VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 13.1-603, 13.1-604, 13.1-609, and 13.1-610, §§ 13.1-614.1, 13.1-614.7, 13.1-615.1, and 13.1-616, as they shall become effective, §§ 13.1-624, 13.1-630, 13.1-636, 13.1-652, 13.1-657, 13.1-679, 13.1-692.1, 13.1-695, 13.1-712.1, as it shall become effective, 13.1-718, 13.1-719, and 13.1-721, §§ 13.1-721.1, 13.1-722.5, 13.1-722.7:1, and 13.1-722.9 through 13.1-722.13, as they shall become effective, and §§ 13.1-761, 13.1-764, and 13.1-766.1 of the Code of Virginia, to amend and reenact the second enactment of Chapter 636 of the Acts of Assembly of 2019 and the third and fourth enactments of Chapter 734 of the Acts of Assembly of 2019, and to repeal § 13.1-768.1 of the Code of Virginia, relating to the Virginia Stock Corporation Act.

[H 1149]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-603, 13.1-604, 13.1-609, and 13.1-610, §§ 13.1-614.1, 13.1-614.7, 13.1-615.1, and 13.1-616, as they shall become effective, §§ 13.1-624, 13.1-630, 13.1-636, 13.1-652, 13.1-657, 13.1-679, 13.1-692.1, 13.1-695, 13.1-712.1, as it shall become effective, 13.1-718, 13.1-719, and 13.1-721, §§ 13.1-721.1, 13.1-722.5, 13.1-722.7:1, and 13.1-722.9 through 13.1-722.13, as they shall become effective, and §§ 13.1-761, 13.1-764, and 13.1-766.1 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-603. Definitions.

As used 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. 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. When used with respect to a foreign corporation, the "articles of incorporation" of such entity means the document that is equivalent to the articles of incorporation of a domestic corporation.

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

"Beneficial shareholder" means a person that owns the beneficial interest in shares, which may be a record shareholder or a person on whose behalf shares are registered in the name of an intermediary as nominee.

"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 that has become a domestic corporation of the Commonwealth pursuant to Article 12.1 (§ 13.1-722.1:1 et seq.) or Article 12.2 (§ 13.1-722.8 et seq.) of this chapter or Article 15 (§ 13.1-1081 et seq.) of Chapter 12.

"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.), a foreign corporation.

"Disinterested director" means, except with respect to Article 14 (§ 13.1-725 et seq.), a director who, at the time action is to be taken under subdivision B 5 of § 13.1-619, § 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 impair the objectivity of the director's judgment 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 board by any director who is not a disinterested director with respect to the matter or by any person that has a material relationship with that director, acting alone or participating with others; (ii) service as a director of another corporation of which a director who is not a disinterested director with respect to the matter, or any person that has a material relationship with that director, is or was 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 cash or other property, except the corporation's 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 payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness of the corporation; a distribution in liquidation; or otherwise. Distribution does not include an 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 handwritten, typed, printed, or similar instruments and copies of such instruments, or (ii) an electronic record.

"Domestic" with respect to an entity, means an entity governed as to its internal affairs by the organic law of the Commonwealth.

"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," when referring to a document for which effectiveness is contingent upon issuance of a certificate by the Commission, means the time and date determined in accordance with § 13.1-606.

"Effective date of notice" is defined in subdivision *A* 9 of § 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 nontangible medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subdivision *A* 10 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 another 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 subdivision *A* 10 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 the director 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.

"Expenses" means reasonable expenses of any kind that are incurred in connection with a matter.

"Filing entity" means an unincorporated entity other than a general partnership.

"Foreign," with respect to an entity, means an entity governed as to its internal affairs by the organic law of a jurisdiction other than the Commonwealth.

"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" means a corporation that is incorporated under a law other than the law of the Commonwealth and would, based on its public organic record, be a nonstock corporation if incorporated under the law of the Commonwealth.

"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 the organic law of a jurisdiction other than the Commonwealth~~ *a foreign partnership, foreign limited liability company, foreign limited partnership, or foreign business trust.*

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

"Governor" means any person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law governing the entity and its organic rules.

"Includes" and "including" denote a partial definition as a nonexclusive list.

"Individual" means a natural person.

"Interest" means either or both of the following rights under the organic law governing 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 to vote on issues involving its internal affairs, other than as an agent, assignee, proxy or person responsible for managing its business and affairs.

"Interest holder" means a person who holds of record an interest.

"Interest holder liability" means:

1. Personal liability for a debt, obligation, or other liability of a domestic or foreign corporation or domestic or foreign eligible entity that is imposed on a person:

a. Solely by reason of the person's status as a shareholder, member, or interest holder; or

b. By the articles of incorporation of the domestic corporation or the organic rules of the eligible entity or foreign corporation that make one or more specified shareholders, members, or interest holders, or categories of shareholders, members, or interest holders, liable in their capacity as shareholders, members, or interest holders for all or specified liabilities of the corporation or eligible entity; or

2. An obligation of a shareholder, member, or interest holder under the articles of incorporation of a domestic corporation or the organic rules of an eligible entity or foreign corporation to contribute to the entity.

For purposes of the foregoing, except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of an eligible entity or a foreign corporation, interest holder liability arises under subdivision 1 when the corporation or eligible entity incurs the liability.

"Jurisdiction of formation" means the state or country the law of which includes the organic law governing a domestic or foreign corporation or eligible entity.

"Means" denotes an exhaustive definition.

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

"Merger" means a transaction pursuant to § 13.1-716 or 13.1-766.1.

"Notice" is defined in § 13.1-610.

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

"Organic rules" means the public organic record and private organic rules of a domestic or foreign corporation or eligible entity.

~~"Partnership" has the same meaning as specified in § 50-73.79.~~

"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.

"Private organic rules" means (i) the bylaws of a domestic or foreign corporation or nonstock

corporation or (ii) the rules, regardless of whether in writing, that govern the internal affairs of an unincorporated entity, are binding on all its interest holders, and are not part of its public organic record. Where private organic rules have been amended or restated, the term means the private organic rules as last amended or restated.

"Proceeding" includes civil suit and criminal, administrative, and investigatory action.

"Protected series" has the same meaning as specified in § 13.1-1002.

"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.

"Public organic record" means (i) the articles of incorporation of a domestic or foreign corporation or nonstock corporation or (ii) the document, the filing of which is required to create an unincorporated entity. Where a public organic record has been amended or restated, the term means the public organic record as last amended or restated.

"Record date" means the date fixed for determining the identity of the corporation's shareholders and their shareholdings for purposes of this chapter. The determinations 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.

"Record shareholder" means (i) the person in whose name shares are registered in the records of the corporation or (ii) the person identified as the beneficial owner of shares in a beneficial ownership certificate pursuant to § 13.1-664 on file with the corporation to the extent of the rights granted by such certificate.

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

"Secretary" means the corporate officer or other individual to whom the board of directors has delegated responsibility under subsection C of § 13.1-693 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

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

"Share exchange" means a transaction pursuant to § 13.1-717.

"Shareholder" means a record shareholder.

"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.

"Unrestricted voting trust beneficial owner" means, with respect to any shareholder rights, a voting trust beneficial owner whose entitlement to exercise the shareholder right in question is not inconsistent with the voting trust agreement.

"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.

"Voting trust beneficial owner" means an owner of a beneficial interest in shares of the corporation held in a voting trust established pursuant to subsection A of § 13.1-670.

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

§ 13.1-604. Filing requirements.

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

B. To be entitled to be filed with the Commission, this chapter shall require or permit the document to be filed with the Commission.

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

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

E. The document shall be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals. The articles of incorporation, duly authenticated by the official having custody of corporate records in the jurisdiction of formation of the foreign corporation, that are required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

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

1. By the chairman or any vice-chairman of the board of directors, the president, or any other of its officers;

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

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

G. Any annual report required to be filed by § 13.1-775 shall be signed in the name of the corporation by an officer or director listed in the report or, if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

H. The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which the document is signed. The document may but need not contain a corporate seal, attestation, acknowledgment, or verification.

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

J. The document shall be delivered to the Commission for filing and shall be accompanied by the correct filing fee, and any franchise tax, charter or entrance fee, registration fee, or penalty required by this chapter to be paid at the time of delivery for filing.

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

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

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

2. The facts may include:

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

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

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

3. As used in this subsection:

a. "Filed document" means a document filed with the Commission under § 13.1-619 or Article 11 (§ 13.1-705 et seq.), 12 (§ 13.1-715.1 et seq.), 12.1 (§ 13.1-722.1:1 et seq.), 12.2 (§ 13.1-722.8 et seq.), 16 (§ 13.1-742 et seq.), or 22 (§ 13.1-782 et seq.); and

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

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

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

b. *A purpose that is required to be set forth in a filed document;*

c. The registered office *address* of any entity required in a filed document;

~~c.~~ *d.* The *name or qualification of the* registered agent of any entity required in a filed document;

~~d.~~ *e.* The number of authorized shares and *the* designation *and terms, including the preferences, rights, and limitations* of each class or series of shares;

~~e.~~ *f.* The effective date of a filed document; and

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

5. If a term of a filed document is made dependent on a fact objectively ascertainable outside of the filed document, and that fact is not objectively ascertainable by reference to a source described in subdivision 2 a or a document that is a matter of public record, nor has notice of the fact been given by the corporation to the affected shareholders, then the corporation shall file with the Commission articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this subdivision are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

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

§ 13.1-609. Certificate of good standing.

A. Anyone may apply to the Commission to furnish a certificate of good standing for a domestic or foreign corporation.

B. The certificate of good standing shall state that the corporation is in good standing in ~~this~~ *the* Commonwealth and shall set forth:

1. The domestic corporation's corporate name or the foreign corporation's corporate name ~~used~~ *and, if applicable, the designated name adopted for use* in ~~this~~ *the* Commonwealth;

2. That (i) the domestic corporation is duly incorporated under the law of the Commonwealth, the date of its incorporation, which is the original date of incorporation *or formation* of the domesticated *or converted* corporation if the corporation was domesticated *or converted* from a foreign jurisdiction, and the period of its duration if less than perpetual, or (ii) the foreign corporation is authorized to transact business in the Commonwealth; and

3. If requested, a list of all certificates relating to articles filed with the Commission that have been issued by the Commission with respect to such corporation and their respective effective dates.

C. A domestic corporation or a foreign corporation authorized to transact business in the Commonwealth shall be deemed to be in good standing if:

1. All fees, fines, penalties, and interest assessed, imposed, charged or to be collected by the Commission pursuant to this chapter have been paid except for any annual registration fee that is not due;

2. An annual report required by § 13.1-775 has been delivered to and accepted by the Commission; and

3. No certificate of dissolution, certificate of withdrawal, or order of reinstatement prohibiting the domestic corporation from engaging in business until it changes its corporate name has been issued or such certificate or prohibition has not become effective or no longer is in effect.

D. The certificate may state any other facts of record in the office of the clerk of the Commission that may be requested by the applicant.

E. Subject to any qualification stated in the certificate, a certificate of good standing issued by the Commission may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in the Commonwealth.

§ 13.1-610. Notices and other communications.

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

1. A notice shall be in writing except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws.

2. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under this chapter shall be in the English language. A notice or other communication may be given by any method of delivery, except that electronic transmissions shall be in accordance with this section. If the methods of delivery are impracticable, a notice or other communication may be given by a broad non-exclusionary dissemination to the public, which may include a newspaper of general circulation in the area where the notice is intended to be given, or by radio, television, or other form of public communication in the area where the notice is intended to be given or other methods of distribution that the corporation has previously identified to its shareholders.

3. A notice or other communication to a domestic or foreign corporation authorized to transact business in the Commonwealth may be delivered to the corporation's registered agent at its registered office or to the secretary at the corporation's principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

4. A notice or other communication may be delivered by electronic transmission if consented to by the recipient or if otherwise authorized by ~~subdivision 11~~ *subsection B.*

5. Any consent under subdivision 4 may be revoked by the person who consented by written or

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

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

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

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

7. Receipt of an electronic acknowledgment from an information processing system described in subdivision 6 a establishes that an electronic transmission was received. However, such receipt of an electronic acknowledgment, by itself, does not establish that the content sent corresponds to the content received.

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

9. A notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

a. If in physical form, the earliest of when it is actually received or when it is left at:

(1) A shareholder's address shown on the corporation's record of shareholders maintained by the corporation pursuant to subsection C of § 13.1-770;

(2) A director's residence or usual place of business;

(3) The corporation's *principal* office; or

(4) The corporation's registered office when left with the corporation's registered agent;

b. If mailed postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail;

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

d. If an electronic transmission, when it is received as provided in subdivision 7; and

e. If oral, when communicated.

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

~~11.~~ *B.* If this chapter prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications not inconsistent with this section or other provisions of this chapter, those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

~~12.~~ *C.* Without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders given by a public corporation, under any provision of this chapter, the articles of incorporation, or the bylaws, shall be effective if given in a manner permitted by the rules and regulations under the federal Securities Exchange Act of 1934, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations.

~~13.~~ *D.* If any provisions of this chapter are deemed to modify, limit, or supersede the federal General Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., the provisions of this chapter shall control to the maximum extent permitted by § 102(a)(2) of that federal act or any successor provision of that federal act.

§ 13.1-614.1. (Effective July 1, 2020) Definitions.

As used in this article:

"Corporate action" means any action taken by or on behalf of the corporation, including any action taken by the incorporator, the board of directors, a committee, an officer or agent of the corporation, or the shareholders.

"Date of the defective corporate action" means the date, or the approximate date if the exact date is unknown, the defective corporate action was purported to have been taken.

"Defective corporate action" means (i) any corporate action purportedly taken that is, and at the time such corporate action was purportedly taken would have been, within the power of the corporation, but is void or voidable due to a failure of authorization, or (ii) an over-issuance of shares.

"Failure of authorization" means the failure to authorize, approve, or otherwise effect a corporate action in compliance with the provisions of this chapter, the articles of incorporation or bylaws, a corporate resolution, or any plan or agreement to which the corporation is a party, if and to the extent such failure would render such corporate action voidable.

"Over-issuance of shares" means the purported issuance of:

1. Shares of a class or series in excess of the number of shares of the class or series the corporation had the power to issue under § 13.1-638 at the time of such issuance; or

2. Shares of any class or series that was not then authorized for issuance by the articles of incorporation.

"Putative shares" means the shares of any class or series of the corporation, including shares issued upon exercise of rights, options, warrants, or other securities convertible into shares of the corporation, or interests with respect to such shares, that were created or issued as a result of a defective corporate action, that (i) but for any failure of authorization would constitute valid shares or (ii) cannot be determined by the board of directors to be valid shares.

"Valid shares" means the shares of any class or series of the corporation that have been duly authorized and validly issued in accordance with this chapter, including as a result of ratification or validation under this article.

"Validation effective time" with respect to any defective corporate action ratified under this article means the later of:

1. The time at which the ratification of the defective corporate action is approved by the shareholders or, if approval of shareholders is not required, the time at which the notice required by § 13.1-614.5 becomes effective in accordance with § 13.1-610; and

2. The time at which any document filed in accordance with § 13.1-614.7 becomes effective.

The validation effective time shall not be affected by the filing or pendency of a proceeding under § 13.1-614.8 or otherwise, unless ordered by the ~~court~~ *Commission*.

§ 13.1-614.7. (Effective July 1, 2020) Filings.

A. ~~If the~~ *After a* defective corporate action *is* ratified under this article ~~would have~~ *for a document* required ~~under any other section of~~ *by* this chapter ~~a filing with~~ *to be filed with the Commission, the corporation shall deliver to* the Commission ~~in accordance with this chapter, then, regardless of whether a~~ *for* filing*:*

1. If a filing with the Commission was previously made ~~in~~ *with* respect ~~of~~ *to* such defective corporate action and ~~in lieu of a filing otherwise required by this chapter, the corporation shall make the required filing or, as appropriate, an amended filing in accordance with this section, and such filing shall~~ *the Commission issued with respect thereto a certificate, the articles of ratification, which may* serve to amend or substitute for ~~any other~~ *the* filing *previously made; or*

2. If no filing with the Commission *was previously made* with respect to such defective corporate action*, the articles* required by ~~the~~ *this* chapter.

B. The ~~filed~~ document *required by subsection A* shall set forth:

1. The defective corporate action that is the subject of the ~~filed~~ document, including, in the case of any defective corporate action involving the issuance of putative shares, the number and type of putative shares issued and the date or dates upon which such putative shares were purported to have been issued;

2. The date of the defective corporate action;

3. The nature of the failure of authorization in respect of the defective corporate action;

4. A statement that the defective corporate action was ratified in accordance with § 13.1-614.3, including the date on which the board of directors ratified such defective corporate action and the date, if any, on which the shareholders approved the ratification of such defective corporate action; and

5. The information required by subsection C.

C. The ~~filed~~ document *required by subsection A* shall also contain the following information:

1. If a filing with the Commission was previously made in respect of the defective corporate action and no changes to such filing are required to give effect to the ratification of such defective corporate action in accordance with § 13.1-614.3, the filed document shall set forth (i) the name, title and filing date of the filing previously made and any articles of correction to that filing and (ii) a statement that a copy of the filing previously made, together with any articles of correction to that filing, is attached as an exhibit;

2. If a filing *with the Commission* was previously made in respect of the defective corporate action and such filing requires any change to give effect to the ratification of such defective corporate action in accordance with § 13.1-614.3, the ~~filed~~ document shall set forth (i) the name, title, and filing date of the filing previously made and any articles of correction to that filing ~~and~~, (ii) a statement that a filing

containing all of the information required to be included under the applicable section or sections of ~~the~~ *this* chapter to give effect to such defective corporate action is attached as an exhibit, and (iii) the date and time that ~~such filing~~ *the document* is deemed to have become effective; or

3. If a filing *with the Commission* was not previously made in respect of the defective corporate action and the defective corporate action ratified under § 13.1-614.3 would have required a filing under any other section of ~~the~~ *this* chapter, the ~~filed~~ document shall set forth (i) ~~a statement that a filing containing~~ all of the information required to be included under the applicable section or sections of ~~the~~ *this* chapter to give effect to such defective corporate action ~~is attached as an exhibit~~ and (ii) the date and time that ~~such filing~~ *the document* is deemed to have become effective.

D. If the Commission finds that the ~~filed~~ document *required by subsection A* complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of ratification of defective corporate action *or the certificate required by this chapter for the articles that were filed.*

§ 13.1-615.1. (Effective July 1, 2020) Charter and entrance fees for corporations.

A. Every domestic corporation, upon the granting of its charter or upon its incorporation by domestication or conversion, shall pay a charter fee into the state treasury, and every foreign corporation, when it obtains from the State Corporation Commission a certificate of authority to transact business in the Commonwealth, shall pay an entrance fee into the state treasury. The fee in each case is to be ascertained and fixed as follows:

For any domestic or foreign corporation whose number of authorized shares is 1,000,000 or fewer shares: $50 for each 25,000 shares or fraction thereof;

For any domestic or foreign corporation whose number of authorized shares is more than 1,000,000 shares: $2,500.

B. For any foreign corporation that files articles of domestication and that had authority to transact business in the Commonwealth at the time of such filing, the charter fee to be charged upon domestication shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as an entrance fee by such corporation.

C. For any foreign corporation that files an application for a certificate of authority to transact business in the Commonwealth and that had previously surrendered its articles of incorporation as a domestic corporation, the entrance fee to be charged upon obtaining a certificate of authority to transact business in the Commonwealth shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as a charter fee by such corporation.

D. Whenever by articles of amendment ~~or~~, articles of merger, *articles of correction, or articles of ratification*, the number of authorized shares of any domestic or foreign corporation or of the surviving corporation is increased, the charter or entrance fee to be charged shall be an amount equal to the difference between the amount already paid as a charter or entrance fee by such corporation and the amount that would be required by this section to be paid if the increased number of authorized shares were being stated at that time in the original articles of incorporation.

E. For any domestic limited liability company that files articles of conversion to become a domestic corporation and that had previously converted from a domestic corporation, the charter fee to be charged upon conversion shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as a charter fee by the domestic limited liability company when it was a domestic corporation.

F. For any domestic nonstock corporation that files articles of restatement to become a domestic corporation, the charter fee to be charged shall be an amount equal to the difference between the amount already paid as a charter fee by the domestic nonstock corporation upon its incorporation and the amount that would be required by this section to be paid in accordance with the number of authorized shares in the corporation's amended and restated articles of incorporation.

G. If no charter or entrance fee has been heretofore paid to the Commonwealth, the amount to be paid shall be the same as would have to be paid on original incorporation or application for authority to transact business.

§ 13.1-616. (Effective July 1, 2020) Fees for filing documents or issuing certificates.

The Commission shall charge and collect the following fees, except as provided in § 12.1-21.2:

1. For filing of articles of conversion to convert a corporation to an eligible entity, the fee shall be $100.

2. For filing any one of the following, the fee shall be $25:

a. Articles of incorporation or domestication.

b. Articles of conversion to convert an eligible entity to a corporation.

c. Articles of amendment or restatement.

d. Articles of merger or share exchange.

e. Articles of correction.

f. *Articles of ratification.*

g. An application of a foreign corporation for a certificate of authority to transact business in the Commonwealth.

~~g.~~ *h.* An application of a foreign corporation for an amended certificate of authority to transact business in the Commonwealth.

~~h.~~ *i.* A copy of an amendment of the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

~~i.~~ *j.* A copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

~~j.~~ *k.* A copy of an instrument of conversion of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

~~k.~~ *l.* An application to register or to renew the registration of a corporate name.

3. For filing any one of the following, the fee shall be $10:

a. An application to reserve or to renew the reservation of a corporate name.

b. A notice of transfer of a reserved corporate name.

c. An application for use of an indistinguishable name.

d. Articles of dissolution.

e. Articles of revocation of dissolution.

f. Articles of termination of corporate existence.

g. An application for a certificate of withdrawal of a foreign corporation.

h. A notice of release of a registered name.

4. For issuing a certificate pursuant to § 13.1-781, the fee shall be $6.

§ 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 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 any or all internal corporate claims shall be brought exclusively in a circuit court or a federal district court in the Commonwealth and, if so specified, in any additional courts in the Commonwealth or in any other jurisdictions ~~with~~ in which the corporation maintains its principal office. As used in this subdivision, "internal corporate claims" means (i) any derivative action or proceeding 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, director, or shareholder of the corporation; (iii) any action asserting a claim arising pursuant to this chapter or the corporation's articles of incorporation or bylaws; or (iv) any action asserting a claim governed by the internal affairs doctrine that is not included in clause (i), (ii), or (iii). Notwithstanding any other provision of this chapter to the contrary, to the extent any provision of this chapter allows or requires an action or proceeding to be brought in the circuit court of the county or city where the corporation's principal office or registered office is located or in any other specified court location, such action or proceeding shall instead be brought in a court in the Commonwealth specified in a bylaw, if any, authorized by this subdivision and adopted prior to the commencement of such action or proceeding.

D. A provision of the bylaws adopted under subdivision C 2 shall not have the effect of conferring jurisdiction on any court or over any person or claim, and shall not apply if none of the courts specified by such provision has the requisite personal and subject matter jurisdiction. If the court or courts specified in a provision adopted under subdivision C 2 do not have the requisite personal and subject matter jurisdiction and another court of the Commonwealth does have such jurisdiction, then the internal corporate claim may be brought in such other court of the Commonwealth, notwithstanding that such other court of the Commonwealth is not specified in such provision, and in any other court specified in such provision that has the requisite jurisdiction. No provision of the articles of incorporation or the bylaws may prohibit bringing an internal corporate claim in the courts of the Commonwealth or require any such claim to be determined by arbitration.

E. Notwithstanding subdivision B 2 of § 13.1-714, the shareholders in amending, repealing, or adopting a bylaw described in subdivision C 1 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 to provide for a reasonable, practicable, and orderly process.

§ 13.1-630. Corporate name.

A. A corporate name shall contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd." Such words and their corresponding abbreviations may be used interchangeably for all purposes.

B. A corporate name shall not contain:

1. Any language stating or implying that the corporation will conduct any of the special kinds of businesses listed in § 13.1-620 unless it proposes in fact to engage in such special kind of business;

2. The word "redevelopment" unless the corporation is organized as an urban redevelopment corporation pursuant to Chapter 190 of the 1946 Acts of Assembly, as amended;

3. Any word, abbreviation, or combination of characters that states or implies the corporation is a limited liability company ~~or~~, a limited partnership*, or a protected series of a series limited liability company*; or

4. Any word or phrase that is prohibited by law for such corporation.

C. Except as authorized by subsection D, a corporate name shall be distinguishable upon the records of the Commission from:

1. The name of any corporation, whether issuing shares or not issuing shares, existing under the laws of the Commonwealth or authorized to transact business in the Commonwealth;

2. A corporate name reserved or registered under § 13.1-631, 13.1-632, 13.1-830 or 13.1-831;

3. The designated name adopted by a foreign corporation, whether issuing shares or not issuing shares, because its real name is unavailable for use in the Commonwealth;

4. The name of a domestic limited liability company or a foreign limited liability company registered to transact business in the Commonwealth;

5. A limited liability company name reserved under § 13.1-1013;

6. The designated name adopted by a foreign limited liability company because its real name is unavailable for use in the Commonwealth;

7. The name of a domestic business trust or a foreign business trust registered to transact business in the Commonwealth;

8. A business trust name reserved under § 13.1-1215;

9. The designated name adopted by a foreign business trust because its real name is unavailable for use in the Commonwealth;

10. The name of a domestic limited partnership or a foreign limited partnership registered to transact business in the Commonwealth;

11. A limited partnership name reserved under § 50-73.3; and

12. The designated name adopted by a foreign limited partnership because its real name is unavailable for use in the Commonwealth.

D. A domestic corporation may apply to the Commission for authorization to use a name that is not distinguishable upon the Commission's records from one or more of the names described in subsection C. The Commission shall authorize use of the name applied for if the other entity consents to the use in writing and submits an undertaking in a form satisfactory to the Commission to change its name to a name that is distinguishable upon the records of the Commission from the name of the applying corporation.

E. The use of assumed names or fictitious names, as provided for in Chapter 5 (§ 59.1-69 et seq.) of Title 59.1, is not affected by this chapter.

F. The Commission, in determining whether a corporate name is distinguishable upon its records from the name of any of the business entities listed in subsection C, shall not consider any word, phrase, abbreviation, or designation required or permitted under this section and § 13.1-544.1, subsection A of § 13.1-1012, § 13.1-1104, subsection A of § 50-73.2, and subdivision A 2 of § 50-73.78 to be contained in the name of a business entity formed or organized under the laws of the Commonwealth or authorized or registered to transact business in the Commonwealth.

§ 13.1-636. Resignation of registered agent.

A. A registered agent may resign as agent for the corporation by signing and filing with the Commission a statement of resignation stating (i) the name of the corporation, (ii) the name of the agent, and (iii) that the agent resigns from serving as registered agent for the corporation. The statement of resignation shall be accompanied by a certification that the registered agent will have a copy of the statement mailed to the principal office of the corporation by certified mail on or before the business day following the day on which the statement is filed. ~~The~~ *When the* statement of resignation ~~may include a statement that~~ *takes effect*, the registered office is also discontinued.

B. A statement of resignation takes effect on the earlier of (i) 12:01 a.m. on the thirty-first day after the date on which the statement was filed with the Commission or (ii) the date on which a statement of change in accordance with § 13.1-635 is filed with the Commission.

§ 13.1-652. Corporation's acquisition of its own shares.

A. A corporation may acquire its own shares, and shares so acquired constitute authorized but

unissued shares of the same class, if any, but undesignated as to series.

B. If the articles of incorporation prohibit the reissuance of acquired shares or if the board of directors has authorized the reduction in the number of authorized shares by the number of shares acquired, the number of authorized shares shall be reduced by the number of shares acquired effective when the certificate of amendment is effective. The corporation shall deliver to the Commission for filing articles of amendment that shall set forth:

1. The name of the corporation;

2. The reduction in the number of authorized shares, itemized by class and series;

3. The total number of authorized shares, itemized by class and series, remaining after reduction of the shares; and

4. A statement that the reduction in the number of authorized shares was required by the articles of incorporation or was adopted by the board of directors *without shareholder approval pursuant to this section,* with the date of adoption.

C. The articles of amendment may be adopted by the board of directors without shareholder action.

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

§ 13.1-657. Action without meeting.

A. Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is 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 action shall be evidenced by one or more written consents bearing the date of signature and describing the action taken, signed by all the shareholders entitled to vote on the action and delivered to the corporation's secretary for filing by the corporation with the minutes of the meeting or 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 articles of incorporation, the bylaws, or this section; however, unless the articles of incorporation of a public corporation authorized action by shareholders by less than unanimous written consent as of April 1, 2018, the shareholders of the public corporation shall not be entitled to act by less than unanimous written consent even if so authorized by the articles of incorporation if the articles of incorporation or bylaws of such public corporation allow the holders of 30 percent or fewer of all votes entitled to be cast to demand the calling of a special meeting of shareholders. For action by shareholders by less than unanimous written consent to be valid:

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

2. The 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 in addition to the other limitations in this subsection B, the inclusion of the authorization in the articles of incorporation was approved by each voting group entitled to vote by the greater of:

a. The vote of that voting group required by the articles of incorporation to amend the articles of incorporation; ~~and~~ *or*

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

3. At least 10 days before the holders of more than 10 percent of the outstanding shares of any voting group entitled to vote on the action to be taken have signed the written consent, the corporation's secretary shall have received a copy of the form of written consent setting forth the action to be taken;

4. If required by this chapter, the articles of incorporation, or the bylaws, the board of directors shall have approved this action; and

5. 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 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 taken.

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

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

to that effect delivered to the corporation's secretary before unrevoked written consents sufficient in number to take the corporate action are delivered to the corporation.

E. A consent signed pursuant to the provisions of this section has the effect of a vote taken 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 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's secretary 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.

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

G. 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 D, prior to its becoming effective.

H. If this chapter requires that notice of a proposed action be given to nonvoting shareholders and the action is to be 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 take the action have been delivered to the corporation's secretary, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection E. The notice shall reasonably describe the action 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.

I. If action is 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 take the action have been delivered to the corporation's secretary or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection E. The notice shall reasonably describe the action 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.

J. The notice requirements in subsections H and I shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, provided that this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

§ 13.1-679. Resignation of directors.

A. A director may resign at any time by delivering a written notice of resignation to the board of directors or its chairman, or to the secretary of the corporation.

B. A resignation is effective as provided in subdivision *A* 9 of § 13.1-610 unless the resignation provides for a delayed effectiveness including effectiveness determined upon a future event or events. If a resignation provides for a delayed effectiveness, the board of directors may fill the pending vacancy before the effectiveness of the resignation if the board of directors provides that the successor does not take office until the effectiveness of the resignation. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.

C. Any person whose name is of record in the office of the clerk of the Commission as a director of a corporation, and who has resigned or whose name is incorrectly of record, may file a statement to that effect with the Commission.

D. Upon the resignation of a director, the corporation may file an amended annual report with the Commission indicating the resignation of the director and the successor in office, if any.

§ 13.1-692.1. Limitation on liability of officers and directors; exception.

A. In any proceeding brought by or in the right of a corporation or brought by or on behalf of shareholders of the corporation, the damages assessed against an officer or director arising out of a single transaction, occurrence or course of conduct shall not exceed the lesser of:

1. The monetary amount, including the elimination of liability, specified in the articles of incorporation or, if approved by the shareholders, in the bylaws as a limitation on or elimination of the liability of the officer or director; or

2. The greater of (i) $100,000 or (ii) the amount of cash compensation received by the officer or

director from the corporation during the 12 months immediately preceding the act or omission for which liability was imposed.

B. The liability of an officer or director shall not be limited as provided in this section if the officer or director engaged in willful misconduct or a knowing violation of the criminal law or of any federal or state securities law, including, without limitation, any claim of unlawful insider trading or manipulation of the market for any security.

C. No limitation or elimination of liability adopted pursuant to this section may be affected by any amendment of the articles of incorporation or bylaws with respect to any action or omission occurring before such amendment.

§ 13.1-695. Resignation and removal of officers.

A. An officer may resign at any time by delivering a written notice to the board of directors, its chairman, the appointing officer, if any, or the corporation's secretary. A resignation is effective as provided in subdivision *A* 9 of § 13.1-610 unless the notice provides for a delayed effectiveness. If effectiveness of a resignation is stated to be delayed and the board of directors or the appointing officer, if any, accepts the delay, the board of directors or the appointing officer, if any, may fill the pending vacancy before the delayed effectiveness but the new officer may not take office until the vacancy occurs.

B. An officer may be removed at any time with or without cause by (i) the board of directors; (ii) the appointing officer, if any, unless the bylaws or the board of directors provides otherwise; or (iii) any other officer, if authorized by the bylaws or the board of directors. An officer's removal does not affect such officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

C. Any person who has resigned as an officer of a corporation, or whose name is of record in the office of the clerk of the Commission as an officer of a corporation, may file a statement to that effect with the Commission.

D. Upon the resignation or removal of an officer, the corporation may file an amended annual report with the Commission indicating the resignation or removal of the officer and the successor in office, if any.

E. As used in this section "appointing officer" means the officer, including any successor to that officer, who, in accordance with subsection B of § 13.1-693, appointed the officer who is resigning or being removed.

§ 13.1-712.1. (Effective July 1, 2020) Abandonment of amendment or restatement of articles of incorporation.

A. After an amendment or restatement of the articles of incorporation has been adopted and approved as required by this article, and at any time before the certificate of amendment or restatement has become effective, the amendment or restatement of the articles of incorporation may be abandoned by the corporation without action by its shareholders in the manner determined by the board of directors.

B. If articles of amendment or restatement of the articles of incorporation are abandoned after they have been filed with the Commission but before the certificate of amendment or restatement of the articles of incorporation has become effective, a statement of abandonment shall be signed by the corporation and delivered to the Commission for filing prior to the effective time and date of the certificate of amendment or restatement of the articles of incorporation. If the Commission finds that the statement of abandonment complies with the requirements of law, it shall issue a certificate of abandonment, effective as of the date and time the statement of abandonment was received by the Commission, and the amendment or restatement of the articles of incorporation shall be deemed abandoned and shall not become effective.

C. The statement of abandonment shall contain:

1. The name of the corporation;

2. The date on which the articles of amendment or restatement of the articles of incorporation were filed with the Commission;

3. The date and time on which the Commission's certificate of ~~abandonment~~ *amendment* or restatement becomes effective; and

4. A statement that the amendment or restatement of the articles of incorporation is being abandoned in accordance with this section.

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

A. Subject to the provisions of subdivision F 4, in the case of a domestic corporation that is (i) a party to a merger, (ii) an acquired entity in a share exchange, or (iii) the acquiring entity in a share exchange:

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

2. Except as provided in subsections F and G 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 or, in the case of an offer referred to in subsection G, that the shareholders tender their shares to the offeror in response to the offer, 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 inform the shareholders of the basis for that determination.

B. The board of directors may set conditions for the approval of the plan of merger or share exchange by the shareholders or the effectiveness of the plan of merger or share exchange.

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 eligible interests or the right to receive shares or other eligible interests in the survivor, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation and bylaws or organic rules of the survivor. If the corporation is to be merged into a domestic or foreign corporation or eligible entity and a new domestic or foreign corporation or eligible entity is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation and bylaws or organic rules of the new corporation or eligible entity.

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

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 time of the merger or share exchange will hold the same number of shares, with identical preferences, limitations, and rights immediately after the effective time of the merger or share exchange; and

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

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 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;

2. Another party to the merger, the acquiring entity in the share exchange, or a parent of another party to the merger or the acquiring entity in the share exchange, makes an offer to purchase, on the terms provided in the plan of merger or share exchange, any and all of the outstanding shares of the corporation that, absent this subsection, would be entitled to vote on the plan of merger or share exchange, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror, or by any wholly owned subsidiary of any of the foregoing;

3. The offer discloses that the plan of merger or share exchange provides that the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in subdivision 7 and that the shares of the corporation that are not tendered in response to the offer will be treated as set forth in subdivision 8;

4. The offer remains open for at least 10 business days;

5. The offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;

6. The shares listed below are collectively entitled to cast at least the minimum number of votes on the merger or share exchange that, absent this subsection, would be required by this chapter and by the articles of incorporation for the approval of the merger or share exchange by the shareholders and by any other voting group entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote on the approval were present and voted:

a. Shares purchased by the offeror in accordance with the offer;

b. Shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of the foregoing; and

c. Shares subject to an agreement that they are to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of the foregoing in exchange for shares or eligible interests in such offeror, parent, or subsidiary;

7. The offeror or a wholly owned subsidiary of the offeror merges with or into, or effects a share exchange in which it acquires shares of, the corporation; and

8. Each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer, and that is not purchased in accordance with the offer, is to be converted in the merger into, or into the right to receive, or is to be exchanged in the share exchange for, or for the right to receive, the same amount and kind of securities, eligible interests, obligations, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in subdivision ~~G~~ 6 a or c need not be converted into or exchanged for the consideration described in this subdivision.

~~9.~~ *H.* As used in ~~this~~ subsection *G*:

"Offer" means the offer referred to in subdivision 3.

"Offeror" means the person making the offer.

"Parent" of any entity means a person that owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares or eligible interests in that entity.

"Wholly owned subsidiary" of a person means an entity of or in which that person owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares or eligible interests.

~~H.~~ *I.* 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.

~~I.~~ *J.* If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the plan of merger or share exchange requires the signing in connection with the transaction, by each such shareholder, of a separate written consent to become subject to such new interest holder liability, unless in the case of a shareholder that already has interest holder liability with respect to such domestic corporation, (i) the new interest holder liability is with respect to a domestic or foreign corporation, which may be a different or the same domestic corporation in which the person is a shareholder, and (ii) the terms and conditions of the new interest holder liability are substantially identical to those of the existing interest holder liability, other than for changes that eliminate or reduce such interest holder liability.

~~J.~~ *K.* Shares tendered in response to an offer shall be deemed, for purposes of this section, to have been purchased in accordance with the offer at the earliest time as of which the offeror has irrevocably

accepted those shares for payment and either (i) in the case of shares represented by certificates, the offeror, or the offeror's designated depository or other agent, has physically received the certificates representing those shares or (ii) in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent, or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent.

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

A. As used in this section:

"Parent entity" means a domestic or foreign corporation or eligible entity that owns shares of a domestic corporation that possess at least 90 percent of the voting power of each class and series of the outstanding shares of the domestic corporation that have voting power.

"Subsidiary" means the domestic corporation whose outstanding shares are owned by a parent entity.

B. A parent entity may merge (i) a subsidiary into itself or another subsidiary or (ii) itself into a subsidiary without the approval of the board of directors or the shareholders of any subsidiary and, if the parent entity is a domestic corporation, without the approval of the shareholders of the parent entity, unless the articles of incorporation of any subsidiary or the articles of incorporation or the organic rules of the parent entity otherwise provide.

C. A parent entity may be a foreign corporation or eligible entity only if the merger is permitted under the laws by which the foreign corporation or eligible entity is organized.

D. The parent entity shall, within 10 days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

E. Except as provided in subsections B and C, a merger under this section shall be governed by the provisions of this article applicable to mergers generally, including subsection ~~I~~ *J* of § 13.1-718.

F. 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.

G. Two or more domestic corporations may be merged into a parent entity pursuant to this section.

§ 13.1-721. Effect of merger or share exchange.

A. When a merger becomes effective:

1. The domestic or foreign corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence as the case may be;

2. The separate existence of every domestic or foreign corporation or eligible entity that is merged into the survivor ceases;

3. All property owned by, and every contract right possessed by, each domestic or foreign corporation or eligible entity that merges into the survivor is vested in the survivor without transfer, reversion or impairment;

4. All debts, obligations, and liabilities of each domestic or foreign corporation or eligible entity that is merged into the survivor are debts, obligations, or liabilities of the survivor;

5. The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

6. If the survivor is a domestic corporation, the articles of incorporation and bylaws of the survivor are amended to the extent provided in the plan of merger;

7. The articles of incorporation and bylaws of a survivor that is a domestic corporation created by the merger become effective;

8. The shares of each domestic or foreign corporation that is a party to the merger, and the eligible interests in a domestic or foreign eligible entity that is a party to the merger, that are 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, are converted, and the former holders of such shares or eligible interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under Article 15 (§ 13.1-729 et seq.) or the organic law governing the foreign corporation or domestic or foreign eligible entity;

9. Except as provided by law or the plan of merger, all the rights, privileges, franchises, and immunities of each entity that was a party to the merger, other than the survivor, are the rights, privileges, franchises, and immunities of the survivor; and

10. If the survivor existed before the merger:

a. All the property and contract rights of the survivor remain its property and contract rights without transfer, reversion, or impairment;

b. The survivor remains subject to all its debts, obligations, and other liabilities; and

c. Except as provided by law or the plan of merger, the survivor continues to hold all of its rights, privileges, franchises, and immunities.

B. When a share exchange becomes effective, the shares or eligible interests in the acquired entity that are to be exchanged for shares and other securities, eligible interests, obligations, rights to acquire

shares, other securities, eligible interests, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under Article 15 (§ 13.1-729 et seq.) or under the organic law governing the acquired entity.

C. Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law governing or organic rules of a foreign corporation or a domestic or foreign eligible entity, the effect of a merger or share exchange on interest holder liability is as follows:

1. A person who becomes subject to a new interest holder liability in respect of an entity as a result of a merger or share exchange shall have that new interest holder liability only in respect of interest holder liabilities that arise after the merger or share exchange becomes effective.

2. If a person had interest holder liability with respect to a party to the merger or the acquired entity before the merger or share exchange becomes effective with respect to shares or eligible interests of such party or acquired entity that were (i) exchanged in the merger or share exchange, (ii) were canceled in the merger, or (iii) the terms and conditions of which relating to interest holder liability were amended pursuant to the merger:

a. The merger or share exchange does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the merger or share exchange becomes effective.

b. The provisions of the organic law governing any entity for which the person had that prior interest holder liability shall continue to apply to the collection or discharge of any interest holder liabilities preserved by subdivision C 2 a, as if the merger or share exchange had not occurred.

c. The person shall have such rights of contribution from other persons as are provided by the organic law governing the entity for which the person had that prior interest holder liability with respect to any interest holder liabilities preserved by subdivision C 2 a, as if the merger or share exchange had not occurred.

d. The person shall not, by reason of such prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the merger or share exchange becomes effective.

3. If a person has interest holder liability both before and after a merger becomes effective with unchanged terms and conditions with respect to the entity that is the survivor by reason of owning the same shares or eligible interests before and after the merger becomes effective, the merger has no effect on such interest holder liability.

4. A share exchange has no effect on interest holder liability related to shares or eligible interests of the acquired entity that were not exchanged in the share exchange.

D. Upon a merger becoming effective, a foreign corporation or a foreign eligible entity that is the survivor of the merger is deemed to:

1. Appoint the clerk of the Commission as its agent for service of process in ~~a~~ *any* proceeding *(i)* to enforce the rights of shareholders of each domestic corporation that was a party to the merger who exercise appraisal rights *or (ii) based on a cause of action against a nonsurviving domestic corporation arising during the time it was in existence under the laws of the Commonwealth,* which service of process shall be made on the clerk in accordance with § 12.1-19.1; and

2. Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under Article 15 (§ 13.1-729 et seq.).

E. No corporation that is required by law to be a domestic corporation, may, by merger, cease to be a domestic corporation, but every such corporation, even though a corporation of some other state, the United States or another country, shall also be a domestic corporation of the Commonwealth.

F. Except as provided in the organic law governing a party to a merger or in its articles of incorporation or organic rules, the merger does not give rise to any rights that a third party would have upon a dissolution, liquidation, or winding up of that party. The merger does not require a party to the merger to wind up the affairs of that party and does not constitute or cause its dissolution, termination, or cancellation.

G. A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to an entity that is a party to a merger that is not the survivor and that takes effect or remains payable after the merger inures to the survivor.

H. A trust obligation that would govern property if transferred to a nonsurviving entity applies to property that is transferred to the survivor after a merger becomes effective.

§ 13.1-721.1. (Effective July 1, 2020) Abandonment of a merger or share exchange.

A. Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign corporation or a domestic or foreign eligible entity that is a party to a merger or a share exchange is organized or by which it is governed, after a plan of merger or share exchange has been adopted and approved as required by this article, and at any time before the certificate of merger or share exchange has become effective, the plan may be abandoned by a domestic corporation that is a party thereto without action by shareholders in accordance with any procedures set forth in the plan of

merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the plan of merger or share exchange.

B. If a merger or share exchange is abandoned after the articles of merger or share exchange have been filed with the Commission but before the certificate of merger or share exchange has become effective, in order for the certificate of merger or share exchange to be ~~canceled~~ *abandoned*, all parties to the plan of merger or share exchange shall sign a ~~request for a certificate of cancellation~~ *statement of abandonment* and deliver it ~~with~~ *to* the Commission for filing prior to the effective time and date of the certificate of merger or share exchange. If the Commission finds that the statement of abandonment complies with the requirements of law, it shall issue a certificate of abandonment, effective as of the date and time the statement of abandonment was received by the Commission, and the merger or share exchange shall be deemed abandoned and shall not become effective.

C. The statement of ~~cancellation~~ *abandonment* shall contain:

1. The name of the corporation;

2. The date on which the articles of merger or share exchange were filed with the Commission;

3. The date and time on which the Commission's certificate of merger or share exchange becomes effective; and

4. A statement that the merger or share exchange is being abandoned in accordance with this section.

§ 13.1-722.5. (Effective July 1, 2020) Articles of domestication; effectiveness.

A. After (i) a plan of domestication of a domestic corporation has been adopted and approved as required by this chapter or (ii) a foreign corporation that is the domesticating corporation has approved a domestication as required under its organic law, articles of domestication shall be signed in the name of the domesticating corporation. The articles shall set forth:

1. The name of the domesticating corporation and its jurisdiction of formation;

2. The original name, date of formation, jurisdiction of formation, *and entity type* of the domesticating corporation and its name, jurisdiction of formation, and entity type upon each subsequent domestication or conversion;

3. The plan of domestication;

4. If the domesticating corporation is a domestic corporation:

a. The date the plan of domestication was approved;

b. A statement that the plan of domestication was approved *by the unanimous consent of the shareholders, or that the plan was submitted by the board of directors to the shareholders* in accordance with this chapter *and was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation*;

c. A statement that the corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as an agent for service of process in any proceeding based on a cause of action arising during the time it was incorporated in the Commonwealth;

d. A mailing address to which the clerk may mail a copy of any process served on the clerk under subdivision c; and

e. A commitment by the corporation to notify the clerk of the Commission in the future of any change in the mailing address of the corporation; and

5. If the domesticating corporation is a foreign corporation, a statement that the domestication is permitted by and was approved in accordance with the organic law of the foreign corporation.

B. The articles of domestication shall be delivered to the Commission for filing. If the Commission finds that the articles of domestication comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of domestication.

~~C. If the domesticating corporation is a foreign corporation that has a certificate of authority to transact business in the Commonwealth under Article 17 (§ 13.1-757 et seq.), its certificate of authority shall be deemed withdrawn automatically when the domestication becomes effective.~~

§ 13.1-722.7:1. (Effective July 1, 2020) Effect of domestication.

A. When a domestication of a foreign corporation into a domestic corporation becomes effective:

1. All property owned by, and every contract right possessed by, the domesticating corporation are the property and contract rights of the domesticated corporation without transfer, reversion, or impairment;

2. All debts, obligations, and other liabilities of the domesticating corporation are the debts, obligations, and other liabilities of the domesticated corporation;

3. The name of the domesticated corporation may, but need not, be substituted for the name of the domesticating corporation in any pending proceeding;

4. The articles of incorporation and bylaws of the domesticated corporation become effective;

5. The shares of the domesticating corporation are reclassified into shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property in accordance with the

terms of the domestication, and the shareholders of the domesticating corporation are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation; ~~and~~

6. The domesticated corporation is:

a. Incorporated under and subject to the organic law of the domesticated corporation;

b. The same corporation without interruption as the domesticating corporation; and

c. Deemed to have been incorporated on the date the domesticating corporation was originally incorporated*; and*

7. If the foreign corporation has a certificate of authority to transact business in the Commonwealth, its certificate of authority is deemed withdrawn.

B. When a domestication of a domestic corporation into a foreign jurisdiction becomes effective, the domesticated corporation is deemed to:

1. Appoint the clerk of the Commission as an agent for service of process in ~~a~~ *any* proceeding *(i)* to enforce the rights of shareholders who exercise appraisal rights in connection with the domestication *or (ii) based on a cause of action against the domesticating domestic corporation arising during the time it was in existence under the laws of the Commonwealth, which service of process shall be made on the clerk in accordance with § 12.1-19.1*; and

2. Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under Article 15 (§ 13.1-729 et seq.).

C. Except as otherwise provided in the organic law or organic rules of a domesticating foreign corporation, the interest holder liability of a shareholder in a foreign corporation that is domesticated into the Commonwealth who had interest holder liability in respect of such domesticating corporation before the domestication becomes effective shall be as follows:

1. The domestication does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the domestication becomes effective.

2. The provisions of the organic law of the domesticating corporation shall continue to apply to the collection or discharge of any interest holder liabilities preserved by subdivision 1, as if the domestication had not occurred.

3. The shareholder shall have such rights of contribution from other persons as are provided by the organic law of the domesticating corporation with respect to any interest holder liabilities preserved by subdivision 1, as if the domestication had not occurred.

4. The shareholder shall not, by reason of such prior interest holder liability, have interest holder liability with respect to any interest holder liabilities preserved that arise after the domestication becomes effective.

D. A shareholder who becomes subject to interest holder liability in respect of the domesticated corporation as a result of the domestication shall have such interest holder liability only in respect of interest holder liabilities that arise after the domestication becomes effective.

E. A domestication does not constitute or cause the dissolution of the domesticating corporation.

F. Property held for charitable purposes under the laws of the Commonwealth by a domestic or foreign corporation immediately before a domestication shall not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of the Commonwealth addressing cy pres or dealing with nondiversion of charitable assets.

G. A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance which is made to the domesticating corporation and which takes effect or remains payable after the domestication inures to the domesticated corporation.

H. A trust obligation that would govern property if transferred to the domesticating corporation applies to property that is transferred to the domesticated corporation after the domestication takes effect.

§ 13.1-722.9. (Effective July 1, 2020) Conversion.

A. By complying with this article, a domestic corporation may become (i) a domestic eligible entity or (ii) a foreign eligible entity if the conversion is permitted by the organic law of the foreign entity.

B. By complying with this article and applicable provisions of its organic law, a domestic eligible entity may become a domestic corporation. If procedures for the approval of a conversion are not provided by the organic law or organic rules of a domestic eligible entity, the conversion shall be adopted and approved in the same manner as a merger of that eligible entity. If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of either a conversion or a merger, a plan of conversion may nonetheless be adopted and approved by the unanimous consent of all the interest holders of such eligible entity. In either such case, the conversion thereafter may be effected as provided in the other provisions of this article, and for purposes of applying this article in such a case:

1. The eligible entity, its members or interest holders, eligible interests, and organic rules taken

together, shall be deemed to be a domestic corporation, shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

2. If the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, that person or persons shall be deemed to be the board of directors.

C. By complying with the provisions of this article applicable to foreign entities, a foreign eligible entity may become a domestic corporation if the organic law of the foreign eligible entity permits it to become a corporation in another jurisdiction and it has complied with said law in effecting the conversion.

D. ~~Unless~~ *Notwithstanding the provisions of subsection B, unless* otherwise provided for in Chapter 2.2 (§ 50-73.79 et seq.) of Title 50, a domestic partnership that has filed either a statement of partnership authority or a statement of registration as a registered limited liability partnership with the Commission that is not canceled may become a domestic corporation pursuant to a plan of conversion that is approved by the domestic partnership in accordance with the provisions of this article.

§ 13.1-722.10. (Effective July 1, 2020) Plan of conversion.

A. A domestic corporation may convert to a domestic or foreign eligible entity, *or a domestic eligible entity may convert to a domestic corporation,* under this article by approving a plan of conversion. The plan of conversion shall include:

1. The name of the converting corporation;

2. The name, jurisdiction of formation, and type of entity of the converted entity;

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

4. If the converted entity will be a domestic corporation, (i) the proposed articles of incorporation of the converted entity that satisfy the requirements of § 13.1-619 and (ii) the proposed bylaws of the converted entity, which shall not be included with the articles of conversion delivered to the Commission for filing;

5. If the converted entity will be a domestic eligible entity and a filing entity, the full text, as it will be in effect immediately after the conversion becomes effective, of the organic rules of the converted entity, *including the public organic record that satisfies the requirements of § 13.1-819, 13.1-1101, 13.1-1212, or 50.73.111, as the case may be,* provided that the private organic rules shall not be included with the articles of conversion delivered to the Commission for filing; ~~and~~

6. *If the converted entity will be a foreign corporation or eligible entity, the plan of conversion may include the organic rules of the converted entity, provided that the organic rules shall not be included with the articles of conversion delivered to the Commission for filing; and*

7. The other terms and conditions of the conversion.

B. In addition to the requirements of subsection A, a plan of conversion may contain any other provision not prohibited by law.

C. The terms of a plan of conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with subsection L of § 13.1-604.

§ 13.1-722.11. (Effective July 1, 2020) Action on plan of conversion.

A. In the case of a conversion of a domestic corporation to a domestic or foreign eligible entity, the plan of conversion shall be adopted in the following manner:

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

2. After adopting the plan of conversion, the board of directors shall submit the plan to the shareholders for their approval. In submitting the plan of conversion to the shareholders for their approval, the board of directors shall recommend 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 inform the shareholders of the basis for that determination.

3. The board of directors may set conditions for approval of the plan of conversion by the shareholders or the effectiveness of the plan of conversion.

4. If the approval of the shareholders is to be sought at a shareholders meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan of conversion 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 of conversion and shall contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the organic rules of the converted entity, which are to be in writing as they will be in effect immediately after the conversion.

5. Unless the articles of incorporation or the board of directors acting pursuant to subdivision 3, requires a greater vote, approval of the plan of conversion requires (i) the approval of the shareholders

at a meeting at which a quorum exists consisting of more than two thirds of the votes entitled to be cast on the plan and (ii) the approval of each class or series of shares voting as a separate voting group at a meeting at which a quorum of the voting group exists consisting of more than two thirds of the votes entitled to be cast on the plan by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided 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 votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

B. *In the case of a conversion of a domestic eligible entity to a domestic corporation, the plan of conversion shall be adopted in accordance with subsection B of § 13.1-722.9.*

C. If as a result of the conversion one or more shareholders of the converting domestic corporation would become subject to interest holder liability, approval of the plan of conversion shall require the signing in connection with the transaction, by each such shareholder, of a separate written consent to become subject to such interest holder liability.

§ 13.1-722.12. (Effective July 1, 2020) Articles of conversion; effectiveness.

A. After (i) a plan of conversion of a domestic corporation has been adopted and approved as required by this article or (ii) a domestic or foreign eligible entity that is the converting entity has approved a conversion as required under its organic law, *or, if applicable, this article,* articles of conversion shall be signed in the name of the converting entity. The articles of conversion shall set forth:

1. The name of the converting entity, its jurisdiction of formation, and entity type;

2. The original name, date of formation, jurisdiction of formation, and entity type of the converted entity and its name, jurisdiction of formation, and entity type upon each subsequent domestication or conversion;

3. ~~The plan of conversion;~~

~~4.~~ If the converting entity is a domestic corporation:

a. *The plan of conversion;*

b. The date the plan of conversion was approved;

~~b.~~ *c.* A statement that the plan of conversion was approved ~~in accordance with this chapter~~ *by the unanimous consent of the shareholders, or a statement that the plan was submitted by the board of directors to the shareholders in accordance with this chapter and was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation*;

~~c.~~ *4. If the converted entity is a foreign eligible entity:*

a. A statement that the corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as an agent for service of process in any proceeding based on a cause of action arising during the time it was incorporated in the Commonwealth;

~~d.~~ *b.* A mailing address to which the clerk may mail a copy of any process served on the clerk under subdivision ~~c~~ *a*; and

~~e.~~ *c.* A commitment by the ~~foreign eligible~~ *converting* entity to notify the clerk of the Commission in the future of any change in ~~the~~ *its* mailing address ~~of the foreign eligible entity~~ *after the conversion becomes effective*.

5. If the converting entity is a foreign eligible entity and the converted entity is a domestic corporation, a statement that the conversion is permitted by and was approved in accordance with the organic law of the foreign eligible entity; and

6. If the converting entity is a domestic nonstock corporation, limited partnership, partnership, or business trust and the converted entity is a domestic corporation:

a. *The plan of conversion;*

b. The date the plan of conversion was approved; and

~~b.~~ *c.* A statement that the plan of conversion was approved in accordance with this chapter.

B. The articles of conversion shall be delivered to the Commission for filing. If the Commission finds that the articles of conversion comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of conversion.

C. Articles of conversion under this section may be combined with any required conversion filing under the organic law of a domestic eligible entity or a foreign eligible entity that is authorized or registered to transact business in the Commonwealth that is the converting entity or converted entity if the combined filing satisfies the requirements of both this section and the other organic law.

~~D. If the converting entity is a foreign eligible entity that is authorized or registered to transact business in the Commonwealth, its certificate of authority or registration shall be deemed withdrawn on the effective date of its conversion.~~

§ 13.1-722.13. (Effective July 1, 2020) Effect of conversion.

A. When a conversion becomes effective:

1. All property owned by, and every contract right possessed by, the converting entity remains the

property and contract rights of the converted entity without reversion or impairment;

2. All debts, obligations, and other liabilities of the converting entity remain the debts, obligations, and other liabilities of the converted entity;

3. The name of the converted entity may, but need not, be substituted for the name of the converting entity in any pending action or proceeding;

4. If the converted entity is a filing entity or a domestic corporation or a domestic or foreign nonstock corporation, its public organic record and its private organic rules become effective;

5. If the converted entity is not a filing entity, its private organic rules become effective;

6. If the converted entity is a registered limited liability partnership, the filing required to become a registered limited liability partnership and its private organic rules become effective;

7. The shares or eligible interests of the converting entity are reclassified into shares, eligible interests, or other securities, obligations, rights to acquire shares, eligible interests or other securities, cash, or other property in accordance with the terms of the conversion, and the shareholders or interest holders of the converting entity are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the converting entity;

8. The converted entity is:

a. Incorporated or organized under and subject to the organic law of the converted entity;

b. The same entity without interruption as the converting entity; and

c. Deemed to have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized.

B. When a conversion of a domestic corporation to a foreign eligible entity becomes effective, the converted entity is deemed to:

1. Appoint the clerk of the Commission as an agent for service of process in ~~a~~ *any* proceeding to *(i)* enforce the rights of shareholders who exercise appraisal rights in connection with the conversion *or (ii) based on a cause of action against a nonsurviving domestic corporation arising during the time it was in existence under the laws of the Commonwealth, which service of process shall be made on the clerk in accordance with § 12.1-19.1*; and

2. Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under Article 15 (§ 13.1-729 et seq.).

C. *If the converting entity is a foreign eligible entity that is authorized or registered to transact business in the Commonwealth, its certificate of authority or registration shall be deemed withdrawn on the effective date of its conversion.*

D. Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of a foreign corporation or a domestic or a foreign eligible entity, a shareholder or eligible interest holder who becomes subject to interest holder liability in respect of a domestic corporation or eligible entity as a result of the conversion shall have such interest holder liability only in respect of interest holder liabilities that arise after the conversion becomes effective.

~~D.~~ *E.* Except as otherwise provided in the organic law or the organic rules of the eligible entity, the interest holder liability of an interest holder in a converting eligible entity that converts to a domestic corporation who had interest holder liability in respect of such converting eligible entity before the conversion becomes effective shall be as follows:

1. The conversion does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the conversion became effective.

2. The provisions of the organic law of the eligible entity shall continue to apply to the collection or discharge of any interest holder liabilities preserved by subdivision 1, as if the conversion had not occurred.

3. The eligible interest holder shall have such rights of contribution from other persons as are provided by the organic law of the eligible entity with respect to any interest holder liabilities preserved by subdivision 1, as if the conversion had not occurred.

4. The eligible interest holder shall not, by reason of such prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the conversion becomes effective.

~~E.~~ *F.* A conversion does not require the converting entity to wind up its affairs and does not constitute or cause the dissolution, termination, or cancellation of the entity.

~~F.~~ *G.* Property held for charitable purposes under the laws of the Commonwealth by a corporation or a domestic or foreign eligible entity immediately before a conversion shall not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of the Commonwealth addressing cy pres or dealing with nondiversion of charitable assets.

~~G.~~ *H.* A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance which is made to the converting entity and which takes effect or remains

payable after the conversion inures to the converted entity.

~~H.~~ *I.* A trust obligation that would govern property if transferred to the converting entity applies to property that is transferred to the converted entity after the conversion takes effect.

§ 13.1-761. Effect of certificate of authority.

A. A certificate of authority authorizes the foreign corporation ~~to which it is issued~~ to transact business in the Commonwealth subject, however, to the right of the Commonwealth to revoke the certificate as provided in this chapter.

B. A foreign corporation holding a valid certificate of authority shall have no greater rights and privileges than a domestic corporation. The certificate of authority shall not be deemed to authorize the foreign corporation to exercise any of its corporate powers or purposes that a foreign corporation is forbidden by law to exercise in the Commonwealth.

C. This chapter does not authorize the Commonwealth to regulate the organization or internal affairs of a foreign corporation authorized to transact business in the Commonwealth.

§ 13.1-764. Change of registered office or registered agent of a foreign corporation.

A. A foreign corporation authorized to transact business in the Commonwealth may change its registered office or registered agent, or both, upon filing with the Commission a statement of change on a form prescribed and furnished by the Commission that sets forth:

1. The name of the foreign corporation;

2. The address of its current registered office;

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

4. The name of its current registered agent;

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

6. That after the change or changes are made, the corporation will be in compliance with the requirements of § 13.1-763.

B. A statement of change shall be filed with the Commission by a foreign corporation if its registered agent dies, resigns, or ceases to satisfy the requirements of § 13.1-763.

C. A foreign corporation's registered agent may sign a statement as required above if (i) the business address of the registered agent changes to another post office address within the Commonwealth ~~or~~, (ii) *the name of the county or city in which the registered office is located changes or is incorrect on the Commission's records, or (iii)* the name of the registered agent has been legally changed. A foreign corporation's new registered agent may sign and submit for filing a statement as required above if (a) the former registered agent is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record with the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § 13.1-763. In either instance, the registered agent or surviving entity shall forthwith file a statement as required above, which shall recite that a copy of the statement shall be mailed to the principal office of the foreign corporation on or before the business day following the day on which the statement is filed with the Commission.

§ 13.1-766.1. Merger of foreign corporation authorized to transact business in Commonwealth.

A. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of its jurisdiction of formation, and such foreign corporation is the surviving entity of the merger, it shall, within 30 days after such merger becomes effective, file with the Commission a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of corporate records in its jurisdiction of formation; however, the filing shall not be required when a foreign corporation merges with a domestic corporation or eligible entity, the foreign corporation's articles of incorporation are not amended by said merger, and the articles or statement of merger filed on behalf of the domestic corporation or eligible entity pursuant to § 13.1-720, 13.1-1072, 13.1-1261, 50-73.48:3, or 50-73.131 contains a statement that the participation of the foreign corporation ~~or eligible entity~~ was duly authorized as required by its organic law.

B. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of its jurisdiction of formation, and such corporation is not the surviving entity of the merger or, whenever such a foreign corporation is a party to a consolidation so permitted, the surviving or resulting foreign corporation or eligible entity, if there is one, shall, if not continuing to transact business in the Commonwealth, within 30 days after such merger or consolidation becomes effective, deliver to the Commission a copy of the instrument of merger or consolidation duly authenticated by the Secretary of State or other official having custody of corporate records in the foreign corporation's jurisdiction of formation, and comply in behalf of the predecessor corporation with the provisions of § 13.1-767. However, if the surviving or resulting foreign corporation or eligible entity is to continue to transact business in the Commonwealth and has not obtained a certificate of authority or a certificate of registration to transact business in the Commonwealth then, within such 30 days, it

shall deliver to the Commission an application for a certificate of authority or a certificate of registration to transact business in the Commonwealth, pursuant to and in compliance with § 13.1-759, 13.1-921, 13.1-1052, 13.1-1242, 50-73.54, or 50-73.138, as applicable.

C. Upon the merger or consolidation of a foreign corporation with one or more foreign corporations or eligible entities, all property in the Commonwealth owned by any of the foreign corporations or eligible entities shall pass to the surviving or resulting foreign corporation or eligible entity except as otherwise provided by the laws of its jurisdiction of formation, but only from and after the time when a duly authenticated copy of the instrument of merger or consolidation is filed with the Commission.

2. That § 13.1-768.1 of the Code of Virginia is repealed.

3. That the provisions of the first and second enactments of this act shall become effective July 1, 2021.

4. That the second enactment of Chapter 636 of the Acts of Assembly of 2019 is amended and reenacted as follows:

2. That the provisions of this act shall become effective on July 1, ~~2020~~ *2021*.

5. That the third and fourth enactments of Chapter 734 of the Acts of Assembly of 2019 are amended and reenacted as follows:

3. That the provisions of this act (i) amending and reenacting §§ 13.1-615, 13.1-615.1, 13.1-616, 13.1-632, 13.1-721.1, and 13.1-722.2 through 13.1-722.13 of the Code of Virginia; (ii) amending the Code of Virginia by adding in Chapter 9 of Title 13.1 an article numbered 1.1, consisting of sections numbered 13.1-614.1 through 13.1-614.8, and by adding sections numbered 13.1-712.1, 13.1-722.1:1, 13.1-722.7:1, and 13.1-722.12:1; and (iii) repealing §§ 13.1-722.4, 13.1-722.7, and 13.1-722.14 of the Code of Virginia shall become effective on July 1, ~~2020~~ *2021*.

4. That until July 1, ~~2020~~ *2021*, the term "conversion," when used in any provision of the first enactment of this act, shall be construed to mean "entity conversion."