares or eligible interests will be acquired under the share exchange into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property or any combination of the foregoing;

4. The manner and basis for exchanging any rights to acquire shares of a domestic or foreign corporation or eligible interests in an eligible entity whose shares or eligible interests will be acquired under the share exchange into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property or any combination of the foregoing; and

5. Any other provisions required by the laws under which any party to the share exchange is organized or by the articles of incorporation or organic document of any such party.

E. Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection L of § 13.1-604.

F. The plan of share exchange may also include a provision that the plan may be amended prior to the effective date of the certificate of share exchange, but if the shareholders of a domestic corporation that is a party to the share exchange are required ~~or permitted~~ *by any provision of this chapter* to vote on the plan, the plan ~~must provide that~~ *may not be amended* subsequent to approval of the plan by such shareholders ~~the plan may not be amended~~ to change *any of the following, unless the amendment is approved by the shareholders*:

1. The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property or any combination of the foregoing to be issued by the corporation or to be received under the plan by the shareholders of or owners of eligible interests in any party to the share exchange; or

2. Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

G. This section does not limit the power of a domestic corporation to acquire shares of another domestic or foreign corporation or eligible interests in an eligible entity in a transaction other than a share exchange.

§ 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~~ *H* 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.

E. Separate voting by voting groups is required:

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

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

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

2. ~~On~~ *Except as otherwise provided in the articles of incorporation, on* a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; ~~and~~

3. *On a plan of merger, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger; and*

4. On a plan of share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of share exchange.

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

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

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

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

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

corporation outstanding immediately before the merger.

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

1. The corporation is a public corporation;

2. The plan of merger or share exchange expressly (i) permits or requires such a merger or share exchange to be effected under this subsection and (ii) provides that such merger or share exchange be effected as soon as practicable following the consummation of the offer referred to in subdivision 3 if such merger or share exchange is effected under this subsection;

3. A corporation or limited liability company irrevocably accepts for payment shares tendered pursuant to a tender or exchange offer for any and all of the outstanding shares of a constituent corporation, as defined in § 13.1-719.1, on the terms provided in such plan of merger or share exchange that, absent this subsection, would be entitled to vote on the adoption of the plan of merger or share exchange; however, the offer may exclude shares of the constituent corporation that are owned at the commencement of the offer by:

a. The corporation or limited liability company making the offer;

b. Any person that owns, directly or indirectly, all of the outstanding shares or eligible interests of the corporation or limited liability company making the offer; or

c. Any direct or indirect wholly-owned subsidiary of any corporation or limited liability company described in subdivision a or person described in subdivision b;

4. Following the acceptance of shares referred to in this subsection, the shares irrevocably accepted for payment pursuant to the offer and received by the depository prior to expiration of the offer, plus the shares otherwise owned by the corporation or limited liability company consummating the offer, equals at least the percentage of the shares, and of each class or series thereof, that, absent this subsection, would be required to adopt a plan of merger or share exchange under this chapter and by the articles of incorporation of the constituent corporation;

5. The corporation or limited liability company accepting the shares referred to in subdivision 3 merges with or into the constituent corporation or acquires all of the outstanding shares of the constituent corporation pursuant to the plan; and

6. Each outstanding share of each class or series of stock of the constituent corporation that is the subject of, and is not irrevocably accepted for payment in, the offer referred to in subdivision 3 is either:

a. To be converted in such merger into, or into the right to receive, the same amount and kind of consideration to be paid for shares of such class or series of stock of such constituent corporation irrevocably accepted for payment in the offer; or

b. Exchanged in such share exchange for, or for the right to receive, the same amount and kind of consideration to be paid for shares of such class or series of stock of such constituent corporation irrevocably accepted for payment in the offer.

As used in this subsection:

"Depository" means an agent appointed in connection with an offer referred to in subdivision 3 by the corporation or limited liability company consummating the offer.

"Person" means any individual, corporation, partnership, limited liability company, unincorporated association, or other entity.

"Received" means (i) with respect to certificated shares, the physical receipt of a stock certificate and (ii) with respect to uncertificated shares, (a) the transfer into the depository's account or (b) the receipt by the depository of an agent's message.

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

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

§ 13.1-719. Merger between parent and subsidiary or between subsidiaries.

A. A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that possess at least 90 percent of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without the approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

B. *A foreign parent corporation that owns shares of a domestic subsidiary corporation that possess at least 90 percent of the voting power of each class and series of the outstanding shares of the*

subsidiary that have voting power may merge the subsidiary into itself or into another domestic or foreign subsidiary, or merge itself into the subsidiary if permitted by the laws under which any such foreign parent or subsidiary corporation is organized or by which it is governed, without the approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation of any of the corporations, or in the case of a foreign corporation, its equivalent governing document, otherwise provide. A foreign corporation may be a party to a merger pursuant to this subsection only if the merger is permitted by the laws under which the foreign corporation is organized.

C. If under subsection A *or B* approval of the merger by the subsidiary's shareholders is not required, the parent corporation shall, within 10 days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

~~C.~~ *D.* Except as provided in subsections A ~~and~~, B, *and C,* a merger between a parent and a subsidiary shall be governed by the provisions of this article applicable to mergers generally.

~~D.~~ *E.* The articles of incorporation of the survivor shall not be altered or amended by a merger pursuant to this section, except for amendments permitted by § 13.1-706.

~~E.~~ *F.* Two or more subsidiaries may be merged into a ~~domestic~~ parent corporation pursuant to this section.

§ 13.1-719.1. Formation of a holding company.

A. ~~In~~ *As used in* this section:

"Constituent corporation" means a corporation which, from the incorporation of the holding company until consummation of a merger governed by this section, was at all times the sole direct parent of the holding company and whose shares are converted into shares of the holding company in such merger.

"Holding company" means a corporation which, from its incorporation until consummation of a merger governed by this section, was at all times a direct ~~wholly-owned~~ *wholly owned* subsidiary of the constituent corporation and whose shares are issued in such merger in exchange for the shares of the constituent corporation.

"Indirect subsidiary" means a corporation which, from its incorporation until consummation of a merger governed by this section, was at all times a direct ~~wholly-owned~~ *wholly owned* subsidiary of the holding company.

B. Unless its articles of incorporation otherwise provide, a constituent corporation may merge an indirect subsidiary into itself, or may merge itself into an indirect subsidiary, without the approval of the shareholders of the constituent corporation or the board of directors or shareholders of the indirect subsidiary, if:

1. Such constituent corporation and indirect subsidiary are the only parties to the merger;

2. The provisions in the articles of incorporation and bylaws of the constituent corporation and the holding company at the effective ~~date~~ *time* of the merger are identical as they relate to:

a. The designation, number, and par value of each class and series of shares that are authorized, and the preferences, rights and limitations of each class and series of shares;

b. Any terms of the shares that are dependent upon facts objectively ascertainable outside of the articles of incorporation or that vary among the holders of the same class or series;

c. The preemptive right of the shareholders to acquire unissued shares, provided, however, that if the constituent corporation was formed on or before December 31, 2005, and its articles of incorporation do not deny the preemptive right of its shareholders, and the holding company was formed after December 31, 2005, the articles of incorporation of the holding company must provide that its shareholders have the preemptive right to acquire the holding company's unissued shares to the same extent the shareholders of the constituent corporation had a preemptive right to acquire unissued shares of the constituent corporation;

d. The definition, limitation, and regulation of the powers of the corporation, its directors, and shareholders;

e. The management of the business and regulation of the affairs of the corporation; and

f. For purposes of subdivision 2 c of this subsection, shares include any warrants, rights or options to acquire any such shares or any security or other obligation of the corporation convertible into any such shares or into warrants, rights or options to acquire any such shares;

3. Each share or fraction of a share of the constituent corporation outstanding immediately prior to the effective ~~date~~ *time* of the merger is converted in the merger into a share or equal fraction of a share of the holding company having the same preferences, rights, and limitations as the share or fraction of a share of the constituent corporation being converted in the merger;

4. Each right to acquire shares of the constituent corporation outstanding immediately prior to the effective ~~date~~ *time* of the merger is converted in the merger into a right to acquire shares of the holding company having the same preferences, rights, and limitations as the right to acquire shares of the constituent corporation being converted in the merger; and

5. The directors of the constituent corporation become or remain the directors of the holding

company upon the effective ~~date~~ *time* of the merger.

C. Notwithstanding any provision in this chapter to the contrary, a plan of merger adopted pursuant to this section may include:

1. If the indirect subsidiary is the survivor:

a. An amendment or restatement of the indirect subsidiary's articles of incorporation to change the name of the indirect subsidiary to a name that satisfies the requirements of this chapter; and

b. A provision that the shares of the holding company into which the shares of the constituent corporation are converted in the merger may be represented by the share certificates that previously represented shares of the constituent corporation, if the holding company adopts the former name of the constituent corporation by filing articles of amendment that are effective immediately following consummation of the merger; and

2. If the constituent corporation is the survivor:

a. An amendment or restatement of the constituent corporation's articles of incorporation:

(1) To change the name of the constituent corporation to a name that satisfies the requirements of this chapter;

(2) To delete any existing provisions that authorize the issuance of or relate to multiple classes or series of shares and to add one or more provisions that authorize a new, single class of shares with unlimited voting rights in lieu thereof;

(3) To delete any existing provision that provides for staggering the terms of directors pursuant to § 13.1-678; or

(4) To make any change permitted by § 13.1-706;

b. A provision that one or more of the directors of the constituent corporation immediately prior to the effective ~~date~~ *time* of the merger will no longer be directors of the constituent corporation immediately following the effective ~~date~~ *time* of the merger; and

c. A provision that the shares of the holding company into which the shares of the constituent corporation are converted in the merger may be represented by the share certificates that previously represented shares of the constituent corporation, if the constituent corporation adopts a new name in the merger that is distinguishable upon the records of the Commission and *if the board of directors of* the holding company, *acting pursuant to § 13.1-706,* adopts the former name of the constituent corporation by filing articles of amendment that are effective immediately following consummation of the merger.

D. Articles of merger filed with respect to a merger authorized by this section shall include a statement that the plan of merger did not require approval by the shareholders of the constituent corporation or by the board of directors or shareholders of the indirect subsidiary because the merger was authorized by this section and that the conditions specified in subsection B ~~of this section~~ have been satisfied.

E. Except as provided in this section, a merger governed by this section shall comply with the provisions of this article applicable to mergers generally.

F. From and after the effective ~~date~~ *time* of a merger adopted by a constituent corporation pursuant to this section:

1. To the extent the restrictions of § 13.1-725.1 or § 13.1-728.2 applied to the constituent corporation and its shareholders ~~at the effective date of~~ *immediately prior to* the merger, such restrictions shall apply to the holding company and its shareholders immediately after the effective ~~date~~ *time* of the merger as though it were the constituent corporation, and all shares of the holding company acquired in the merger shall for purposes of §§ 13.1-725.1 and 13.1-728.2 be deemed to have been acquired at the time that the shares of the constituent corporation converted in the merger were acquired, and provided further that:

a. Any shareholder who immediately prior to the effective ~~date~~ *time* of the merger was not an interested shareholder within the meaning of § 13.1-725 shall not solely by reason of the merger become an interested shareholder of the holding company; and

b. Any shares which immediately prior to the effective ~~date~~ *time* of the merger were not interested shares within the meaning of § 13.1-728.1 shall not solely by reason of the merger become interested shares of the holding company; and

2. To the extent a shareholder of the constituent corporation immediately prior to the effective ~~date~~ *time* of the merger had standing to institute or maintain a derivative proceeding on behalf of the constituent corporation, consummation of the merger shall not be deemed to limit or extinguish such standing.

3. To the extent a voting trust authorized by § 13.1-670, a voting agreement authorized by § 13.1-671, a shareholder agreement authorized by § 13.1-671.1, a proxy or any similar agreement or instrument applied to the constituent corporation, its shares or its shareholders ~~at the effective date of~~ *immediately prior to* the merger, such voting trust, voting agreement, shareholder agreement, proxy or other agreement or instrument shall apply to the holding company and its shares and shareholders immediately following consummation of the merger to the same extent that it applied to the constituent corporation and its shares and shareholders immediately prior to consummation of the merger.

§ 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, ~~except that~~ *or would be required but for the provisions of subsection G of § 13.1-718; however,* 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, 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~~ *approval is required for* the disposition, *except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series if:*

a. Under the terms of the corporate action approved by the shareholders there is to be distributed to the shareholders in cash the corporation's net assets, in excess of a reasonable amount reserved to meet claims of the type described in § 13.1-746 or 13.1-746.1:

(1) Within one year after the shareholders' approval of the action; and

(2) In accordance with their respective interests determined at the time of distribution; and

b. The disposition of assets is not an interested transaction;

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*; or*

6. Consummation of a domestication in which a domestic corporation becomes a foreign corporation if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest in the total voting rights of the outstanding shares of the domestic corporation, as the shares held by the shareholder immediately before the domestication.

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 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 shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or other right existing immediately before the effective

date of such amendment shall not apply to any corporate action that becomes effective within one year of that date if such action would otherwise afford appraisal rights.

§ 13.1-732. Notice of appraisal rights.

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

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

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

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

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

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

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

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

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

E. 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 subsection D 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.

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

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

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

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

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

B. If a corporate action specified in subsection A of § 13.1-730 is to be approved by ~~less than unanimous~~ *shareholders by* written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares ~~may~~*:*

1. Shall deliver to the corporation before the proposed action becomes effective written notice of the shareholder's intent to demand payment if the proposed action is effectuated, except that such written notice is not required if the notice required by subsection C of § 13.1-732 is given less than 25 days prior to the date such proposed action is effectuated; and

2. Shall not sign a consent in favor of the proposed action with respect to that class or series of shares.

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

§ 13.1-741.1. Limitations on other remedies for fundamental transactions.

A. Except for action taken before the Commission pursuant to § 13.1-614 or as provided in subsection B, the legality of a proposed or completed corporate action described in subsection A of

§ 13.1-730 may not be contested, nor may the corporate action be enjoined, set aside or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

B. Subsection A does not apply to a corporate action that:

1. Was not authorized and approved in accordance with the applicable provisions of:

a. Article 11 (§ 13.1-705 et seq.), Article 12 (§ 13.1-715.1 et seq.), or Article 13 (§ 13.1-723 et seq.);

b. The articles of incorporation or bylaws; or

c. The resolutions of the board of directors authorizing the corporate action;

2. Was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

3. Is an interested transaction, unless it has been authorized, approved or ratified by the board of directors in the same manner as is provided in subsection B of § 13.1-691 and has been authorized, approved or ratified by the shareholders in the same manner as is provided in subsection C of § 13.1-691 as if the interested transaction were a director's conflict of interests transaction; or

4. Is adopted or taken by less than unanimous consent of the voting shareholders pursuant to § 13.1-657 if:

a. The challenge to the corporate action is brought by a shareholder who did not consent ~~and as to whom notice of the adoption or taking of~~ *to* the corporate action ~~was not effective at least 10 days before the corporate action was effected~~; and

b. The proceeding challenging the corporate action is commenced within 10 days after notice of the adoption or taking of the corporate action is effective as to the shareholder bringing the proceeding.

C. Any remedial action with respect to corporate action described in subsection A of § 13.1-730 shall not limit the scope of, or be inconsistent with, any provision of § 13.1-614.

§ 13.1-746.1. Other claims against dissolved corporation.

A. A dissolved corporation may also (i) deliver notice of its dissolution to any known claimant with a liability or claim that ~~is excluded from the definition of a claim in~~ *pursuant to* subsection D *of § 13.1-746 is not treated as a claim for purposes* of § 13.1-746 and (ii) publish notice of its dissolution one time in a newspaper of general circulation in the city or county where the dissolved corporation's principal office, or, if none in the Commonwealth, its registered office, is or was last located. The notice of dissolution shall request that persons with claims against the dissolved corporation present them in accordance with the notice.

B. The notice shall:

1. Describe the information that is required to be included in a claim and provide a mailing address where the claim may be sent; and

2. State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced prior to the earlier of the expiration of any applicable statute of limitations or three years after the date of delivery of notice to the claimant, or the date of publication of the notice, as appropriate.

C. If the dissolved corporation provides notice of its dissolution in accordance with this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation prior to the earlier of the expiration of any applicable statute of limitations or three years after the date on which notice was delivered to the claimant or published, as appropriate:

1. A claimant who was not given written notice under § 13.1-746;

2. A claimant whose claim was timely sent to the dissolved corporation but not acted on; *and*

3. A claimant whose claim ~~does not meet the definition of a claim in~~ *pursuant to* subsection D of § 13.1-746 *is not treated as a claim for purposes of § 13.1-746*.

D. A claim that is not barred by subsection C of § 13.1-746 or subsection C of ~~§ 13.1-746.1~~ *this section* may be enforced:

1. Against the dissolved corporation, to the extent of its undistributed assets; or

2. Except as provided in subsection D of § 13.1-746.2, if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

§ 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. *The determination of fair value shall include consideration of all relevant facts and circumstances, including, unless the court determines it would be unjust or inequitable to do so, (i) the petitioner's minority status, (ii) the marketability of the petitioner's shares, (iii) the relevant terms of any shareholders' agreement, and (iv) if the court finds that the value of the corporation has been diminished by the wrongful conduct of controlling shareholders, the petitioner's proportionate claim for any compensable corporate injury.* 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.

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.

§ 13.1-826. General powers.

A. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

1. To sue and be sued, complain and defend, in its corporate name;

2. To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

3. To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use and otherwise deal

with, real or personal property, or any legal or equitable interest in property, wherever located;

4. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

5. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal with shares or other interests in, or obligations of, any other entity;

6. To make contracts and guarantees, incur liabilities, borrow money, and issue its notes, bonds, and other obligations, which may be convertible into, or include the option to purchase, other securities or property of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

7. To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

8. To transact its business, locate offices, and exercise the powers granted by this ~~Act~~ *chapter* within or without the Commonwealth;

9. To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

10. To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Commonwealth~~, for managing the business and regulating the affairs of the corporation~~;

11. To make donations for the public welfare or for religious, charitable, scientific, literary or educational purposes;

12. To pay pensions and establish pension plans, pension trusts, profit-sharing plans, bonus plans, and benefit and incentive plans for any or all of the current or former directors, officers, employees, and agents of the corporation or any of its subsidiaries;

13. To insure for its benefit the life of any of its directors, officers, or employees and to continue such insurance after the relationship terminates;

14. To make payments or donations or do any other act not inconsistent with this section or any other applicable law that furthers the business and affairs of the corporation;

15. To pay compensation or to pay additional compensation to any or all directors, officers, and employees on account of services previously rendered to the corporation, whether or not an agreement to pay such compensation was made before such services were rendered;

16. To cease its corporate activities and surrender its corporate franchise; and

17. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

B. Each corporation other than a banking corporation, an insurance corporation, a savings institution or a credit union shall have power to enter into partnership agreements, joint ventures or other associations of any kind with any person or persons. The foregoing limitations on banking corporations, insurance corporations, savings institutions, and credit unions shall not apply to the purchase by any such entity of any security of a limited liability company.

C. Privileges and powers conferred and restrictions and requirements imposed by other titles of the Code on railroads or other public service companies, banking corporations, insurance corporations, savings institutions, credit unions, industrial loan associations or other special types of corporations shall not be deemed repealed or amended by any provision of this ~~Act~~ *chapter* except where specifically so provided.

D. Each corporation which is deemed a private foundation, as defined in § 509 of the Internal Revenue Code, unless its articles of incorporation expressly provide otherwise, shall distribute its income and, if necessary, principal, for each taxable year at such time and in such manner as not to subject such corporation to tax under § 4942 of the Internal Revenue Code. Such corporation shall not engage in any act of self-dealing, as defined in § 4941(d) of the Internal Revenue Code, retain any excess business holdings, as defined in § 4943(c) of the Internal Revenue Code, make any investments in such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code, or make any taxable expenditures, as defined in § 4945(d) of the Internal Revenue Code. This subsection shall apply to any corporation organized after December 31, 1969, under this ~~Act~~ *chapter* or under the Virginia Nonstock Corporation Act (§ 13.1-201 et seq.) enacted by Chapter 428 of the Acts of Assembly of 1956; and to any corporation organized before January 1, 1970, only for its taxable years beginning on and after January 1, 1972, unless the exceptions provided in § 508(e)(2)(B) or (C) of the Internal Revenue Code shall apply or unless the board of directors of such corporation shall elect that such restrictions as contained in this subsection shall not apply by filing written notice of such election with the Attorney General and the clerk of the Commission on or before December 31, 1971. Each reference to a section of the Internal Revenue Code made in this subsection shall include future amendments to such Code sections and corresponding provisions of future internal revenue laws.

§ 13.1-841. Corporate action without meeting.

A. 1. Corporate action required or permitted by this ~~Act~~ *chapter* to be taken at a meeting of the members may be taken without a meeting and without prior notice if the corporate action is taken by all members entitled to vote on the corporate action, in which case no corporate action by the board of directors shall be required.

2. Notwithstanding subdivision 1 of this subsection, if so provided in the articles of incorporation of a corporation, corporate action required or permitted by this ~~Act~~ *chapter* to be taken at a meeting of members may be taken without a meeting and without prior notice, if the corporate action is taken by members who would be entitled to vote at a meeting of members having voting power to cast not fewer than the minimum number (or numbers, in the case of voting by voting groups) of votes that would be necessary to authorize or take the corporate action at a meeting at which all members entitled to vote thereon were present and voted.

3. The corporate action shall be evidenced by one or more written consents bearing the date of execution and describing the corporate action taken, signed by the members entitled to take such corporate action without a meeting and delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records. Any corporate action taken by written consent shall be effective according to its terms when the requisite consents are in possession of the corporation. Corporate action taken under this section is effective as of the date specified therein, provided the consent states the date of execution by each member.

B. If not otherwise determined under § 13.1-840 or 13.1-844, the record date for determining members entitled to take corporate action without a meeting is the date the first member signs the consent under subsection A. No written consent shall be effective to take the corporate action referred to therein unless, within 120 days after the earliest date of execution appearing on a consent delivered to the corporation in the manner required by this section, written consents sufficient in number to take corporate action are received by the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to receipt by the corporation of unrevoked written consents sufficient in number to take corporate action.

C. For purposes of this section, written consent may be accomplished by one or more electronic transmissions, as defined in § 13.1-803. A consent signed under this section has the effect of a vote of voting members at a meeting and may be described as such in any document filed with the Commission under this ~~Act~~ *chapter*.

D. If corporate action is to be taken under this section by fewer than all of the members entitled to vote on the action, the corporation shall give written notice of the proposed corporate action, not less than five days before the action is taken, to all persons who are members on the record date and who are entitled to vote on the matter. The notice shall contain or be accompanied by the same material that under this ~~Act~~ *chapter* would have been required to be sent to members in a notice of meeting at which the corporate action would have been submitted to the members for a vote.

E. If this ~~Act~~ *chapter* requires that notice of proposed corporate action be given to nonvoting members and the corporate action is to be taken by consent of the voting members, the corporation shall give its nonvoting members written notice of the proposed action not less than five days before it is taken. The notice shall contain or be accompanied by the same material that under this ~~Act~~ *chapter* would have been required to be sent to nonvoting members in a notice of meeting at which the corporate action would have been submitted to the members for a vote.

F. Any person, whether or not then a member, may provide that a consent in writing as a member shall be effective at a future time, including the time when an event occurs, but such future time shall not be more than 60 days after such provision is made. Any such consent shall be deemed to have been made for purposes of this section at the future time so specified for the consent to be effective, provided that (i) the person is a member at such future time and (ii) the person did not revoke the consent prior to such future time.

§ 13.1-842. Notice of meeting.

A. 1. A corporation shall notify members of the date, time and place of each annual and special members' meeting. Such notice shall be given no less than 10 nor more than 60 days before the meeting date except that notice of a members' meeting to act on an amendment of the articles of incorporation, a plan of merger, domestication, a proposed sale of assets pursuant to § 13.1-900, or the dissolution of the corporation shall be given not less than 25 nor more than 60 days before the meeting date. Unless this ~~Act~~ *chapter* or the articles of incorporation require otherwise, the corporation is required to give notice only to members entitled to vote at the meeting.

2. In lieu of delivering notice as specified in subdivision A 1, the corporation may publish such notice at least once a week for two successive calendar weeks in a newspaper published in the city or county in which the registered office is located, or having a general circulation therein, the first publication to be not more than 60 days, and the second not less than seven days before the date of the meeting.

B. Unless this ~~Act~~ *chapter* or the articles of incorporation require 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 § 13.1-840 or 13.1-844, the record date for determining members entitled to notice of and to vote at an annual or special meeting is the day before the effective date of the notice to members.

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 § 13.1-844, however, *not less than 10 days before the meeting date* notice of the adjourned meeting shall be given under this section to persons who are members as of the new record date.

§ 13.1-847.1. Voting procedures and inspectors of elections.

A. A corporation may appoint one or more inspectors to act at a meeting of members ~~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 members, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting~~ *in connection with determining voting results*. Each inspector, before entering upon the discharge of his duties, shall ~~take and sign an oath~~ *certify in writing that the inspector will* 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 members and the voting power of each, (ii) determine the number of the members represented at a meeting and the validity of ~~proxies~~ *proxy appointments* 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 members represented at the meeting and their count of ~~all~~ *the* votes. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of their duties, *and may rely on information provided by such persons and other persons, including those appointed to tabulate votes, unless the inspectors believe reliance is unwarranted*. 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 the Commonwealth, where its registered office is located, upon application by a member, 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 § 13.1-847, ballots, and the regular books and records of the corporation. If the inspectors consider other reliable information for the limited purpose permitted herein, they shall specify, at the time that they make their certification pursuant to clause (v) of subsection B, the precise information that they considered, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for their belief that such information is accurate and reliable.

E. If authorized by the board of directors, any member vote to be taken by written ballot may be satisfied by a ballot submitted by electronic transmission by the member or the member's proxy, provided that any such electronic transmission shall either set forth or be submitted with information from which it may be determined that the electronic transmission was authorized by the member or the member's proxy. *A member who votes by a ballot submitted by electronic transmission is deemed present at the meeting of members.*

§ 13.1-848. Corporation's acceptance of votes.

A. If the name signed on a vote, *ballot*, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, if acting in good faith, is entitled to accept the vote, *ballot*, consent, waiver, or proxy appointment and give it effect as the act of the member.

B. If the name signed on a vote, *ballot*, consent, waiver, or proxy appointment does not correspond to the name of a member, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, *ballot*, consent, waiver, or proxy appointment and give it effect as the act of the member if:

1. The member is an entity and the name signed purports to be that of an officer, partner or agent of the entity;

2. The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, *ballot*, consent, waiver, or proxy appointment;

3. The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence acceptable to the corporation that such receiver or trustee has been authorized to vote the membership interest in an order of the court by which such person was appointed has been presented with respect to the vote, *ballot*, consent, waiver, or proxy appointment;

4. The name signed purports to be that of a beneficial owner or attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, *ballot*, consent, waiver, or proxy appointment; or

5. Two or more persons are the member as fiduciaries and the name signed purports to be the name of at least one of the fiduciaries and the person signing appears to be acting on behalf of all the fiduciaries.

C. Notwithstanding the provisions of subdivisions B 2 and 5, in any case in which the will, trust agreement, or other instrument under which a fiduciary purports to act contains directions for the voting of membership interests in any corporation, or for the execution and delivery of proxies for the voting thereof, such directions shall be binding upon the fiduciary and upon the corporation if a copy thereof has been furnished to the corporation.

D. The corporation is entitled to reject a vote, *ballot*, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to ~~tabulate~~ *count* votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

E. ~~The~~ *Neither the* corporation ~~and its officer or agent~~ *nor the person authorized to count votes, including an inspector under § 13.1-847.1,* who accepts or rejects a vote, *ballot*, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or subsection B of § 13.1-847 ~~are not~~ *is* liable in damages to the member for the consequences of the acceptance or rejection.

F. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

§ 13.1-852.1. Member or director agreements.

A. An agreement among the members or the directors of a corporation that complies with this section is effective among the members or directors and the corporation, even though it is inconsistent with one or more other provisions of this chapter in that it:

1. Eliminates the board of directors or, subject to the requirements of subsection A of § 13.1-872, one or more officers, or restricts the discretion or powers of the board of directors or any one or more officers;

2. Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

3. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the members and directors or by or among any of them, including use of weighted voting rights or director proxies;

4. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any member, director, officer or employee of the corporation, or among any of them;

5. Transfers to one or more members, directors or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or members;

6. Requires dissolution of the corporation at the request of one or more of the members, or directors, in the case of a corporation that has no members or in which the members have no voting rights, or upon the occurrence of a specified event or contingency; or

7. Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the members, the directors and the corporation, or among any of them, and is not contrary to public policy.

B. An agreement authorized by this section shall be:

1. a. Set forth in the articles of incorporation or bylaws and approved by all persons who are members or, if there are no members or the corporation's members do not have voting rights, by all persons who are directors at the time of the agreement; or

b. Set forth in a written agreement that is signed by all persons who are members or, if there are no members or the corporation's members do not have voting rights, by all persons who are directors at the time of the agreement;

2. Subject to amendment only by all persons who are members or, if ~~there are no members or~~ the corporation's members do not have voting rights, by all persons who are directors at the time of the amendment, unless the agreement provides otherwise; and

3. Valid for an unlimited duration, if the agreement is set forth in the articles of incorporation or bylaws, unless the agreement shall be otherwise amended by the members or the directors, as the case may be; or ~~valid for 10 years,~~ if the agreement is set forth in a written agreement, *as set forth in the agreement except that the duration of an agreement that became effective prior to July 1, 2015, remains 10 years* unless the agreement ~~provides~~ *provided* otherwise *or is subsequently amended to provide*

otherwise.

C. The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate evidencing membership, if any. The failure to note the existence of the agreement on the certificate shall not affect the validity of the agreement or any action taken pursuant to it.

D. An agreement authorized by this section shall cease to be effective when the corporation has more than 300 members of record. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without member action, to delete the agreement and any references to it.

E. An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

F. The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any member for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in a failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

G. Incorporators or subscribers for membership interests may act as members or directors with respect to an agreement authorized by this section if no members have been elected or appointed or, in the case of a corporation that has no members, no directors are elected or holding office when the agreement was made.

H. No action taken pursuant to this section shall change any requirement to file articles or other documents with the Commission or affect the rights of any creditors or other third parties.

I. An agreement among the members or the directors of a corporation that is consistent with the other provisions of this chapter that does not comply with the provisions of this section shall nonetheless be effective among the members, the directors, and the corporation.

§ 13.1-865. Action without meeting of board of directors.

A. Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this ~~Act~~ *chapter* to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

B. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date, in which event the action taken is effective as of the date specified therein provided the consent states the date of execution by each director.

C. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

D. *Any person, whether or not then a director, may provide that a consent to action as a director shall be effective at a future time, including the time when an event occurs, but such future time shall not be more than 60 days after such provision is made. Any such consent shall be deemed to have been made for purposes of this section at the future time so specified for the consent to be effective, provided that (i) the person is a director at such future time and (ii) the person did not revoke the consent prior to such future time. Any such consent may be revoked, in the manner provided in subsection C, prior to its becoming effective.*

E. For purposes of this section, a written consent and the signing thereof may be accomplished by one or more electronic transmissions.

~~E.~~ *F.* A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

§ 13.1-878. Advance for expenses.

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

~~1. The director furnishes the corporation a signed written statement of his good faith belief that he has met the standard of conduct described in § 13.1-876;~~

~~2. The~~ *the* director furnishes the corporation a signed written undertaking, executed personally or on his behalf, to repay any funds advanced if he is not entitled to mandatory indemnification under § 13.1-877 and it is ultimately determined under § 13.1-879.1 or 13.1-880 that he has not met the relevant standard of conduct.

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

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

1. The board of directors:

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

b. If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with subsection C of § 13.1-868, in which authorization directors who do not qualify as disinterested directors may participate; or

2. The members, but any membership interest under the control of a director who at the time does not qualify as a disinterested director may not be voted on the authorization.

§ 13.1-894. Merger.

A. One or more domestic corporations may merge with one or more domestic or foreign corporations or eligible entities pursuant to a plan of merger, or two or more foreign corporations or domestic or foreign eligible entities may merge into a new domestic corporation to be created in the merger in the manner provided in this ~~Act~~ *chapter*. When a domestic corporation is the survivor of a merger with a domestic stock corporation, it may become, pursuant to subdivision C 5, a domestic stock corporation, provided that the only parties to the merger are domestic corporations and domestic stock corporations.

B. A foreign corporation or a foreign eligible entity may be a party to a merger with a domestic corporation or may be created pursuant to the terms of the plan of merger only if the merger is permitted by the laws under which the foreign corporation or eligible entity is organized or by which it is governed.

C. The plan of merger shall include:

1. The name of each domestic or foreign corporation or eligible entity that will merge and the name of the domestic or foreign corporation or eligible entity that will be the survivor of the merger;

2. The terms and conditions of the merger;

3. The manner and basis of converting the membership interests of each merging domestic or foreign corporation and eligible interests of each domestic or foreign eligible entity into membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash or other property, or any combination of the foregoing;

4. The manner and basis of converting any rights to acquire the membership interests of each merging domestic or foreign corporation and eligible interests of each merging domestic or foreign eligible entity into membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash or other property, or any combination of the foregoing;

5. The articles of incorporation of any domestic or foreign corporation or stock corporation or the organic document of any domestic or foreign unincorporated entity to be created by the merger or, if a new domestic or foreign corporation or stock corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organic document; and

6. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed or required by the articles of incorporation or organic document of any such party.

D. Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection L of § 13.1-804.

E. The plan of merger may also include a provision that the plan may be amended prior to the effective date of the certificate of merger, but if the members of a domestic corporation that is a party to the merger are required ~~or permitted~~ *by any provision of this chapter* to vote on the plan, the plan ~~must provide that,~~ *may not be amended* subsequent to approval of the plan by such members~~, the plan may not be amended~~ to change *any of the following unless such amendment is approved by the members*:

1. The amount or kind of membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash, or other property to be received under the plan by the members of or owners of eligible interests in any party to the merger;

2. The articles of incorporation of any domestic or foreign corporation or stock corporation or the organic document of any unincorporated entity that will survive or be created as a result of the merger, except for changes permitted by subsection B of § 13.1-885; or

3. Any of the other terms or conditions of the plan if the change would adversely affect such members in any material respect.

§ 13.1-895. Action on plan of merger.

A. In the case of a domestic corporation that is a party to a merger, where the members of any merging corporation have voting rights the plan of merger shall be adopted by the board of directors. Except as provided in subsection F, after adopting a plan of merger, 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 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 members the basis for that determination.

B. The board of directors may condition its submission of the plan of merger to the members on any basis.

C. If the plan of merger is required to be approved by the members, and if the approval is to be given at a meeting, the corporation shall notify each member, whether or not entitled to vote, of the meeting of members 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 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 members are to receive membership 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 members are to receive membership 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, requires a greater vote, the plan of merger 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 cast by that voting group at a meeting at which a quorum of the voting group exists. 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.

E. Separate voting by voting groups is required:

1. On a plan of merger by each class of members:

a. Whose membership interests are to be converted under the plan of merger into membership interests in a different domestic or foreign corporation, or eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash, other property, or any combination of the foregoing; or

b. Who would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to the articles of incorporation, would require action by separate voting groups under § 13.1-887.

2. On a plan of merger, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger.

F. Unless the articles of incorporation otherwise provide, approval by the corporation's members of a plan of merger is not required if:

1. The corporation will survive the merger;

2. Except for amendments permitted by subsection B of § 13.1-885, its articles of incorporation will not be changed; and

3. Each person who is a member of the corporation immediately before the effective ~~date~~ *time* of the merger will retain the same membership interest with identical designation, preferences, limitations, and rights immediately after the effective ~~date~~ *time* of the merger.

G. Where any merging corporation has no members, or no members having voting rights, a plan of merger shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

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

§ 13.1-908.1. Other claims against dissolved corporation.

A. A dissolved corporation may also *(i) deliver notice of its dissolution to any known claimant with a liability or claim that pursuant to subsection D of § 13.1-908 is not treated as a claim for purposes of § 13.1-908 and (ii)* publish notice of its dissolution ~~and~~ *one time in a newspaper of general circulation in the city or county where the dissolved corporation's principal office, or, if none in the Commonwealth, its registered office, is or was last located. The notice of dissolution shall* request that persons with claims against the dissolved corporation present them in accordance with the notice.

B. The notice shall:

1. ~~Be published one time in a newspaper of general circulation in the city or county where the dissolved corporation's principal office, or, if none in the Commonwealth, its registered office, is or was last located;~~

~~2.~~ Describe the information that is required to be included in a claim and provide a mailing address to which the claim may be sent; and

~~3.~~ *2.* State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced prior to the earlier of the expiration of any applicable statute of limitations or three years after the date of *delivery of notice to the claimant, or the date of* publication of the notice*, as appropriate*.

C. If the dissolved corporation ~~publishes a newspaper~~ *provides* notice *of its dissolution* in accordance with ~~subsection B~~ *this section*, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation prior to the earlier of the expiration of any applicable statute of limitations or three years after the ~~publication~~ date ~~of the newspaper~~ *on which* notice *was delivered to the claimant or published, as appropriate*:

1. A claimant who was not given written notice under § 13.1-908;

2. A claimant whose claim was ~~sent in a~~ timely ~~manner~~ *sent* to the dissolved corporation but not acted on; and

3. A claimant whose claim ~~does not meet the definition of a claim in~~ *pursuant to* subsection D of § 13.1-908 *is not treated as a claim for purposes of § 13.1-908*.

D. A claim that is not barred by subsection C of § 13.1-908 or subsection C of this section may be enforced:

1. Against the dissolved corporation, to the extent of its undistributed assets; or

2. Except as provided in subsection D of § 13.1-908.2, if the assets have been distributed in liquidation, against a member of the dissolved corporation to the extent of the member's pro rata share of the claim or the corporate assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.