VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 6.1-43, 6.1-44.17, 6.1-44.19, 6.1-100.1, 6.1-194.88, 6.1-194.150, 13.1-603 through 13.1-604.1, 13.1-607 through 13.1-611, 13.1-614, 13.1-615, 13.1-616, 13.1-619, 13.1-627, 13.1-628, 13.1-630 through 13.1-633, 13.1-636, 13.1-638, 13.1-639, 13.1-641, 13.1-642, 13.1-646, 13.1-647, 13.1-649, 13.1-651 through 13.1-658, 13.1-660, 13.1-662, 13.1-663, 13.1-664.1, 13.1-665, 13.1-669, 13.1-670, 13.1-671.1, 13.1-672.3, 13.1-672.4, 13.1-673, 13.1-675, 13.1-677, 13.1-679, 13.1-680, 13.1-685, 13.1-686, 13.1-688, 13.1-689, 13.1-691, 13.1-692, 13.1-693, 13.1-695, 13.1-696, 13.1-697, 13.1-699, 13.1-700.1 through 13.1-704, 13.1-706, 13.1-707, 13.1-708, 13.1-710, 13.1-711, 13.1-713 through 13.1-721, 13.1-722.13, 13.1-723, 13.1-724, 13.1-725, 13.1-727, 13.1-728.1 through 13.1-734, 13.1-737 through 13.1-743, 13.1-746 through 13.1-750, 13.1-752, 13.1-757, 13.1-758, 13.1-762, 13.1-765, 13.1-767 through 13.1-772, 13.1-774, 13.1-775, 13.1-775.1, 13.1-776, 13.1-898.1, 13.1-1070, 13.1-1276, 38.2-1000, 38.2-1017, 50-73.48:1, and 50-73.128 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 13.1-660.1, 13.1-691.1, by adding in Article 12 of Chapter 9 of Title 13.1 a section numbered 13.1-715.1, by adding sections numbered 13.1-721.1, 13.1-735.1, 13.1-746.1, 13.1-746.2, 13.1-746.3, 13.1-749.1, and 13.1-773.1; and to repeal §§ 13.1-722, 13.1-722.1, 13.1-735, and 13.1-736 of the Code of Virginia, relating to the Virginia Stock Corporation Act.

[S 1228]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-43, 6.1-44.17, 6.1-44.19, 6.1-100.1, 6.1-194.88, 6.1-194.150, 13.1-603 through 13.1-604.1, 13.1-607 through 13.1-611, 13.1-614, 13.1-615, 13.1-616, 13.1-619, 13.1-627, 13.1-628, 13.1-630 through 13.1-633, 13.1-636, 13.1-638, 13.1-639, 13.1-641, 13.1-642, 13.1-646, 13.1-647, 13.1-649, 13.1-651 through 13.1-658, 13.1-660, 13.1-662, 13.1-663, 13.1-664.1, 13.1-665, 13.1-669, 13.1-670, 13.1-671.1, 13.1-672.3, 13.1-672.4, 13.1-673, 13.1-675, 13.1-677, 13.1-679, 13.1-680, 13.1-685, 13.1-686, 13.1-688, 13.1-689, 13.1-691, 13.1-692, 13.1-693, 13.1-695, 13.1-696, 13.1-697, 13.1-699, 13.1-700.1 through 13.1-704, 13.1-706, 13.1-707, 13.1-708, 13.1-710, 13.1-711, 13.1-713 through 13.1-721, 13.1-722.13, 13.1-723, 13.1-724, 13.1-725, 13.1-727, 13.1-728.1 through 13.1-734, 13.1-737 through 13.1-743, 13.1-746 through 13.1-750, 13.1-752, 13.1-757, 13.1-758, 13.1-762, 13.1-765, 13.1-767 through 13.1-772, 13.1-774, 13.1-775, 13.1-775.1, 13.1-776, 13.1-898.1, 13.1-1070, 13.1-1276, 38.2-1000, 38.2-1017, 50-73.48:1, and 50-73.128 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 13.1-660.1, 13.1-691.1, by adding in Article 12 of Chapter 9 of Title 13.1 a section numbered 13.1-715.1, by adding sections numbered 13.1-721.1, 13.1-735.1, 13.1-746.1, 13.1-746.2, 13.1-746.3, 13.1-749.1, and 13.1-773.1 as follows:

§ 6.1-43. Merger or share exchange authorized; laws applicable.

Virginia banks as defined in § 6.1-44.16 may merge upon compliance with the provisions of Article 12 (§ ~~13.1-716~~ *13.1-715.1* et seq.) of the Virginia Stock Corporation Act. However, the provisions of § ~~13.1-722~~ *13.1-716* that relate to *a* merger *with a foreign corporation as foreign eligible entity* shall not apply, except as hereafter provided; the provisions of § 13.1-730 shall not apply to a merger under this section. The provisions of §§ 13.1-716 ~~and~~ ~~13.1-722~~ relating to merger shall apply to the merger of a state and a national bank if the national bank is engaged in business in Virginia, and if the state bank is to be the surviving bank. A national bank shall be treated as if it were a foreign corporation and as if the United States were the state where it is organized. A bank may enter into a share exchange, as permitted by §§ 13.1-717 ~~and~~ ~~13.1-722~~, provided there is also compliance with Chapter 13 (§ 6.1-381 et seq.) or Chapter 15 (§ 6.1-398 et seq.) of this title. The exclusion in § 6.1-387 shall not apply in the case of such an exchange of shares.

§ 6.1-44.17. Authority to branch outside Virginia by merger.

With the prior approval of the Commission, any Virginia state bank may maintain and operate one or more branches in a state other than Virginia pursuant to an interstate merger transaction in which the Virginia state bank is the resulting bank. The Virginia state bank shall file an application on a form prescribed by the Commission, pay the merger fee prescribed by § 6.1-94, and comply with the applicable provisions of Article 12 (§ ~~13.1-716~~ *13.1-715.1* et seq.) of the Virginia Stock Corporation Act. If the Commission finds that (i) the proposed transaction will not be detrimental to the safety and soundness of the applicant, (ii) any new officers and directors of the resulting bank are qualified by character, experience, and financial responsibility to direct and manage the resulting bank, and (iii) the

proposed merger is in the public interest, it may approve the interstate merger transaction and the operation of branches outside Virginia by the Virginia state bank. Such an interstate merger transaction may be consummated only after the applicant has received the Commission's written approval.

§ 6.1-44.19. Filing requirements.

Any out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a Virginia bank shall submit to the Commission a copy of the application it files with the responsible federal banking agency to engage in the interstate merger transaction. Such submission shall be made at the same time the application is filed by the out-of-state bank with the responsible federal banking agency. All banks which are parties to any interstate merger transaction involving a Virginia bank shall comply with Article 12 (§ ~~13.1-716~~ *13.1-715.1* et seq.) of the Virginia Stock Corporation Act, as applicable, and with other applicable state and federal laws. Any out-of-state bank resulting from an interstate merger transaction shall comply with Article 17 (§ 13.1-757 et seq.) of the Virginia Stock Corporation Act. The out-of-state bank shall pay any filing fee required by the Commission.

§ 6.1-100.1. Merger or transfer of assets of insolvent bank.

A. If the Commission shall find that any bank is insolvent, that its merger into another bank is desirable for the protection of its depositors and that an emergency exists, and, if the board of directors of such insolvent bank shall approve a plan of merger of such bank into another bank, compliance with the requirements of § 13.1-718 shall be dispensed with as to such insolvent bank and the approval by the Commission of such plan of merger shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such insolvent bank for all purposes of Article 12 (§ ~~13.1-716~~ *13.1-715.1* et seq.) of Chapter 9 of Title 13.1.

B. If the Commission finds that a bank is insolvent, that the acquisition of its assets by another bank is in the best interests of its depositors and that an emergency exists, it may, with the consent of the boards of directors of both banks as to the terms and conditions of such transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the assets of such insolvent bank to such other bank and no compliance with the provisions of §§ 13.1-723 and 13.1-724 shall be required, nor shall §§ 13.1-730 through 13.1-741 be applicable to such transfer.

C. In the case either of such a merger or of such a sale of assets, the Commission shall provide that prompt notice of its finding of insolvency and of the merger or sale of assets be sent to the stockholders of record of the insolvent bank for the purpose of providing such shareholders an opportunity to challenge the finding that the bank is insolvent. The relevant books and records of such insolvent bank shall remain intact and be made available to such shareholders for a period of ~~thirty~~ *30* days after such notice is sent. The Commission's finding of insolvency shall become final if a hearing before the Commission is not requested by any such shareholder within such ~~thirty~~ *30*-day period.

D. If, after such hearing provided in subsection C ~~hereof~~, the Commission finds that such bank was solvent, it shall rescind its order entered pursuant to subsection A or subsection B ~~hereof~~ and the merger or transfer of assets shall be rescinded. But if, after such hearing, the Commission finds that such bank was insolvent, its order shall be final.

E. [Repealed.]

§ 6.1-194.88. Merger, consolidation or transfer of assets of insolvent or financially unstable association; notice and hearing; final order; priorities; examinations of resulting institutions.

A. If the Commission finds (i) that any state association is insolvent, or that, in its opinion, the financial stability of a state association is threatened, (ii) that the merger or consolidation of such state association into another savings institution or into a bank is desirable for the protection of the stockholders, members or depositors of such association, and that such merger or consolidation is in the public interest, and (iii) that an emergency exists, and if the board of directors of such state association approves a plan of merger or consolidation of such association into another savings institution or bank, compliance with the requirements of § 13.1-718 or ~~§~~ 13.1-895 shall be dispensed with as to such state association and the approval by the Commission of such plan of merger or consolidation shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such state association for all purposes of Article 12 (§ ~~13.1-716~~ *13.1-715.1* et seq.) of Chapter 9 of Title 13.1 or the approval of two-thirds of the members for all purposes of Article 11 (§ 13.1-894 et seq.) of Chapter 10 of Title 13.1.

B. If the Commission finds (i) that a state association is insolvent, or that, in its opinion, the financial stability of a state association is threatened, (ii) that the acquisition of the assets and liabilities of such association by another savings institution or by a bank is in the best interests of the stockholders, members or depositors of such state association, and that such acquisition of the assets and liabilities is in the public interest, and (iii) that an emergency exists, it may, with the consent of the board of directors of both institutions as to the terms and conditions of such transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the assets and liabilities of such state association to such other savings institution or bank and no compliance with the provisions

of § 13.1-723 ~~or §~~, 13.1-724 ~~or §~~, 13.1-899, or ~~§~~–13.1-900 shall be required, nor shall § 13.1-730 be applicable to such transfer.

C. In the case either of such a merger, consolidation or a transfer of assets and liabilities, the Commission shall provide that prompt notice of its findings, and plan of merger, consolidation or transfer of assets and liabilities, be sent to the stockholders or members of record of such insolvent association or association threatened with financial instability for the purpose of providing such shareholders or members an opportunity to challenge the findings of the Commission and the plan of merger, consolidation or transfer of assets and liabilities. The relevant books and records of such state association shall remain intact and be made available to such shareholders or members for a period of ~~thirty~~ *30* days after such notice is sent. The Commission's findings and plan of merger, consolidation or transfer of assets and liabilities shall become final if a hearing before the Commission is not requested by any such shareholder or member in a written request delivered to the Commission within ~~fifteen~~ *15* days after the notice specified by this section is sent. Any such request for a hearing shall contain a statement of the specific grounds for such shareholder's or member's challenge to the Commissioner's findings and plan of merger, or consolidation or transfer of assets and liabilities.

D. If, after such hearing provided in subsection C ~~of this section~~, the Commission finds that good cause has been shown for the reversal or modification of its initial findings, or for rescission or modification of its initial plan for merger, consolidation or transfer of assets and liabilities, the Commission shall enter its final order accordingly. But if, after such hearing, the Commission affirms its original findings and plan for merger, or consolidation or transfer of assets and liabilities, its order shall be final.

E. Notwithstanding any other provision of law, any institution resulting from a merger, consolidation or a transfer of assets and liabilities under the provisions of this section shall have the right to retain and operate all offices of the association so merged, consolidated or acquired which were in operation at the time of such merger, or consolidation or acquisition. This section shall not be construed to allow the establishment of additional branches by any institution resulting from such merger, consolidation or transfer than would otherwise be allowed by the laws of the Commonwealth.

F. For the purposes of this section, the word "insolvent" shall mean that the current book value of liabilities is in excess of the current book value of assets.

G. For the purposes of this section, the terms "association," "bank," or "savings institution" shall mean institutions incorporated or established under the laws of (i) the Commonwealth of Virginia, (ii) the United States, (iii) any other state of the United States, (iv) a territory of the United States, or (v) the District of Columbia, which institutions' deposits are insured as required by this title for the issuance of a certificate of authority to do business.

H. The Commission shall authorize transactions under this section according to the following priorities:

1. First, between financial institutions of the same type located within the Commonwealth of Virginia;

2. Second, between financial institutions of different types located within the Commonwealth of Virginia;

3. Third, between financial institutions of the same type including depository institutions located outside the Commonwealth of Virginia; and

4. Fourth, between financial institutions of different types including depository institutions located outside the Commonwealth of Virginia.

I. In considering transactions involving financial institutions located outside the Commonwealth of Virginia, the Commission shall give priority to plans of merger, consolidation or asset acquisition involving financial institutions located in states adjoining the Commonwealth of Virginia or located in the District of Columbia.

J. Any institution resulting from a transaction authorized by this section whose main office is located outside of the Commonwealth of Virginia shall, as a condition of being able to do business in ~~this~~ *the* Commonwealth, allow the Commission to examine such institution from time to time as the Commission deems necessary. In conducting such examinations, the Commission shall have all of the powers provided by this title relating to the examination of financial institutions.

K. The provisions of Article 5 (§ 6.1-194.41 et seq.) and Article 11 (§ 6.1-194.96 et seq.) of this chapter shall not apply to mergers, consolidations, and acquisitions authorized by the provisions of this section.

§ 6.1-194.150. Merger, consolidation or transfer of assets of insolvent or financially unstable state savings bank; notice and hearing; final order; priorities; examinations of resulting institutions.

A. If the Commission finds (i) that any state savings bank is insolvent or that, in its opinion, the financial stability of a state savings bank is threatened, (ii) that the merger or consolidation of such state savings bank into another savings institution or into a bank is desirable for the protection of the

stockholders or depositors of such savings bank and that such merger or consolidation is in the public interest, and (iii) that an emergency exists, and if the board of directors of such state savings bank shall approve a plan of merger or consolidation of such savings bank into another savings institution or bank, compliance with the requirements of § 13.1-718 or ~~§~~ 13.1-895 shall be dispensed with as to such savings bank and the approval by the Commission of such plan of merger or consolidation shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such savings bank for all purposes of Article 12 (§ ~~13.1-716~~ *13.1-715.1* et seq.) of Chapter 9 of Title 13.1 or the approval of two-thirds of the members for all purposes of Article 11 (§ 13.1-894 et seq.) of Chapter 10 of Title 13.1.

B. If the Commission finds (i) that a state savings bank is insolvent or that, in its opinion, the financial stability of a state savings bank is threatened, (ii) that the acquisition of the assets and liabilities of such savings bank by another savings institution or by a bank is in the best interests of the stockholders or depositors of such savings bank and that such acquisition of the assets and liabilities is in the public interest, and (iii) that an emergency exists, it may, with the consent of the board of directors of both institutions as to the terms and conditions of such transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the assets and liabilities of such savings bank to such other savings institution or bank, and no compliance with the provisions of §§ 13.1-723, 13.1-724, 13.1-899, or ~~§~~ 13.1-900 shall be required, nor shall § 13.1-730 be applicable to such transfer.

C. In the case of either such a merger or consolidation or of such a transfer of assets and liabilities, the Commission shall provide that prompt notice of its findings and plan of merger, consolidation or transfer of assets and liabilities, be sent to the stockholders of record of such insolvent savings bank or savings bank threatened with financial instability for the purpose of providing such shareholders an opportunity to challenge the findings of the Commission and the plan of merger, consolidation or transfer of assets and liabilities. The relevant books and records of such savings bank shall remain intact and be made available to such shareholders or members for a period of ~~thirty~~ *30* days after such notice is sent. The Commission's findings and plan of merger, consolidation or transfer of assets and liabilities shall become final if a hearing before the Commission is not requested by any such shareholder in a written request delivered to the Commission within ~~fifteen~~ *15* days after the notice specified by this section is sent. Any such request for a hearing shall contain a statement of the specific grounds for such shareholder's challenge to the Commissioner's findings and plan of merger, consolidation or transfer of assets and liabilities.

D. If, after such hearing provided in subsection C ~~of this section~~, the Commission finds that good cause has been shown for the reversal or modification of its initial findings, or for rescission or modification of its initial plan for merger, consolidation or transfer of assets and liabilities, the Commission shall enter its final order accordingly. But if, after such hearing, the Commission affirms its original findings and plan for merger, consolidation or transfer of assets and liabilities, its order shall be final.

E. Notwithstanding any other provision of law, any institution resulting from a merger, a consolidation or a transfer of assets and liabilities under the provisions of this section shall have the right to retain and operate all offices of the savings bank so merged, consolidated or acquired which were in operation at the time of such merger, consolidation or acquisition. This section shall not be construed to allow the establishment of additional branches by any institution resulting from such merger, consolidation or transfer than would otherwise be allowed by the laws of the Commonwealth.

F. For the purposes of this section, ~~the word~~ "insolvent" means that the current book value of liabilities is in excess of the current book value of assets.

G. For the purposes of this section, the term "savings bank," "bank," or "savings institution" shall mean institutions incorporated or established under the laws of (i) the Commonwealth, (ii) the United States, (iii) any other state of the United States, (iv) a territory of the United States, or (v) the District of Columbia, which institutions' deposits are insured as required by this title for the issuance of a certificate of authority to do business.

H. The Commission shall authorize transactions under this section according to the following priorities:

1. First, between financial institutions of the same type located within the Commonwealth;

2. Second, between financial institutions of different types located within the Commonwealth;

3. Third, between financial institutions of the same type including depository institutions located outside the Commonwealth; and

4. Fourth, between financial institutions of different types including depository institutions located outside the Commonwealth.

I. (Repealed.)

J. Any institution resulting from a transaction authorized by this section whose main office is located

outside of the Commonwealth shall, as a condition of being able to do business in ~~this~~ *the* Commonwealth, allow the Commission to examine such institution from time to time as the Commission deems necessary. In conducting such examinations, the Commission shall have all of the powers provided by this title relating to the examination of financial institutions.

K. The provisions of Article 5 (§ 6.1-194.41 et seq.) and Article 11 (§ 6.1-194.96 et seq.) of this chapter shall not apply to merger, consolidations, and acquisitions authorized by the provisions of this section.

§ 13.1-603. Definitions.

In this chapter:

"Articles of incorporation" means all documents constituting, at any particular time, the charter of a corporation. It includes the original charter issued by the General Assembly, a court or the Commission and all amendments including certificates of merger, except a certificate of merger with a subsidiary pursuant to § 13.1-719, consolidation, serial designation, reduction or correction. It excludes articles of exchange filed by an acquiring corporation. When the articles of incorporation have been restated pursuant to any articles of amendment, *domestication,* or merger, it includes only the restated articles of incorporation, including any articles of serial designation, without the accompanying articles of amendment, *domestication,* or merger.

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

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

"Commission" means the State Corporation Commission of Virginia.

"Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or 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 ~~Act~~ *chapter* or existing pursuant to the laws of ~~this~~ *the* Commonwealth on January 1, 1986, or which, by virtue of articles of incorporation, amendment, or merger, has become a domestic corporation of ~~this~~ *the* Commonwealth, even though also being a corporation organized under laws other than the laws of ~~this~~ *the* Commonwealth, or which has become a domestic corporation of ~~this~~ *the* Commonwealth pursuant to Article 12.1 (§ 13.1-722.2 et seq.) or Article 12.2 (§ 13.1-722.8 et seq.) of this chapter.

"Deliver" ~~includes~~ *or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand,* mail, *commercial delivery, and electronic transmission.*

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

"Disinterested director" means, except with respect to Article 14 (§ 13.1-725 et seq.) of this chapter, a director who, at the time action is to be taken under § 13.1-672.4, 13.1-691, 13.1-699 or 13.1-701, does not have (i) a financial interest in a matter that is the subject of such action or (ii) a familial, financial, professional, employment or other relationship with a person who has a financial interest in the matter, either of which would reasonably be expected to affect adversely the objectivity of the director when participating in the action, and if the action is to be taken under § 13.1-699 or 13.1-701, is also not a party to the proceeding. The presence of one or more of the following circumstances shall not by itself prevent a person from being a disinterested director: (i) nomination or election of the director to the current board by any person, acting alone or participating with others, who is so interested in the matter; (ii) service as a director of another corporation of which an interested person is also a director; or (iii) at the time action is to be taken under § 13.1-672.4, status as a named defendant, as a director against whom action is demanded, or as a director who approved the act being challenged.

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

"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 ~~this~~ *the* Commonwealth, and includes, for all purposes of the laws of ~~this~~ *the* Commonwealth, a registered limited liability partnership.

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

"Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Any term used in this definition that is defined in § 59.1-480 ~~of the Uniform Electronic Transactions Act~~ shall have the meaning set forth in such section. ~~For purposes of §§ 13.1-657 and 13.1-685, a written consent and the signing thereof may be accomplished by one or more electronic transmissions.~~

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

"Eligible interests" means interests or memberships.

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

"Entity" includes ~~corporation and~~ *any domestic or* foreign corporation; *any domestic or foreign* nonstock corporation; ~~profit and not-for-profit~~ *any domestic or foreign* unincorporated ~~association~~ *entity*; ~~business trust,~~ *any* estate~~, partnership,~~ *or* trust~~;~~*;* and ~~two or more persons having a joint or common economic interest; and~~ *any* state, *the* United States and *any* foreign government.

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

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

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

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

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

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

"Foreign registered limited liability partnership" has the same ~~meanings~~ *meaning* as specified in §~~§ 50-2 and~~ 50-73.79.

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

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

"Includes" denotes a partial definition.

"Individual" ~~includes the estate of an incapacitated or deceased individual~~ *means a natural person.*

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

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

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

"Means" denotes an exhaustive definition.

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

"Notice" is defined in § 13.1-610.

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

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

"Person" includes *an* individual and *an* entity.

"Principal office" means the office, in or out of ~~this~~ *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 ~~this~~ *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.

"Public corporation" means a corporation that has ~~300~~ *shares listed on a national securities exchange or regularly traded in a market maintained by one* or more ~~shareholders~~ *members of a national or affiliated securities association*.

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

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

~~"Share" means the unit into which the proprietary interests in a corporation are divided.~~

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

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

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

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

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

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

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

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

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

§ 13.1-604. Filing requirements.

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

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

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

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

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

F. The document shall be executed in the name of the corporation:

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

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

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

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

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

I. If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for

the document, the document shall be in or on the prescribed form.

J. The document shall be delivered to the Commission for filing and shall be accompanied by the required filing fee, and any franchise tax, charter or entrance fee or registration fee required by this chapter ~~or by~~ ~~§ 13.1-775.1~~.

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

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

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

2. The facts may include:

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

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

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

3. As used in this subsection:

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

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

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

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

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

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

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

e. The effective date of a filed document; and

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

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

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

§ 13.1-604.1. Filings with the Commission pursuant to reorganization.

A. Notwithstanding anything to the contrary contained in §§ 13.1-604, 13.1-619, 13.1-720 or ~~§~~ 13.1-743, whenever, pursuant to any applicable statute of the United States relating to reorganizations of corporations, a plan of reorganization of a corporation has been confirmed by the decree or order of a court of competent jurisdiction, the corporation may put into effect and carry out the plan and decrees of the court relative thereto, (i) through an amendment or amendments to the corporation's articles of incorporation containing terms and conditions permitted by this ~~Act~~ *chapter*, (ii) through a plan of merger or share exchange, or (iii) through dissolution, without action by the board of directors or shareholders to carry out the plan of reorganization ordered or decreed by such court of competent jurisdiction under federal statute.

B. The individual or individuals designated by the court shall file with the Commission articles of amendment, merger, share exchange, or dissolution, which, in addition to the matters otherwise required or permitted by law to be set forth therein, shall set forth:

1. The name of the corporation;

2. The text of each amendment, plan of merger or share exchange or dissolution approved by the court;

3. The date of the court's order or decree approving the articles of amendment, plan of merger or share exchange or dissolution;

4. The title of the reorganization proceeding in which the order or decree was entered; and

5. A statement that the court had jurisdiction of the proceeding under federal statute.

C. If the Commission finds that the articles of amendment, merger, share exchange or dissolution comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment, merger, share exchange or dissolution.

D. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

§ 13.1-607. Correcting filed articles.

A. The board of directors of a domestic or foreign corporation may authorize correction of any articles filed with the Commission if *(i)* the articles ~~(i)~~ contain an ~~incorrect~~ ~~statement~~ ~~or~~ *inaccuracy;* (ii) *the articles* were defectively executed, attested, sealed, verified, or acknowledged*; or (iii) the electronic transmission of the articles was defective*.

B. Articles are corrected:

1. By preparing articles of correction that ~~describe~~*:*

a. Describe the articles to be corrected, including their effective date~~,~~*;* and ~~that~~ ~~correct~~

b. Correct the ~~incorrect~~ ~~statement~~ *inaccuracy* or ~~defective~~ ~~execution~~ *defect*; and

2. By filing the articles of correction with the Commission.

C. Upon the issuance of a certificate of correction by the Commission, the articles of correction shall become effective as of the effective date of the articles they correct except as to persons relying on the uncorrected articles and adversely affected by the correction. As to those persons, articles of correction are effective upon the issuance of the certificate of correction.

D. No articles of correction shall be accepted by the Commission when received more than ~~nine~~ *30* days after the effective date of the certificate relating to the articles to be corrected.

§ 13.1-608. Evidentiary effect of copy of filed document.

A certificate attached to a copy of any document admitted to the records of the Commission, bearing the signature of the clerk ~~or~~ ~~an~~ ~~assistant~~ ~~clerk~~ of the Commission *or a member of the staff of the office of the clerk, which in either case may be in facsimile,* and the seal of the Commission, *which may be in facsimile,* is conclusive evidence that the document has been admitted to the records of the Commission.

§ 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 shall state that the corporation is in good standing in this Commonwealth and shall set forth:

1. The domestic corporation's corporate name or the foreign corporation's corporate name used in this Commonwealth;

2. That (i) the domestic corporation is duly incorporated under the law of this Commonwealth, the date of its incorporation, and the period of its duration if less than perpetual; or that (ii) the foreign corporation is authorized to transact business in ~~this~~ *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 this 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 ~~or~~ ~~Title~~ ~~12.1~~ have been paid;

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

3. No certificate of dissolution or certificate of withdrawal has been issued or such certificate 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 ~~this~~ *the* Commonwealth.

§ 13.1-610. Notice.

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

A. Notice shall be in writing except that oral notice of any meeting of the board of directors may be

given if expressly authorized by the articles of incorporation or bylaws. *Notice by electronic transmission is written notice.*

B. Notice may be communicated in person; by *mail or other method of delivery; or by* telephone, ~~telegraph, teletype,~~ *voice mail,*or other ~~form of wire or wireless communication; or by mail or private carrier~~ *electronic means*. If these forms of personal notice are impracticable, notice may be communicated by 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 broadcast communication in the area where the notice is intended to be given.

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

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

E. Except as provided in ~~subdivisions B and~~ *subsection* C ~~of this section~~, written notice, if in a comprehensible form, is effective at the earliest of the following:

1. When received;

2. Five days after its deposit in the United States mail~~, as evidenced by the postmark,~~ if mailed postpaid and correctly addressed;

3. On the date shown on the return receipt~~,~~ if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

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

G. When this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements govern.

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

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

§ 13.1-611. Number of shareholders.

A. For purposes of this chapter, the following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:

1. Two or more co-owners;

2. A corporation, *limited liability company,* partnership, *limited partnership, business trust,* trust, estate, or other entity; or

3. The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

B. For purposes of this chapter, shareholdings registered in substantially similar names constitute one

shareholder if it is reasonable to believe that the names represent the same person.

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

A. The Commission shall have no power to grant a ~~rehearing~~ *hearing* with respect to any certificate issued by the Commission with respect to any articles filed with the Commission except on a petition by a shareholder filed with the Commission and the corporation within ~~ten~~ *10* days after the effective date of the certificate, in which the shareholder asserts that the certification of corporate action contained in the articles contains a misstatement of a material fact as to compliance with statutory requirements, specifying the particulars thereof. After hearing, on notice in writing to the corporation and the shareholder, the Commission shall determine the issues and revoke or refuse to revoke its order accordingly.

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

§ 13.1-615. Fees to be collected by Commission; payment of fees prerequisite to Commission action; exceptions.

A. The Commission shall assess the registration fees and shall charge and collect the filing fees, charter fees, and entrance fees imposed by law. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document which is not accepted for filing, at any time within one year from the date of its payment.

B. The Commission shall not issue any certificate or file any document specified in this chapter, except the report required by § 13.1-775, until all fees, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this chapter or Title 12.1 have been paid. However, a certificate of termination of corporate existence may be issued under the provisions of § 13.1-751 without requiring prepayment of any such assessment. Except as provided hereinafter, the issuance of such certificate shall not have the effect of releasing any obligation that has accrued in favor of ~~this~~ *the* Commonwealth on account of such assessment.

Any domestic corporation that has ceased to exist in ~~this~~ *the* Commonwealth because of the issuance of a certificate of termination of corporate existence, certificate of incorporation surrender or certificate of entity conversion or any foreign corporation ~~which~~ *that* has obtained a certificate of withdrawal, effective prior to its annual report due date pursuant to subsection C of § 13.1-775 in any year, shall not be required to pay the registration fee for that year. Any domestic or foreign corporation ~~which~~ *that* has merged, effective prior to its annual report due date pursuant to subsection C of § 13.1-775 in any year, into a surviving domestic corporation or into a surviving foreign corporation that files with the Commission the certificate of merger prior to such date, shall not be required to pay the registration fee for that year. The Commission shall enter an order withdrawing and cancelling the registration fee assessments specified in this section that remain unpaid. Any foreign corporation ~~which~~ *that* has amended its articles of incorporation to reduce the number of shares it is authorized to issue, effective prior to its annual assessment date pursuant to subsection B of § 13.1-775.1 of a given year, and has timely filed an authenticated copy of the amendment with the Commission pursuant to § 13.1-760 after its annual assessment date pursuant to subsection B of § 13.1-775.1, shall have its registration fee reassessed to reflect the new number of authorized shares. Registration fee assessments that have been paid shall not be refunded.

§ 13.1-616. Fees for filing documents or issuing certificates.

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

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

1. Articles of incorporation, domestication, entity conversion or incorporation surrender.

2. Articles of amendment or restatement.

3. Articles of merger or share exchange.

4. Articles of correction.

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

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

7. A copy of an amendment to the articles of incorporation of a foreign corporation holding a

certificate of authority to transact business in the Commonwealth.

8. A copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

9. A copy of an instrument of entity conversion of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

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

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

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

3. An application for use of an indistinguishable name.

4. Articles of dissolution.

5. Articles of revocation of dissolution.

6. Articles of termination of corporate existence.

7. A statement of withdrawal of a foreign corporation.

C. For issuing a certificate of change of name the fee shall be $5.

§ 13.1-619. Articles of incorporation.

A. The articles of incorporation shall set forth:

1. A corporate name for the corporation that satisfies the requirements of § 13.1-630;

2. The number of shares the corporation is authorized to issue;

3. If more than one class *or series* of shares is authorized, the number of authorized shares of each class *or series* and a distinguishing designation for each class *or series*; and

4. The address of the corporation's initial registered office (including both (i) the post-office address with street and number, if any, and (ii) the name of the city or county in which it is located), and the name of its initial registered agent at that office, and that the agent is either (i) an individual who is a resident of Virginia and either a director of the corporation or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in ~~this~~ *the* Commonwealth.

B. The articles of incorporation may set forth:

1. The names and addresses of the individuals who are to serve as the initial directors;

2. Any provision defining or denying the preemptive right of shareholders to acquire unissued shares of the corporation;

3. Provisions not inconsistent with law:

a. Stating the purpose or purposes for which the corporation is organized;

b. Regarding the management of the business and regulation of the affairs of the corporation;

c. Defining, limiting, and regulating the powers of the corporation, its directors, and shareholders;

d. Establishing a par value for authorized shares or classes *or series* of shares; and

4. Any provision that under this chapter is required or permitted to be set forth in the bylaws.

C. The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

D. Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection L of § 13.1-604.

§ 13.1-627. General powers.

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

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

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

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

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

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

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

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

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

security for repayment;

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

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

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

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

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

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

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

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

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

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

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

D. Each corporation which is deemed a private foundation, as defined in § 509 of the Internal Revenue Code, unless its articles of incorporation expressly provide otherwise, shall distribute its income and, if necessary, principal, for each taxable year at such time and in such manner as not to subject such corporation to tax under § 4942 of the Internal Revenue Code. Such corporation shall not engage in any act of self-dealing, as defined in § 4941 (d) of the Internal Revenue Code, retain any excess business holdings, as defined in § 4943 (c) of the Internal Revenue Code, make any investments in such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code or make any taxable expenditures, as defined in § 4945 (d) of the Internal Revenue Code. This subsection shall apply to any corporation organized after December 31, 1969, under this chapter or under the Virginia Stock Corporation Act (§ 13.1-601 et seq.) enacted by Chapter 428 of the 1956 Acts of General Assembly; and to any corporation organized before January 1, 1970, only for its taxable years beginning on and

after January 1, 1972, unless the exceptions provided in § 508 (e) (2) (A) or (B) of the Internal Revenue Code shall apply or unless the board of directors of such corporation shall elect that such restrictions as contained in this subsection shall not apply by filing written notice of such election with the Attorney General and the clerk of the Commission on or before December 31, 1971. Each reference to a section of the Internal Revenue Code made in this subsection shall include future amendments to such Code sections and corresponding provisions of future internal revenue laws.

§ 13.1-628. Emergency powers.

A. In anticipation of or during an emergency defined in subsection D ~~of this section~~, the board of directors of a corporation may:

1. Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

2. Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

B. During an emergency defined in subsection D ~~of this section~~, unless emergency bylaws provide otherwise:

1. Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

2. One or more officers of the corporation present at a meeting of the board of directors may be deemed by a majority of the directors present at the meeting to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

C. Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

1. Binds the corporation; and

2. May not be used to impose liability on a ~~corporate~~ director, officer, employee, or agent *of the corporation*.

D. An emergency exists for purposes of this section if a quorum of the corporation's board of directors cannot readily be assembled because of some catastrophic event.

§ 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 it will transact one of the special kinds of businesses listed in § 13.1-620 unless it proposes in fact to engage in such special kind of business; or

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

C. Except as authorized by subsection D ~~of this section~~, 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 ~~this~~ *the* Commonwealth or authorized to transact business in ~~this~~ *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 ~~this~~ *the* Commonwealth;

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

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

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

D. A domestic corporation may apply to the Commission for authorization to use a name that is not distinguishable upon ~~its~~ *the Commission's* records from one or more of the names described in subsection C ~~of this section~~. The Commission shall authorize use of the name applied for if:

1. The other entity consents to the use in writing and submits an undertaking in 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.

2. [Repealed.]

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, or abbreviation required or permitted under this chapter, Chapters 7 (§ 13.1-542 et seq.), 10 (§ 13.1-801 et seq.), 13 (§ 13.1-1100 et seq.), and 14 (§ 13.1-1200 et seq.) of this title, and Chapter 2.1 (§ 50-73.1 et seq.) of Title 50 to be contained in the name of a business entity formed or organized under the laws of ~~this~~ *the* Commonwealth or authorized or registered to transact business in ~~this~~ *the* Commonwealth.

§ 13.1-631. Reserved name.

A. A person may apply to the Commission to reserve the exclusive use of a corporate name, including a designated name for a foreign corporation whose corporate name is not available. If the Commission finds that the corporate name applied for is available, it shall reserve the name for the applicant's exclusive use for a 120-day period.

B. The owner of a reserved corporate name may renew the reservation for successive periods of 120 days each *by filing with the Commission, during the 45-day period preceding the date of expiration of the reservation, a renewal application*.

C. The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Commission a notice of the transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

§ 13.1-632. Registered name.

A. A foreign corporation may register its corporate name, or its corporate name with any addition required by § 13.1-762, if the name is distinguishable upon the records of the Commission from the corporate names that are not available under subsection C of § 13.1-630.

B. A foreign corporation registers its corporate name, or its corporate name with any addition required by § 13.1-762, by:

1. Filing with the Commission (i) an application setting forth its corporate name, or its corporate name with any addition required by § 13.1-762, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and (ii) a certificate setting forth that such corporation is in good standing, or a document of similar import, from the state or country of incorporation, executed by the official who has custody of the records pertaining to corporations; and

2. Paying to the Commission a registration fee in the amount of ~~twenty~~ ~~dollars~~ *$20*. Except as provided in subsection E ~~of~~ ~~this~~ ~~section~~, registration is effective for one year after the date an application is filed.

C. If the Commission finds that the corporate name applied for is available, it shall register the name for the applicant's exclusive use.

D. A foreign corporation whose registration is effective may renew it for the succeeding year by filing with the Commission, during the ~~sixty~~ *60*-day period preceding the date of expiration of the registration, a renewal application ~~which~~ *that* complies with the requirements of subsection B ~~of~~ ~~this~~ ~~section~~, and paying a renewal fee of ~~twenty~~ ~~dollars~~ *$20*. The renewal application is effective when filed in accordance with this section and, except as provided in subsection E ~~of~~ ~~this~~ ~~section~~, renews the registration for one year after the date the registration would have expired if such subsequent renewal of the registration had not occurred.

E. A foreign corporation whose registration is effective may thereafter obtain a certificate of authority to transact business in ~~this~~ *the* Commonwealth under ~~that~~ *the registered* name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in ~~this~~ *the* Commonwealth. The registration terminates when the domestic corporation is incorporated or the foreign corporation obtains a certificate of authority to transact business in ~~this~~ *the* Commonwealth or consents to the authorization of another foreign corporation to transact business in ~~this~~ *the* Commonwealth under the registered name.

F. A foreign corporation ~~which~~ *that* has in effect a registration of its corporate name may release such name by filing a notice of release of a registered name with the Commission and by paying a fee of ~~ten~~ ~~dollars~~ *$10*.

§ 13.1-633. Property title records.

Whenever ~~by~~ ~~merger~~ ~~or~~ ~~amendment~~ ~~to~~ the ~~articles~~ ~~of~~ ~~incorporation~~ ~~the~~ *corporate* name of any domestic or foreign corporation is changed or another domestic or foreign corporation succeeds to the ownership of its property, a certificate reciting such change or succession shall be issued by the clerk of the Commission upon request and such certificate may be admitted to record in the deed books, in

accordance with § 17.1-227, of any recording office within the jurisdiction of which any property of the corporation is located in order to maintain the continuity of title records upon paying a fee of ~~ten dollars~~ *$10* to the clerk of the court, but no tax shall be due thereon. If such corporation is not a domestic corporation or a foreign corporation authorized to do business in ~~this~~ *the* Commonwealth, a similar certificate by any competent authority of the state *or country* of incorporation, may be admitted to record in the deed books, in accordance with § 17.1-227, of any recording office within the jurisdiction of which any property of the corporation is located in order to maintain the continuity of title records upon paying a fee of ~~ten dollars~~ *$10* to the clerk of the court, but no tax shall be due thereon.

§ 13.1-636. Resignation of registered agent.

A. A registered agent may resign ~~his~~ *the* agency appointment by signing and filing with the Commission his statement of resignation accompanied by ~~his~~ *a* certification that ~~he~~ *the registered agent* has mailed a copy thereof to the principal office of the corporation by certified mail. The statement may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

§ 13.1-638. Authorized shares.

A. The articles of incorporation shall ~~prescribe the~~ *set forth any* classes of shares and *series of shares within a class, and* the number of shares of each class *and series*, that the corporation is authorized to issue. If more than one class *or series* of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class~~,~~ *or series* and *shall describe,* prior to the issuance of shares of a class *or series, the terms, including* the preferences, *rights and* limitations ~~and relative rights~~ of that class ~~shall be described in the articles of incorporation~~ *or series*. ~~All~~ *Except to the extent varied as permitted by this section or by subsection B of § 13.1-646, all* shares of a class *or series* shall have *terms, including* preferences, *rights, and* limitations ~~and relative rights~~, *that are* identical with those of other shares of the same class ~~except to the extent otherwise permitted by § 13.1-639~~ or ~~by § 13.1-646 B~~ *series*.

B. The articles of incorporation shall authorize ~~(i) one~~*:*

1. One or more classes *or series* of shares that together have unlimited voting rights~~,~~*;* and ~~(ii) one~~

2. One or more classes *or series* of shares, which may be the same class or classes *or series* as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

C. The articles of incorporation may authorize one or more classes *or series* of shares that:

1. Have special, conditional or limited voting rights, or no right to vote, except to the extent ~~prohibited~~ *otherwise provided* by this ~~Act~~ *chapter*;

2. Are redeemable or convertible as specified in the articles of incorporation ~~(i) at~~*:*

a. At the option of the corporation, the shareholder, or another person or upon the occurrence of a ~~designated~~ *specified* event; ~~(ii) for~~

b. For cash, indebtedness, securities, or other property; and ~~(iii) in a designated amount~~

c. At prices and in amounts specified or ~~in an amount~~ determined in accordance with a ~~designated~~ formula ~~or by reference to extrinsic data or events~~;

3. Entitle the holders to distributions, calculated in any manner, including dividends that may be cumulative, noncumulative or partially cumulative;

4. Have preference over any other class *or series* of shares with respect to distributions, including ~~dividends and~~ distributions upon the dissolution of the corporation; or

5. Entitle the holders to other specified rights, including a right that no transaction of a specified nature shall be consummated while any such shares remain outstanding except upon the assent of all or a specified ~~proportion~~ *portion* of such shares.

D. *Any of the terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection L of § 13.1-604.*

E. Any of the terms of shares may vary among holders of the same class or series so long as such variations are expressly set forth in the articles of incorporation.

F. The description of the ~~designations,~~ preferences, *rights, and* limitations ~~and relative rights~~ of ~~share~~ classes *or series of shares* in subsection C is not exhaustive.

§ 13.1-639. Terms of class or series determined by board of directors.

A. If the articles of incorporation so provide, the board of directors, *without shareholder action, may,* by ~~an~~ adoption of an amendment of the articles of incorporation~~, may fix in whole or part, the preferences, limitations and relative rights, within the limits set forth in § 13.1-638, of (i)~~*:*

1. Classify any ~~class of~~ *unissued* shares ~~before the issuance of any shares of that class or (ii)~~ *into* one or more *classes or into one or more* series within ~~a class before the issuance of~~ *one or more classes;*

2. Reclassify any *unissued* shares of ~~that~~ *any class into one or more classes or into one or more* series~~.~~ *within one or more classes; or*

~~B. Each~~

3. Reclassify any unissued shares of any series of ~~a~~ *any* class ~~shall be given a distinguishing designation.~~

~~C. All shares of a~~ *into one or more classes or into one or more* series ~~shall have preferences, limitations and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, of those of other series of the same class~~ *within one or more classes.*

B. If the board of directors acts pursuant to subsection A, it shall determine the terms, including the preferences, rights and limitations, to the same extent permitted under § 13.1-638, of:

1. Any class of shares before the issuance of any shares of that class, or

2. Any series within a class before the issuance of any shares of that series.

~~D~~ *C.* When the board of directors has adopted an amendment of the articles of incorporation pursuant to ~~this section~~ *subsection A,* the corporation shall file with the Commission articles of amendment~~, which may become effective without shareholder action,~~ that set forth:

1. The name of the corporation;

2. The text of the amendment determining the terms of the class *or classes* or series of shares;

3. The date it was adopted; and

4. A statement that the amendment was duly adopted by the board of directors.

If the Commission finds that the articles comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment. Shares of any class or series that are the subject of the articles of amendment shall not be issued until the certificate of amendment is effective.

~~E~~ *D.* Unless the articles of incorporation otherwise provide, the board of directors may ~~redesignate any shares of any series theretofore established that have not been issued, or that have been issued and reacquired, as shares of some other series, and may~~ delete from the articles of incorporation any provisions originally adopted by the board of directors without shareholder action fixing the preferences, limitations and ~~relative~~ rights of any class of shares or series within a class, provided there are no shares of such class or series then outstanding. Such ~~redesignation, change of designation or~~ deletion shall be set forth in articles of amendment, which may become effective without shareholder action.

§ 13.1-641. Fractional shares.

A. A corporation may, if authorized by its board of directors:

1. Issue fractions of a share or pay in money the value of fractions of a share;

2. Arrange for disposition of fractional shares by the shareholders; or

3. Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

B. Each certificate representing scrip shall be conspicuously labeled "Scrip" and shall contain the information required by subsection B of § 13.1-647.

C. The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon dissolution. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

D. The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

1. That the scrip will become void if not exchanged for full shares before a specified date; and

2. That the shares for which the scrip is exchangeable may be sold by the corporation and the proceeds paid to the scripholders.

E. When a corporation is to pay in money the value of fractions of a share such value shall be determined by the board of directors. A good faith judgment of the board *of directors* as to the value of a fractional share is conclusive.

§ 13.1-642. Subscription for shares before incorporation.

A. A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides otherwise or all the subscribers agree to revocation.

B. The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

C. Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

D. If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. The articles of incorporation, bylaws or the subscription agreement may prescribe other penalties for nonpayment but a subscription and the installments already paid on it may not be forfeited unless the corporation demands the amount due by written notice to the subscriber and it remains unpaid for at least ~~twenty~~ *20* days after the effective date of the notice.

E. If a subscription for unissued shares is forfeited for nonpayment under subsection D ~~of this section~~, the corporation may sell the shares subscribed for. If the shares are sold by reason of any forfeiture for more than the amount due on the subscription, the corporation shall pay the excess, after deducting the expense of sale, to the subscriber or ~~his~~ *the subscriber's* representative.

F. A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to § 13.1-643.

§ 13.1-646. Share options.

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

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

§ 13.1-647. Form and content of certificates evidencing shares and form of bonds.

A. Shares may but need not be represented by certificates. Unless this ~~Act~~ *chapter* or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

B. At a minimum each share certificate shall state on its face:

1. The name of the issuing corporation and that it is organized under the law of this Commonwealth;

2. The name of the person to whom issued; and

3. The number and class of shares and the designation of the series, if any, the certificate represents.

C. If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, ~~relative~~ rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series (and the authority of the board of directors to determine variations for future series) shall be summarized on the front or back of each certificate for shares of such class or series. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

D. Each share certificate (i) shall be signed by two officers designated in the bylaws or by the board of directors and (ii) may bear the corporate seal or its facsimile. Unless otherwise provided in the articles of incorporation or bylaws, any or all of the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if ~~he~~ *such person* were such officer, transfer agent or registrar at the date of issue.

E. On any bond, note or debenture issued by a corporation ~~which~~ *that* is countersigned or otherwise authenticated by the manual signature of a trustee, the signatures of the officers of the corporation and its seal may be facsimiles.

F. If the person who signed, either manually or in facsimile, a share certificate or bond, note or debenture no longer holds office when the certificate or bond, note or debenture is issued, the certificate or bond, note or debenture is nevertheless valid.

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

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

B. A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement

required by subsection B of § 13.1-648. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

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

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

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

3. For any other reasonable purpose.

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

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

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

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

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

E. For ~~purpose~~ *purposes* of this section, "shares" includes ~~a~~ *any warrants, rights or options to acquire any such shares or any* security *or other obligation of the corporation* convertible into *any such shares* or ~~carrying a right~~ *into warrants, rights or options* to ~~subscribe for or~~ acquire *any such* shares.

§ 13.1-651. Shareholders' preemptive rights.

A. Unless limited or denied in the articles of incorporation and subject to the ~~limitation~~ *limitations* in ~~subsection C of this section~~ *subsections D through G,* the shareholders of a corporation *incorporated on or before December 31, 2005,* have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

B. *Unless otherwise provided for in the articles of incorporation, the shareholders of a corporation incorporated after December 31, 2005, have no preemptive right to acquire the corporation's unissued shares upon the decision of the board of directors to issue them.*

C. Except to the extent that the articles of incorporation expressly provide otherwise, a shareholder may waive ~~his~~ *the shareholder's* preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

~~C~~ *D.* Unless expressly conferred in the articles of incorporation, there is no preemptive right with respect to:

1. Shares issued to officers or employees of the corporation or of its subsidiaries pursuant to a plan approved by the shareholders; or

2. Shares sold other than for money.

~~D~~ *E.* Holders of shares of any class with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

~~E~~ *F.* Holders of shares of any class without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into, or carry a right to subscribe for or acquire, shares without preferential rights.

~~F~~ *G.* Holders of shares without general voting rights and without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with general voting rights but without preferential rights to distributions or assets.

~~G~~ *H.* Except to the extent that the articles of incorporation expressly provide otherwise, shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

~~H~~ *I.* For purposes of this section, "shares" includes ~~a~~ *any warrants, rights or options to acquire any such shares or any* security *or other obligation of the corporation* convertible into *any such shares* or ~~carrying a right~~ *into warrants, rights or options* to ~~subscribe for or~~ acquire *any such* shares.

§ 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 reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon the issuance of a certificate of amendment. The corporation shall file with the Commission articles of amendment setting 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 authorized by the board of directors. The articles of amendment may be adopted by the board of directors without shareholder action.

C. 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.

§ 13.1-653. Distributions to shareholders.

A. A board of directors may authorize and the corporation may make distributions to its shareholders, subject to restriction by the articles of incorporation and the limitation in subsection C ~~of this section~~.

B. If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a ~~repurchase or reacquisition~~ *purchase, redemption or other acquisition* of *the corporation's* shares, it is the date the board of directors authorizes the distribution.

C. No distribution may be made if, after giving it effect:

1. The corporation would not be able to pay its debts as they become due in the usual course of business; or

2. The corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

D. The board of directors may base a determination that a distribution is not prohibited under subsection C ~~of this section~~ either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances. *For any public corporation, reliance upon the most recent financial statements that have been prepared in accordance with accounting principles generally accepted in the United States shall be deemed to be reasonable in the circumstances if the financial statements have been audited by independent certified public accountants whose certification does not include a going concern qualification.*

E. ~~The~~ *Except as provided in subsection G, the* effect of a distribution under subsection C ~~of this section~~ is measured:

1. In the case of a distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of (i) the date money or other property is transferred or debt incurred by the corporation or (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

2. In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; *and*

3. In all other cases, as of (i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or (ii) the date payment is made if it occurs more than 120 days after the date of authorization.

F. A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

G. Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection C if its terms provide that payments of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

H. This section shall not apply to distributions in liquidation under Article 16 (§ 13.1-742 et seq.) of this chapter.

§ 13.1-654. Annual meeting.

A. A corporation shall hold *a meeting of shareholders* annually at a time stated in or fixed in accordance with the bylaws ~~a meeting of shareholders~~, except that a corporation registered under the Investment Company Act of 1940 is not required to hold an annual meeting in any year in which the election of directors is not required to be held under the Investment Company Act of 1940 unless the articles of incorporation or bylaws of the corporation require an annual meeting to be held.

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

C. If the articles of incorporation or bylaws so provide, shareholders may participate in an annual

meeting by use of any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

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

§ 13.1-655. Special meeting.

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

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

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

B. ~~The~~ *Unless otherwise provided in the* articles of incorporation ~~may provide for an increase or decrease in the percentage stated in paragraph 2 of subsection A of this section~~, *a written demand for a special meeting may be revoked by a writing, including an electronic transmission, to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting*.

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

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

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

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

§ 13.1-656. Court-ordered meeting.

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

1. On petition of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within ~~fifteen~~ *15* months after its last annual meeting or, if there has been no annual meeting, the date of its incorporation; or

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

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

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

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

§ 13.1-657. Corporate action without meeting.

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

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

3. The *corporate* action shall be evidenced by one or more written consents *bearing the date of execution and* describing the *corporate* action taken, signed by the shareholders entitled to take such *corporate* action without a meeting and delivered to the secretary of the corporation for inclusion in the

minutes or filing with the corporate records. Any *corporate* action taken by written consent shall be effective according to its terms when the requisite consents are in possession of the corporation. ~~A shareholder may withdraw consent only by delivering a written notice of withdrawal to the corporation prior to the time that the requisite consents are in the possession of the corporation.~~ *Corporate* action taken under this section is effective as of the date specified therein provided the consent states the date of execution by each shareholder.

B. If not otherwise determined under § *13.1-656 or* 13.1-660, the record date for determining shareholders entitled to take *corporate* action without a meeting is the date the first shareholder signs the consent under subsection A ~~of this section~~. *No written consent shall be effective to take the corporate action referred to therein unless, within 120 days after the earliest date of execution appearing on a consent delivered to the corporation in the manner required by this section, written consents sufficient in number to take corporate action are received by the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to receipt by the corporation of unrevoked written consents sufficient in number to take corporate action.*

C. *For purposes of this section, written consent may be accomplished by one or more electronic transmissions, as defined in § 13.1-603.* A consent signed under this section has the effect of a vote of voting shareholders at a meeting and may be described as such in any document filed with the Commission under this chapter.

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

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

§ 13.1-658. Notice of meeting.

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

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

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

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

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

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

G. [Repealed.]

§ 13.1-660. Record date.

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

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

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

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

§ 13.1-660.1. Conduct of the meeting.

A. At each meeting of shareholders, a chairman shall preside. The chairman shall be appointed as provided in the articles of incorporation, bylaws or, in the absence of such a provision, by the board of directors.

B. Unless the articles of incorporation or bylaws provide otherwise, the chairman shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

C. The chairman of the meeting shall announce at the meeting when the polls open and close for each matter voted upon. If no announcement is made, the polls shall be deemed to have opened at the beginning of the meeting and closed upon the final adjournment of the meeting.

§ 13.1-662. Voting entitlement of shares.

A. Except as provided in subsections B, C, D and E or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting.

B. Unless the articles of incorporation provide otherwise, in the election of directors each outstanding share, regardless of class, is entitled to one vote for as many persons as there are directors to be elected at that time and for whose election the shareholder has a right to vote.

C. ~~Redeemable~~ Shares *that have been called for redemption* are not entitled to vote on any matter and, except as to any right of conversion, shall not be deemed outstanding shares after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution with irrevocable instruction and authority to pay the holders the redemption price on surrender of the shares. Such instruction may provide that the amount so deposited and any interest thereon not claimed within ~~five~~ *a specified period, not less than two* years, after the redemption date shall be repaid to the corporation whose shares are so redeemed, and the persons entitled thereto shall thereafter have only the right to receive the redemption price as unsecured creditors of such corporation.

D. The shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

E. If a corporation holds in a fiduciary capacity its own shares or shares of a second corporation that owns directly or indirectly a majority of shares entitled to vote for directors of the first corporation, such shares shall not be deemed to be outstanding and entitled to vote unless:

1. The corporation has authority to vote the shares only in accordance with directions of the principal or beneficiary; or

2. A co-fiduciary exists, pursuant to § 6.1-31.2 or otherwise, in which event the co-fiduciary may vote the shares.

F. Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine.

G. Shares standing in the name of a partnership may be voted by any partner. *Shares standing in the name of a limited liability company may be voted as the articles of organization or an operating agreement may prescribe, or in the absence of any such provision as the managers, or if there are no managers, the members of the limited liability company may determine.*

H. Shares held by two or more persons as joint tenants or tenants in common or tenants by the entirety may be voted by any of such persons. If more than one of such tenants votes such shares, the vote shall be divided among them in proportion to the number of such tenants voting.

I. Shares held by an administrator, executor, guardian, conservator, committee or curator representing the shareholder may be voted by ~~him~~ *such person* without a transfer of such shares into ~~his~~ *such person's* name. Shares standing in the name of a trustee may be voted by ~~him~~ *the trustee*, but no trustee

is entitled to vote shares held by ~~him~~ *the trustee* without a transfer of such shares into ~~his~~ *the trustee's* name.

J. Shares standing in the name of a receiver or a trustee in proceedings under the Bankruptcy Reform Act of 1978 may be voted by ~~him~~ *such person*. Shares held by or under the control of a receiver or a trustee in proceedings under the Bankruptcy Reform Act of 1978 may be voted by ~~him~~ *such person* without the transfer thereof into ~~his~~ *such person's* name if authority to do so is contained in an order of the court by which ~~he~~ *such person* was appointed.

K. Nothing herein contained shall prevent trustees or other fiduciaries holding shares registered in the name of a nominee pursuant to § 6.1-31 from causing such shares to be voted by such nominee as the trustee or other fiduciary may direct. Such nominee may vote shares as directed by a trustee or other fiduciary without the necessity of transferring the shares to the name of the trustee or other fiduciary.

L. A shareholder whose shares are pledged is entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee is entitled to vote the shares so transferred.

M. The articles of incorporation may provide that the holders of bonds or debentures shall be entitled to vote on specified matters and such right shall not be terminated except upon consent of the holders of two-thirds in aggregate principal amount.

N. Subject to the provisions of § 13.1-665, ~~where~~ *when* shares are held by more than one of the fiduciaries referred to in this section, the shares shall be voted as determined by a majority of such fiduciaries, except that: (i) if they are equally divided as to a vote, the vote of the shares is divided equally and (ii) if only one of such fiduciaries is present in person or by proxy at a meeting, the fiduciary shall be entitled to vote all the shares. A proxy apparently executed by one of several of such fiduciaries shall be presumed to be valid until challenged and the burden of proving invalidity shall rest on the challenger.

§ 13.1-663. Proxies.

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

B. ~~Without limiting the manner in which a shareholder may authorize another person or persons to act for him as proxy pursuant to subsection A of this section, the following shall constitute a valid means by which a shareholder may grant such authority:~~

~~1. A shareholder may execute a writing authorizing another person or persons to act for him as proxy. Execution may be accomplished by the shareholder or his authorized officer, director, employee or agent signing such writing or causing his signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.~~

~~2. A shareholder may authorize another person or persons to act for him as proxy by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which the inspectors of election can determine that the telegram, cablegram or other electronic transmission was authorized by the shareholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors, or if there are no inspectors, such other persons making that determination, shall specify the information upon which they relied.~~

~~3.~~ *A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission shall contain or be accompanied by information from which one can determine that the shareholder, the shareholder's agent or the shareholder's attorney-in-fact authorized the transmission.* Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this subsection may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

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

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

1. A pledgee;

2. A person who purchased or agreed to purchase the shares;

3. A creditor of the corporation who extended it credit under terms requiring the appointment;

4. An employee of the corporation whose employment contract requires the appointment; or

5. A party to a voting agreement created under § 13.1-671.

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

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

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

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

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

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

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

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

C. ~~The date and time of the opening and the closing of the polls for each matter upon which the shareholders will vote at a meeting shall be announced at the meeting.~~ No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the circuit court of the city or county where the corporation's principal office is located or, if none in this Commonwealth, where its registered office is located, upon application by a shareholder, shall determine otherwise.

D. In determining the validity ~~and counting~~ of proxies and ballots *and in counting the votes*, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with § 13.1-663 B ~~2~~, ballots and the regular books and records of the corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons ~~which~~ *that* represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the shareholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification pursuant to ~~subdivision B~~ *clause* (v) of ~~this section~~ *subsection B* shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

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

~~F. Unless otherwise provided in the articles of incorporation or bylaws, subsections A through D of this section shall not apply to a corporation that does not have a class of voting shares that is (i) listed on a national securities exchange, (ii) authorized for quotation on an interdealer quotation system of a registered national securities association, or (iii) held of record by more than 2,000 shareholders.~~

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

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

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

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

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

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

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

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

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

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

E. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section *or subsection B of § 13.1-663* are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

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

§ 13.1-669. Voting for directors; cumulative voting.

A. Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

B. Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

C. A statement included in the articles of incorporation that "all of a designated voting group of shareholders are entitled to cumulate their votes for directors" or words of similar import means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

D. Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

1. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

2. A shareholder who has the right to cumulate his votes gives notice to the secretary of the corporation not less than ~~forty-eight~~ *48* hours before the time set for the meeting of ~~his~~ *the shareholder's* intent to cumulate his votes during the meeting. If one shareholder gives ~~his~~ *such a* notice all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

§ 13.1-670. Voting trusts.

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

transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

B. A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than ~~ten~~ *10* years after its effective date unless extended under subsection C ~~of this section~~.

C. 1. All or some of the parties to a voting trust may extend it for additional terms of not more than ~~ten~~ *10* years each by signing ~~an extension agreement and obtaining the voting trustee's~~ *a* written consent to the extension. An extension is valid for ~~ten~~ *not more than 10* years from the date the first shareholder signs ~~the extension agreement~~ *such a consent*.

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

§ 13.1-671.1. Shareholder agreements.

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

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

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

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

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

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

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

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

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

B. An agreement authorized by this section shall be:

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

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

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

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

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

D. An agreement authorized by this section shall cease to be effective when the corporation ~~has more than 300 shareholders of record~~ *becomes a public corporation*. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the

corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

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

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

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

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

§ 13.1-672.3. Foreign corporations.

Notwithstanding the provisions of §§ 13.1-672.1 and 13.1-672.4, in any derivative proceeding in the right of a foreign corporation, subject to the court's determination of whether the courts of ~~this state~~ *the Commonwealth* are a convenient forum for such a proceeding, determinations of (i) standing and satisfaction of conditions precedent to commencing and maintaining derivative proceedings and (ii) grounds for dismissal of derivative proceedings, shall be governed by the laws of the foreign corporation's state of incorporation.

§ 13.1-672.4. Dismissal.

A. A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection B or ~~F~~ *E* has:

1. Conducted a review and evaluation, adequately informed in the circumstances, of the allegations made in the demand or complaint;

2. Determined in good faith on the basis of that review and evaluation that the maintenance of the derivative proceeding is not in the best interests of the corporation; and

3. Submitted in support of the motion a short and concise statement of the reasons for its determination.

B. Unless a panel is appointed pursuant to subsection ~~F~~ *E*, the determination in subsection A shall be made by:

1. A majority vote of ~~independent~~ *disinterested* directors present at a meeting of the board of directors if the ~~independent~~ *disinterested* directors constitute a quorum; or

2. A majority vote of a committee consisting of two or more ~~independent~~ *disinterested* directors appointed by a majority vote of ~~independent~~ *disinterested* directors present at a meeting of the board of directors, whether or not such ~~independent~~ *disinterested* directors constituted a quorum.

C. ~~None of the following shall by itself cause a director to be considered not independent for purposes of this section:~~

~~1. The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;~~

~~2. The naming of a director as a defendant in a derivative proceeding or as a person against whom action is demanded; or~~

~~3. The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.~~

~~D.~~ If a derivative proceeding has been commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing that the requirements of subsection A have not been met. *The* plaintiff shall be entitled to discovery with respect to the issues presented by the motion only if and to the extent that the complaint alleges such facts with particularity.

~~E~~ *D*. The plaintiff shall have the burden of proving that the requirements of subsection A have not been met, except that the corporation shall have the burden with respect to the issue of independence under subsection B if the complaint alleges with particularity facts raising a substantial question as to such independence.

~~F~~ *E*. The court may appoint a panel of independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation.

§ 13.1-673. Requirement for and duties of board of directors.

A. Except as provided in *an agreement authorized by* § 13.1-671.1, each corporation shall have a board of directors.

B. All corporate powers shall be exercised by or under the authority of, and the business and affairs

of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under § 13.1-671.1.

§ 13.1-675. Number and election of directors.

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

B. The shareholders may adopt a bylaw fixing the number of directors and may direct that such ~~bylaws~~ *bylaw* not be amended by the board of directors. If a bylaw states a fixed number of directors and the board of directors has the right to amend the bylaw, it may by amendment to the bylaw increase or decrease by ~~thirty~~ *30* percent or less the number of directors last elected by the shareholders, or, if the directors' terms are staggered pursuant to § 13.1-678, the number of directors of all classes immediately following the most recent election of directors by the shareholders, but only the shareholders may increase or decrease the number by more than ~~thirty~~ *30* percent.

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

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

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

§ 13.1-677. Terms of directors generally.

A. The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

B. The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under § 13.1-678.

C. A decrease in the number of directors does not shorten an incumbent director's term.

D. The term of a director elected by the board of directors to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

E. Despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors, *if any*.

F. Notwithstanding the foregoing provisions, the terms of the directors of a corporation registered under the Investment Company Act of 1940 shall expire according to, and otherwise be governed by, the provisions of the Investment Company Act of 1940.

§ 13.1-679. Resignation of directors.

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

B. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

C. Any person who has resigned as a director of a corporation, or whose name is incorrectly on file with the Commission as a director of a corporation, 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*.

§ 13.1-680. Removal of directors by shareholders.

A. The shareholders may remove one or more directors with or without cause, unless the articles of incorporation provide that directors may be removed only with cause.

B. If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove ~~him~~ *the director*.

C. If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, unless the articles of incorporation require a greater vote, a director may be removed if the number of votes cast to remove him constitutes a majority of the votes entitled to be cast at an election of directors of the voting group or voting groups by which the director was elected.

D. A director may be removed by the shareholders only at a meeting called for the purpose of

removing ~~him~~ *the director*. The meeting notice shall state that the purpose, or one of the purposes of the meeting, is removal of the director.

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

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

A. ~~Unless~~ *Except to the extent that* the articles of incorporation or bylaws ~~provide otherwise~~ *require that action by the board of directors be taken at a meeting*, action required or permitted by this ~~Act~~ *chapter* to be taken ~~at a~~ *by the* board of ~~directors'~~ ~~meeting~~ *directors* may be taken without a meeting if ~~the action is taken by all members of the board. The action shall be evidenced by one or more written consents stating the action taken, signed by~~ each director ~~either before or after~~ *signs a consent describing* the action *to be* taken~~,~~ and ~~included in~~ *delivers it to* the ~~minutes or filed with the corporate records reflecting the action taken~~ *corporation*.

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

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

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

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

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

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

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

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

§ 13.1-688. Quorum and voting by directors.

A. Unless the articles of incorporation or bylaws require a greater number for the transaction of all business or any particular business, *or unless otherwise specifically provided in this chapter,* a quorum of a board of directors consists of:

1. A majority of the fixed number of directors if the corporation has a fixed board size; or

2. A majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

B. The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection A ~~of this section~~.

C. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

D. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

1. ~~He~~ *The director* objects at the beginning of the meeting, or promptly upon his arrival, to holding it or transacting specified business at the meeting; or

2. ~~He~~ *The director* votes against, or abstains from, the action taken.

E. *Except as provided in § 13.1-671.1, a director shall not vote by proxy.*

F. Whenever this chapter requires the board of directors to take any action or to recommend or approve any proposed corporate act, such action, recommendation or approval shall not be required if the proposed action or corporate act is adopted by the unanimous consent of shareholders.

§ 13.1-689. Committees.

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

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

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

D. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under § 13.1-673, except that a committee may not:

1. Approve or recommend to shareholders action that this ~~Act~~ *chapter* requires to be approved by shareholders;

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

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

4. Adopt, amend, or repeal the bylaws;

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

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

7. Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and ~~relative~~ rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee, or a senior executive officer of the corporation, to do so ~~within~~ *subject to such* limits ~~specifically~~*, if any, as may be* prescribed by the board of directors.

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

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

§ 13.1-691. Director conflict of interests.

A. A conflict of interests transaction is a transaction with the corporation in which a director of the corporation has ~~a direct or indirect personal~~ *an* interest *that precludes the director from being a disinterested director*. A conflict of interests transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

1. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction;

2. The material facts of the transaction and the director's interest were disclosed to the shareholders entitled to vote and they authorized, approved, or ratified the transaction; or

3. The transaction was fair to the corporation.

B. ~~For the purposes of this section, a director of the corporation has an indirect personal interest in a transaction if:~~

~~1. Another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction; or~~

~~2. Another entity of which he is a director, officer or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.~~

~~C.~~ For purposes of subdivision *A* 1 ~~of subsection A of this section~~, a conflict of interests transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the *disinterested* directors on the board of directors, or on the committee~~, who have no direct or indirect personal interest in the transaction~~. A transaction shall not be authorized, approved, or ratified under this section by a

single director. If a majority of the *disinterested* directors ~~who have no direct or indirect personal interest in the transaction~~ vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director ~~with a direct or indirect personal interest in the transaction~~ *who is not disinterested* does not affect the validity of any action taken under subdivision *A* 1 ~~of subsection A of this section~~ if the transaction is otherwise authorized, approved or ratified as provided in that subsection.

~~D~~ *C.* For purposes of subdivision *A* 2 ~~of subsection A of this section~~, a conflict of interests transaction is authorized, approved, or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who ~~has a direct or indirect personal interest in the transaction, and shares owned by or voted under the control of an entity described in subdivision 1 of subsection B of this section,~~ *is not disinterested* may not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interests transaction under subdivision *A* 2 ~~of subsection A of this section~~. The vote of those shares, however, shall be counted in determining whether the transaction is approved under other sections of this chapter. A majority of the shares, whether or not present, ~~which~~ *that* are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

§ 13.1-691.1. Business opportunities.

A. A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and:

1. Directors' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in subdivision A 1 of § 13.1-691, as if the decision being made concerned a director's conflict of interests transaction; or

2. Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in subdivision A 2 of § 13.1-691, as if the decision being made concerned a director's conflict of interests transaction.

B. In any proceeding seeking equitable relief or other remedies, based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ one of the procedures described in subsection A before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

§ 13.1-692. Liability for unlawful distributions.

A. ~~Unless he complies with the applicable standards of conduct described in § 13.1-690,~~ A director who votes for or assents to a distribution made in violation of this chapter or the articles of incorporation is personally liable to the corporation and its creditors for the amount of the distribution that exceeds what could have been distributed without violating this chapter or the articles of incorporation *if the party asserting liability establishes that when taking the action the director did not comply with § 13.1-690*.

B. A director held liable for an unlawful distribution under subsection A ~~of this section~~ is entitled to ~~contribution~~:

1. *Contribution* from every other director who ~~voted~~ *could be held liable under subsection A* for ~~or assented to~~ the *unlawful* distribution ~~without complying with the applicable standards of conduct described in § 13.1-690~~; and

2. *Recoupment* from the shareholders who received the unlawful distribution in proportion to the amounts of such unlawful distribution received by them respectively.

C. No suit shall be brought against any director for any liability imposed by ~~this section~~ *subsection A* except within two years after the right of action shall accrue.

D. Contribution or recoupment under subsection B is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection A.

§ 13.1-693. Required officers.

A. *Except as provided in an agreement authorized by § 13.1-671.1,* a corporation shall have such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors that is not inconsistent with the bylaws and as may be necessary to enable it to execute documents that comply with subsection F of § 13.1-604.

B. ~~A duly appointed~~ *The board of directors may elect individuals to fill one or more offices of the corporation. An* officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

C. The secretary or any other officer as designated in the bylaws or by resolution of the board shall have the responsibility for preparing and maintaining custody of minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

D. The same individual may simultaneously hold more than one office in a corporation.

§ 13.1-695. Resignation and removal of officers.

A. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective ~~date~~ *time*. If a resignation is made effective at a later ~~date~~ ~~and~~ *time,* the corporation ~~accepts~~ ~~the~~ ~~future~~ ~~effective~~ ~~date,~~ ~~it~~ may fill the pending vacancy before the effective ~~date~~ *time* if the successor does not take office until the effective ~~date~~ *time*.

B. A board of directors may remove any officer at any time with or without cause and any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer. Election or appointment of an officer shall not of itself create any contract rights in the officer or the corporation. 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 incorrectly on file with 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*.

§ 13.1-696. Definitions.

In this article:

"Corporation" includes any domestic *corporation and any domestic* or foreign predecessor entity of a *domestic* corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

"Director" *or "officer"* means an individual who is or was a director *or officer, respectively,* of a corporation ~~or~~ ~~an~~ ~~individual~~ who, while a director *or officer* of ~~a~~ *the* corporation, is or was serving at the corporation's request as a director, officer, *manager,* partner, trustee, employee, or agent of another foreign or domestic corporation, *limited liability company,* partnership, joint venture, trust, employee benefit plan, or other ~~enterprise~~ *entity*. A director *or officer* is considered to be serving an employee benefit plan at the corporation's request if his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. "Director" *or "officer"* includes, unless the context requires otherwise, the estate or personal representative of a director *or officer*.

"Expenses" includes counsel fees.

"Liability" means the obligation to pay a judgment, settlement, penalty, fine, including any excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

"Official capacity" means, (i) when used with respect to a director, the office of director in a corporation; or (ii) when used with respect to an ~~individual~~ ~~other~~ ~~than~~ ~~a~~ ~~director~~ *officer*, as contemplated in § 13.1-702, the office in a corporation held by the officer ~~or~~ ~~the~~ ~~employment~~ ~~or~~ ~~agency~~ ~~relationship~~ ~~undertaken~~ ~~by~~ ~~the~~ ~~employee~~ ~~or~~ ~~agent~~ ~~on~~ ~~behalf~~ ~~of~~ ~~the~~ ~~corporation~~. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other ~~enterprise~~ *entity*.

"Party" ~~includes~~ *means* an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

"Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, *arbitrative,* or investigative and whether formal or informal.

§ 13.1-697. Authority to indemnify.

A. Except as provided in subsection D ~~of~~ ~~this~~ ~~section~~, a corporation may indemnify an individual made a party to a proceeding because he is or was a director against liability incurred in the proceeding if *the director*:

1. ~~He~~ Conducted himself in good faith; and

2. ~~He~~ Believed:

a. In the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

b. In all other cases, that his conduct was at least not opposed to its best interests; and

3. In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

B. A director's conduct with respect to an employee benefit plan for a purpose he believed to be in

the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subdivision *A* 2 b ~~of subsection A of this section~~.

C. The termination of a proceeding by judgment, order, settlement or conviction*, or upon a plea of nolo contendere or its equivalent*, is not, of itself, determinative that the director did not meet the *relevant* standard of conduct described in this section.

D. ~~A~~ *Unless ordered by a court under subsection C of § 13.1-700.1, a* corporation may not indemnify a director under this section:

1. In connection with a proceeding by or in the right of the corporation ~~in which~~ *except for reasonable expenses incurred in connection with the proceeding if it is determined that* the director ~~was adjudged liable to~~ *has met* the ~~corporation~~ *relevant standard under subsection A*; or

2. In connection with any other proceeding charging improper personal benefit to ~~him~~ *the director*, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

~~E. Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.~~

§ 13.1-699. Advance for expenses.

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

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

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

~~3. A determination is made that the facts then known to those making the determination would not preclude indemnification under this article~~.

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

C. ~~Determinations and~~ *Authorizations* of payments under this section shall be made ~~in the manner specified in § 13.1-701~~ *by:*

1. The board of directors:

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

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

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

§ 13.1-700.1. Court orders for advances, reimbursement or indemnification.

A. An individual who is made a party to a proceeding because he is ~~or was~~ a director of ~~a~~ *the* corporation may apply to a court for an order directing the corporation to make advances or reimbursement for expenses or to provide indemnification. Such application may be made to the court conducting the proceeding or to another court of competent jurisdiction.

B. The court shall order the corporation to make advances and/or reimbursement for expenses or to provide indemnification if it determines that the director is entitled to such advances, reimbursement or indemnification and shall also order the corporation to pay the director's reasonable expenses incurred to obtain the order.

C. With respect to a proceeding by or in the right of the corporation, the court may (i) order indemnification of the director to the extent of his reasonable expenses if it determines that, considering all the relevant circumstances, the director is entitled to indemnification even though he was adjudged liable to the corporation and (ii) also order the corporation to pay the director's reasonable expenses incurred to obtain the order of indemnification.

D. Neither (i) the failure of the corporation, including its board of directors, its independent legal counsel and its shareholders, to have made an independent determination prior to the commencement of any action permitted by this section that the applying director is entitled to receive advances and/or reimbursement nor (ii) the determination by the corporation, including its board of directors, its independent legal counsel and its shareholders, that the applying director is not entitled to receive advances and/or reimbursement or indemnification shall create a presumption to that effect or otherwise of itself be a defense to that director's application for advances for expenses, reimbursement or

indemnification.

§ 13.1-701. Determination and authorization of indemnification.

A. A corporation may not indemnify a director under § 13.1-697 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible ~~in the circumstances~~ because he has met the *relevant* standard of conduct set forth in § 13.1-697.

B. The determination shall be made:

1. *If there are two or more disinterested directors,* by the board of directors by a majority vote of ~~a quorum consisting of directors not at~~ *all* the ~~time parties to the proceeding;~~

~~2. If a quorum cannot be obtained under subdivision 1 of this subsection, by~~ *disinterested directors, a* majority ~~vote of a committee duly designated~~ *of whom shall for such purpose constitute a quorum, or* by ~~the board~~ *a majority of the members of a committee* of *two or more disinterested* directors ~~(in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding~~ *appointed by such a vote*;

~~3~~ *2.* By special legal counsel:

a. Selected ~~by the board of directors or its committee~~ in the manner prescribed in ~~subdivisions~~ *subdivision* 1 ~~and 2~~ of this subsection; or

b. If ~~a quorum of the board of~~ *there are fewer than two disinterested* directors ~~cannot be obtained under subdivision 1 of this subsection and a committee cannot be designated under subdivision 2 of this subsection~~, selected by ~~majority vote of~~ the ~~full~~ board of directors, in which selection directors who ~~are parties~~ *do not qualify as disinterested directors* may participate; or

~~4~~ *3.* By the shareholders, but shares owned by or voted under the control of ~~directors~~ *a director* who ~~are~~ at the time ~~parties to the proceeding~~ *does not qualify as a disinterested director* may not be voted on the determination.

C. Authorization of indemnification ~~and evaluation as to reasonableness of expenses~~ shall be made in the same manner as the determination that indemnification is permissible, except that if *there are fewer than two disinterested directors or if* the determination is made by special legal counsel, authorization of indemnification ~~and evaluation as to reasonableness of expenses~~ shall be made by those entitled under subdivision ~~3~~ *B 2* ~~of subsection B of this section~~ to select counsel.

§ 13.1-702. Indemnification of officers.

Unless limited by a corporation's articles of incorporation~~,~~*:*

1. An officer of the corporation is entitled to mandatory indemnification under § 13.1-698, and is entitled to apply for court-ordered indemnification under § 13.1-700.1, in each case to the same extent as a director; and

2. The corporation may indemnify and advance expenses under this article to an officer~~, employee, or agent~~ of the corporation to the same extent as to a director.

§ 13.1-703. Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director~~,~~ *or* officer~~, employee, or agent~~ of the corporation, or who, while a director~~,~~ *or* officer~~, employee, or agent~~ of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee~~,~~ or agent of another foreign or domestic corporation, *limited liability company,* partnership, joint venture, trust, employee benefit plan, or other ~~enterprise~~ *entity,* against liability asserted against or incurred by him in that capacity or arising from his status as a director~~,~~ *or* officer~~, employee, or agent~~, whether or not the corporation would have power to indemnify him against the same liability under § 13.1-697 or ~~§~~ 13.1-698.

§ 13.1-704. Application of article.

A. Unless the articles of incorporation or bylaws expressly provide otherwise, any authorization of indemnification in the articles of incorporation or bylaws shall not be deemed to prevent the corporation from providing the indemnity permitted or mandated by this article.

B. Any corporation shall have power to make any further indemnity, including indemnity with respect to a proceeding by or in the right of the corporation, and to make additional provision for advances and reimbursement of expenses, to any director~~,~~ *or* officer~~, employee or agent~~ that may be authorized by the articles of incorporation or any bylaw made by the shareholders or any resolution adopted, before or after the event, by the shareholders, except an indemnity against (i) his willful misconduct, or (ii) a knowing violation of the criminal law. Unless the articles of incorporation, or any such bylaw or resolution expressly provide otherwise, any determination as to the right to any further indemnity shall be made in accordance with *subsection B of* § 13.1-701 ~~B~~. Each such indemnity may continue as to a person who has ceased to have the capacity referred to above and may inure to the benefit of the heirs, executors and administrators of such a person.

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

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

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

§ 13.1-706. Amendment of articles of incorporation by directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

1. To delete the names and addresses of the initial directors;

2. To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Commission;

3. *If the corporation has only one class of shares outstanding:*

a. To change each issued and unissued authorized share of ~~an outstanding~~ *the* class into a greater number of whole shares ~~if the corporation has only shares~~ of that class ~~outstanding~~; *or*

b. To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

4. To eliminate or change the par value of the shares of any class or series;

5. To change the corporate name by substituting the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co." or "ltd.," or a similar word or abbreviation in the name, or by adding, deleting, or changing a geographic attribution for the name; *or*

6. To make any other change expressly permitted by this chapter to be made without shareholder action~~; or~~

~~7. In the case of any corporation whose proxy statement for its most recent annual meeting of shareholders was required to be filed with the Securities and Exchange Commission and whose board of directors adopts the amendment prior to January 1, 1990, to change the shareholder vote required to approve an amendment of the articles of incorporation pursuant to the first sentence of subsection E of § 13.1-707 to approval by each voting group entitled to vote on the amendment by a majority of all votes entitled to be cast by that voting group.~~

§ 13.1-707. Amendment of articles of incorporation by directors and shareholders.

A. ~~A corporation's board of directors may propose one or more amendments~~ *Except where shareholder approval of an amendment of the articles of incorporation is not required by this chapter, an amendment* to the articles of incorporation ~~for submission to the shareholders.~~

~~B. For the amendment to~~ *shall* be adopted *in the following manner*:

1. The *proposed amendment shall be adopted by the board of directors.*

2. After adopting the proposed amendment the board of directors shall ~~recommend~~ *submit* the amendment to the shareholders ~~unless the~~ *for their approval. The* board of directors ~~determines that because of conflict of interests or other special circumstances it should make no~~ *shall also transmit to the shareholders a* recommendation ~~and communicates the basis for its~~ *that the shareholders approve the amendment, unless the board of directors makes a* determination ~~to the shareholders with the amendment~~ *that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination*; and

~~2~~ *3.* The shareholders entitled to vote on the amendment shall approve the amendment as provided in subsection ~~E of this section~~ *D*.

~~C~~ *B.* The board of directors may condition its submission of the proposed amendment on any basis.

~~D~~ *C.* The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 13.1-658. The notice of meeting shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy of the amendment.

~~E~~ *D.* Unless this chapter or the board of directors, acting pursuant to subsection ~~C of this section~~ *B*, requires a greater vote, the amendment to be adopted shall be approved by each voting group entitled to vote on the ~~proposed~~ amendment 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 amendment by each voting group entitled to vote on the ~~transaction~~ *amendment* at a meeting at which a quorum of the voting group exists.

~~F~~ *E.* When an exchange, reclassification or change of shares is effected by amendment of the articles of incorporation, and a material difference in right results, or the par value of the shares is changed or the corporate name is changed, the action of the shareholders authorizing the amendment may prescribe a time after which the holders of the old shares shall no longer be entitled to receive ~~dividends~~ *distributions* or to vote or to exercise any other rights as shareholders until certificates representing the

old shares are surrendered in exchange for certificates representing the new shares. But upon such surrender all ~~dividends~~ *distributions* not paid because of this provision shall be paid without interest.

§ 13.1-708. Voting on amendments by voting groups.

A. ~~The~~ *Except as otherwise provided in the articles of incorporation, if a corporation has more than one class of shares outstanding, the* outstanding shares of a class are entitled to vote as a separate voting group on a proposed amendment of the articles of incorporation if shareholder voting is otherwise required by this chapter and if the amendment would:

1. Increase or decrease the aggregate number of authorized shares of the class, provided that the vote of the class as a separate voting group is not required to increase or decrease the number of authorized shares of the class (but not below the number of shares thereof then outstanding and the number of shares required to be reserved for issuance), if so provided in the articles of incorporation as in effect prior to the issuance of any shares of the class or in any amendment thereto ~~which~~ *that* was approved by the required vote of the shares of such class;

2. Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

3. Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

4. Change the ~~designation,~~ rights, preferences, or limitations of all or part of the shares of the class, but such class shall not be entitled to vote as a separate voting group on an amendment increasing the number of authorized shares of a subordinate class solely because both such classes vote on some or all matters as a single voting group;

5. Change the shares of all or part of the class into a different number of shares of the same class;

6. Create a new class of shares~~,~~ or change a class *of shares* with subordinate and inferior rights into a class of shares, having rights or preferences with respect to distributions or to dissolution that are prior~~,~~ *or* superior~~,~~ ~~or~~ ~~substantially~~ ~~equal~~ to the shares of the class, or increase the rights, preferences, or number of authorized shares of any class ~~having~~ *that after giving effect to the amendment, have* rights or preferences with respect to distributions or to dissolution that are prior~~,~~ *or* superior~~,~~ ~~or~~ ~~substantially~~ ~~equal~~ to the shares of the class;

7. In the case of a class of shares with preferential rights, divide the shares into a series, designate the series, and determine, or, unless authority was conferred at the time the class was created, authorize the board of directors to determine, variations in the rights, preferences and limitations among the shares of the respective series;

8. Limit or deny an existing preemptive right of all or part of the shares of the class; or

9. Cancel or otherwise affect rights to distributions ~~or~~ ~~dividends~~ that have accumulated but not yet been declared on all or part of the shares of the class.

B. If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection A ~~of~~ ~~this~~ ~~section~~, the *holders of* shares of that series are entitled to vote as a separate voting group on the proposed amendment.

C. If a proposed amendment that entitles two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, the *holders of* shares of all the classes or series so affected shall vote together as a single voting group on the proposed amendment, unless the articles of incorporation provide for different voting rights for shares of the different classes or series.

D. A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares; provided, however, that, except as otherwise provided in the articles of incorporation, shares that are convertible into shares of another class or series shall not have any right, prior to conversion, to vote on any matter because it affects the class or series into which such shares are convertible.

§ 13.1-710. Articles of amendment.

A. A corporation amending its articles of incorporation shall file with the Commission articles of amendment setting forth:

1. The name of the corporation;

2. The text of each amendment adopted *or the information required by subdivision L 5 of § 13.1-604*;

3. If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, *which may be made dependent upon facts objectively ascertainable outside the articles of amendment in accordance with subsection L of § 13.1-604*;

4. The date of each amendment's adoption;

5. If an amendment was adopted by the incorporators or *the* board of directors without shareholder approval, a statement ~~to~~ that ~~effect~~ *the amendment was duly approved by the incorporators or by the*

board of directors, as the case may be, including the reason shareholder approval was not required;

6. If an amendment was approved by the shareholders, either:

a. A statement that the amendment was adopted by unanimous consent of the shareholders, or

b. A statement that the amendment was proposed by the board of directors and submitted to the shareholders in accordance with this chapter and a statement of:

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

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

B. 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.

§ 13.1-711. Restated articles of incorporation.

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

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

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

D. A corporation restating its articles of incorporation shall file with the Commission articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

1. The name of the corporation immediately prior to restatement;

2. The date of the restatement's adoption;

3. Whether the restatement contains ~~an~~ *a new* amendment to the articles and, if it does not, that the board of directors adopted the restatement;

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

5. If the restatement contains ~~an~~ *a new* amendment to the articles requiring shareholder approval, the information required by subdivision A 6 of § 13.1-710.

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

F. The Commission may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection D ~~of this section~~.

§ 13.1-713. Effect of amendment of articles of incorporation.

An amendment to *the* articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

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

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

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

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

2. The shareholders in *amending, repealing, or* adopting ~~or amending particular bylaws~~ *a bylaw expressly* provide ~~expressly~~ that the board of directors may not amend ~~or~~, repeal, *or reinstate* that bylaw~~;~~

~~3. A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws also may be amended or repealed by its board of directors~~.

§ 13.1-715. Bylaw provisions increasing quorum or voting requirements for directors.

A. A bylaw that ~~fixes~~ *increases* a ~~greater~~ quorum or voting requirement for the board of directors may be amended or repealed:

1. If originally adopted by the shareholders, only by the shareholders, *unless the bylaw otherwise*

provides; or

2. If ~~originally~~ adopted by the *board of* directors, either by the shareholders or by the board of directors.

B. A bylaw adopted or amended by the shareholders that ~~fixes~~ *increases* a ~~greater~~ quorum or voting requirement for the board of directors may provide that it ~~may~~ *shall* be amended or repealed only by a specified vote of either the shareholders or the board of directors.

C. Action by the board of directors under ~~subdivision 2 of~~ subsection A ~~of this section~~ to ~~adopt or~~ amend *or repeal* a bylaw that changes the quorum or voting requirement applicable to meetings of the board of directors must meet the quorum requirement and be adopted by the vote required to take action under the quorum and voting requirement then in effect.

Article 12.

~~Merger~~ *Mergers* and Share ~~Exchange~~ *Exchanges*.

§ 13.1-715.1. Definitions.

As used in this article:

"Merger" means a business combination pursuant to § 13.1-716.

"Party to a merger" or "party to a share exchange" means any domestic or foreign corporation or eligible entity that will:

1. Merge under a plan of merger;

2. Acquire shares of another domestic or foreign corporation or eligible interests in an eligible entity in a share exchange; or

3. Have all of its shares or eligible interests or all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

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

"Survivor" in a merger means the domestic or foreign corporation or the eligible entity into which one or more other domestic or foreign corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

§ 13.1-716. Merger.

A. One or more *domestic* corporations *may merge with one or more domestic or foreign corporations or eligible entities pursuant to a plan of merger, or two or more foreign corporations or domestic or foreign eligible entities* may merge into ~~another~~ *a new domestic* corporation ~~if the articles of incorporation of each of them could lawfully contain all the corporate powers and purposes of all of them. The board of directors of each corporation shall adopt and its shareholders, if required by § 13.1-718, shall approve a plan of~~ *to be created in the* merger *in the manner provided in this chapter*.

B. ~~The plan of merger shall set forth:~~

~~1. The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;~~

~~2. The terms and conditions of the merger; and~~

~~3. The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part, and the manner and basis of converting rights to acquire shares of each corporation into rights to acquire shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part~~ *A foreign corporation or a foreign eligible entity may be a party to a merger with a domestic corporation, or may be created pursuant to the terms of the plan of merger, only if the merger is permitted by the laws under which the foreign corporation or eligible entity is organized or by which it is governed.*

C. The plan of merger ~~may set forth~~ *shall include*:

1. ~~Amendments to, or a restatement of, the articles of incorporation of the surviving corporation; and~~ *The name of each domestic or foreign corporation or eligible entity that will merge and the name of the domestic or foreign corporation or eligible entity that will be the survivor of the merger;*

2. ~~Other~~ *The terms and conditions of the merger;*

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

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

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

created by the merger, any amendments to the survivor's articles of incorporation or organic document; and

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

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

E. The plan of merger may also include a provision that the plan may be amended prior to the effective date of the certificate of merger, but if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to change:

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

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

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

F. Any corporation authorized by its articles of incorporation to engage in a special kind of business enumerated in § 13.1-620 may be merged with another corporation authorized by its articles of incorporation to engage in the same special kind of business, including mergers authorized under § 6.1-194.40, whether or not either or both of such corporations are actually engaged in the transaction of such business, and the shareholders of the corporations parties to the merger may receive shares of a corporation not authorized by its articles of incorporation to engage in such special kind of business.

§ 13.1-717. Share exchange.

A. *Through a share exchange:*

1. A *domestic* corporation may acquire all of the ~~outstanding~~ shares of one or more classes or series of *shares of* another *domestic or foreign* corporation ~~if~~*, or all of* the ~~board of directors of each corporation adopts and its shareholders, if required by § 13.1-718, approve the exchange~~ *eligible interests of one or more classes or series of eligible interests of a domestic or foreign eligible entity, as well as rights to acquire any such shares or eligible interests, in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property or any combination of the foregoing, pursuant to a plan of share exchange; or*

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

B. ~~The plan of~~ *A foreign corporation or eligible entity may be a party to a* share exchange ~~shall set forth:~~

~~1. The name of the corporation whose shares will be acquired and the name of the acquiring corporation;~~

~~2. The terms and conditions of the exchange;~~

~~3. The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part, and the manner and basis of converting rights to acquire shares of the corporation to be acquired into rights to acquire shares, obligations, or other securities of the acquiring or any other corporation or into cash or other property in whole or part~~ *only if the share exchange is permitted by the laws under which the corporation or eligible entity is organized or by which it is governed.*

C. ~~The~~ *If the organic law of a domestic eligible entity does not provide procedures for the approval of a share exchange, a* plan of share exchange may ~~set forth other provisions relating to~~ *be adopted and approved, and* the *share* exchange *effectuated, in accordance with the procedures, if any, for a merger.*

D. *The plan of share exchange shall include:*

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

2. The terms and conditions of the share exchange;

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

securities or eligible interests, cash, other property or any combination of the foregoing;

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

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

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

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

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

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

G. This section does not limit the power of a *domestic* corporation to acquire ~~all or part of the~~ shares of ~~one or more classes or series of~~ another *domestic or foreign* corporation ~~through~~ *or eligible interests in an eligible entity in* a ~~voluntary~~ *transaction other than a share* exchange ~~or otherwise~~.

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

A. ~~After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation all of whose outstanding shares of any class or series will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection G of this section, or share exchange for approval by its shareholders.~~

~~B. For a plan of~~ *In the case of a domestic corporation that is a party to a* merger or share exchange ~~to be approved~~:

1. The ~~board of directors shall recommend the~~ plan of merger or share exchange ~~to the shareholders unless~~ *shall be adopted by* the board of directors ~~determines that because of conflict of interests or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and~~.

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

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

~~D. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 13.1-658. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy of the plan.~~

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 must 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 capital stock or other interests in the surviving corporation or eligible entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organic document of that corporation or eligible entity. If the corporation is to be merged into a domestic or foreign corporation or eligible entity that is to be created pursuant to the merger and its shareholders are to receive capital stock or other interests in the surviving corporation or eligible entity, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organic document of the new domestic or foreign corporation or eligible entity.

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

~~F~~ *E. Separate* voting by ~~a class or series of shares as a separate~~ voting ~~group~~ *groups* is required:

1. On a plan of merger ~~if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would entitle the class or series to vote as a separate voting group on the proposed amendment under § 13.1-708.~~

~~2. On a plan of share exchange if the shares of such class or series are~~ *by each class or series of shares that:*

a. Is to be converted ~~or exchanged~~ under ~~such plan or if~~ the plan ~~contains any~~ *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*

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

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

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

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

1. The ~~articles of incorporation of the surviving~~ corporation will ~~not differ, except~~ *survive the merger or is the acquiring corporation in a share exchange;*

2. Except for amendments ~~enumerated in~~ *permitted by* § 13.1-706, ~~from~~ its articles ~~before the merger~~ *of incorporation will not be changed*; *and*

~~2~~ *3.* Each shareholder of the ~~surviving~~ corporation whose shares were outstanding immediately before the effective date of the merger *or share exchange* will hold the same number of shares, with identical ~~designations,~~ preferences, limitations, and ~~relative~~ rights~~,~~ immediately after~~;~~ *the effective date of the merger or share exchange.*

~~3. The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent the total number of voting shares of the surviving corporation outstanding immediately before the merger; and~~

~~4. The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent the total number of participating shares outstanding immediately before the merger.~~

~~H. As used in subsection G of this section:~~

~~1. "Participating shares" means shares that entitle their holders to participate without limitation in distributions.~~

~~2. "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.~~

~~I. Any plan of merger or share exchange may contain a provision that the board of directors of each corporation party to the merger or share exchange may amend the plan at any time prior to issuance of the certificate of merger or share exchange. An amendment made subsequent to the submission of the plan to the shareholders of any corporation party to the merger or share exchange shall not:~~

~~1. Alter or change the amount or kind of shares, securities, cash, property or rights to be received in exchange for or on conversion of all or any of the shares of any class or series of such corporation;~~

~~2. Alter or change any of the terms and conditions of the plan if such alteration or change would adversely affect the shares of any class or series of such corporation; or~~

~~3. Alter or change any term of the articles of incorporation of any corporation whose shareholders must approve the plan of merger or share exchange.~~

G. If ~~articles~~ *as a result* of *a* merger or share exchange ~~already have been filed with~~ *one or more shareholders of a domestic corporation would become subject to owner liability for* the ~~Commission,~~

~~amended articles~~ *debts, obligations, or liabilities of any other person or entity, approval of the plan* of merger or share exchange shall ~~be filed with the Commission prior to the effective date of the certificate of merger or share exchange~~ *require the execution, by each shareholder, of a separate written consent to become subject to such owner liability*.

~~J. Unless a plan of merger or share exchange prohibits abandonment of the merger or share exchange without shareholder approval, after the merger or share exchange has been authorized, and at any time prior to the effective date of the certificate of merger or share exchange, the merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan or, if none is set forth, in the manner determined by the board of directors of each corporation party to the merger or share exchange. Written notice of abandonment must be filed with the Commission prior to the effective date of the certificate of merger or share exchange.~~

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

A. A domestic *parent corporation that owns shares of a domestic* or foreign *subsidiary* corporation ~~owning~~ *that possess* at least ~~ninety~~ *90* percent of the ~~outstanding shares~~ *voting power* of each class *and series* of ~~a~~ *the outstanding shares of the* subsidiary ~~corporation~~ *that have voting power* may merge the subsidiary into itself *or into another such subsidiary, or merge itself into the subsidiary,* without *the* approval of the *board of directors or* shareholders of the ~~parent or~~ subsidiary~~. Such parent corporation may also merge itself into a subsidiary without~~, *unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary,* approval ~~of~~ *by* the *subsidiary's board of directors or* shareholders ~~of the subsidiary, provided that the proposed merger~~ is ~~(i) adopted by the parent in accordance with the provisions of §§ 13.1-716 and 13.1-718 if the parent is a domestic corporation or (ii) adopted by the parent in accordance with~~ *required by* the laws under which ~~it~~ *the subsidiary* is organized ~~if the parent is not a domestic corporation~~.

B. ~~The board of directors of~~ *If under subsection A approval of the merger by the subsidiary's shareholders is not required,* the parent *corporation* shall ~~adopt a plan~~, *within 10 days after the effective date* of *the* merger*, notify each of the subsidiary's shareholders* that ~~sets forth~~ the ~~following information:~~ *merger has become effective.*

~~1. The names of the parent and subsidiary; and~~

~~2. If the parent is the surviving corporation, the manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or part, and the manner and basis of converting rights to acquire shares, obligations or other securities of the subsidiary into rights to acquire shares, obligations or other securities of the parent or any other corporation or into cash or other property in whole or part; or~~

~~3. If the parent is not the surviving corporation, a provision for the pro rata issuance of shares of the surviving corporation to the holders of the shares of the parent corporation.~~

C. ~~The~~ *Except as provided in subsections A and B, a merger between a* parent *and a subsidiary* shall ~~mail a copy of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing~~ *be governed by the provisions of this article applicable to mergers generally*.

D. ~~If the parent is not the surviving corporation, the articles of merger or share exchange shall set forth either:~~

~~1. A statement that the plan was adopted by the unanimous consent of the shareholders of the parent; or~~

~~2. A statement that the plan was submitted to the shareholders of the parent by the board of directors in accordance with this chapter, and a statement of:~~

~~a. The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and~~

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

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

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

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

A. After a plan of merger or share exchange ~~is~~ *has been adopted and* approved ~~by the shareholders, or adopted by the board of directors if shareholder approval is not~~ *as* required *by this chapter,* ~~the surviving or acquiring entity shall file with the Commission~~ articles of merger or share exchange *shall be* executed ~~by~~ *on behalf of* each party to the merger or share exchange ~~setting~~. *The articles shall set* forth:

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

2. If ~~shareholder approval was not required, a statement to that effect, including the reason approval was not required~~ *the articles of incorporation of a domestic corporation that is the survivor of a merger are amended, or if a new domestic corporation is created as a result of a merger, as an attachment to the articles of merger or share exchange, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation*;

3. If *the plan of merger or share exchange required* approval ~~of~~ *by* the shareholders of ~~one or more corporations~~ *a domestic corporation that was a* party to the merger or share exchange ~~was required, with respect to each such corporation~~, either:

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

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

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

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

4. If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect including the reason approval was not required; and

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

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

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

1. The articles need only be executed on behalf of the surviving corporation; and

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

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

A. When a merger ~~takes effect~~ *becomes effective*:

1. ~~Every other~~ *The domestic or foreign* corporation ~~party to~~ *or eligible entity that is designated in* the *plan of* merger ~~merges~~ *as the survivor continues or comes* into ~~the surviving corporation and the separate~~ existence ~~of every corporation except the surviving corporation ceases~~ *as the case may be*;

2. The ~~title to all real estate and other property owned by each~~ *separate existence of every domestic or foreign* corporation ~~party to the merger~~ *or eligible entity that* is ~~vested in the surviving~~ *merged into the survivor ceases;*

3. Property owned by, and, except to the extent that assignment would violate a contractual prohibition on assignment by operation of law, every contract right possessed by, each domestic or foreign corporation *or eligible entity that merges into the survivor is vested in the survivor* without reversion or impairment;

~~3. The surviving~~

4. All liabilities of each domestic or foreign corporation ~~has all liabilities of each corporation party to the merger;~~

~~4. A proceeding pending by or against any corporation party to the merger may be continued as if~~ *or eligible entity that is merged into* the ~~merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased~~ *survivor are vested in the survivor*;

5. The ~~articles of incorporation of the surviving corporation are amended~~ *name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party* to the ~~extent provided~~ *merger whose separate existence ceased* in the ~~plan of~~ merger; ~~and~~

6. *The articles of incorporation or organic document of the survivor is amended to the extent provided in the plan of merger;*

7. The articles of incorporation or organic document of a survivor that is created by the merger

becomes effective; and

8. The *shares of each domestic or foreign corporation that is a party to the merger, and the eligible interests in an 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 securities, other securities, or eligible interests, cash, other property or any combination of the foregoing, are converted, and the* former holders of ~~the~~ *such* shares ~~of every corporation party to the merger~~ *or eligible interests* are entitled only to the rights provided *to them* in the ~~articles~~ *plan* of merger or to ~~their~~ *any* rights *they may have* under Article 15 (§ 13.1-729 et seq.) of this chapter *or the organic law of the eligible entity*.

B. When a share exchange ~~takes effect~~ *becomes effective*, the shares of each ~~acquired~~ *domestic or foreign* corporation *that* are *to be* exchanged ~~as provided in the plan, and the former holders~~ *for shares and other securities, eligible interests, obligations, rights to acquire shares, other securities, eligible interests, cash, other property or any combination* of the ~~shares~~ *foregoing,* are entitled only to the ~~exchange~~ rights provided *to them* in the ~~articles~~ *plan* of share exchange or to ~~their~~ *any* rights *they may have* under Article 15 (§ 13.1-729 et seq.) of this chapter.

C. ~~When~~ *Upon* a ~~conversion, exchange, reclassification or change of shares is effected by~~ merger ~~or share exchange, whether the resulting shares are shares of the same or any other~~ *becoming effective, a foreign* corporation~~, and a material difference in right results, or the par value of the shares is changed or the corporate name is changed, the action of the shareholders authorizing the merger or share exchange may prescribe a time after which the holders of the old shares shall no longer be entitled to receive dividends or to vote or to exercise any other rights as shareholders until certificates representing the old shares are surrendered in exchange for certificates representing the new shares. But upon such surrender all dividends not paid because of this provision shall be paid without interest~~ *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 proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights; 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.) of this chapter.

D. 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.

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

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

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

§ 13.1-722.13. Effect of entity conversion.

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

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

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

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

4. The articles of incorporation or articles of organization attached to the articles of conversion constitute the articles of incorporation or articles of organization of the surviving entity;

5. The shares or interests of the converting entity are reclassified into shares or interests in accordance with the plan of entity conversion; and the shareholders or members of the converting entity are entitled only to the rights provided in the plan of entity conversion or, in the case of a converting entity that is a corporation, to the rights, if any, they may have under subdivision A~~. 4.~~ *5* of § 13.1-730; and

6. The surviving entity is deemed to:

a. Be a corporation or limited liability company for all purposes;

b. Be the same corporation or limited liability company without interruption as the converting entity that existed prior to the conversion; and

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

7. The converting entity shall cease to be a corporation or a limited liability company, as the case may be, when the certificate of entity conversion becomes effective.

Article 13.

~~Sale~~ *Disposition* of Assets.

§ 13.1-723. Disposition of assets not requiring shareholder approval.

~~A.~~ *Unless the articles of incorporation otherwise provide, no approval of the shareholders of* a corporation ~~may, under the terms and conditions and for the consideration determined by the board of directors~~ *is required*:

1. *To* sell, lease, exchange, or otherwise dispose of *any or* all~~, or substantially all,~~ of ~~its property~~ *the corporation's assets* in the usual and regular course of business;

2. *To* mortgage, pledge~~,~~ or dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of ~~its property~~ *the corporation's assets*, whether or not in the usual and regular course of business; ~~or~~

3. *To* transfer any or all of ~~its property to a corporation~~ *the corporation's assets to one or more domestic or foreign corporations or eligible entities* all the shares *or eligible interests* of which are owned by the corporation~~, provided that a corporation that is not a public corporation may not make transfers pursuant to this subdivision~~*; or*

4. To distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

~~B. Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection A of this section is not required.~~

§ 13.1-724. Shareholder approval of certain dispositions.

A. A ~~corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors adopts and its shareholders approve the proposed transaction~~ *sale, lease, exchange or other disposition of the corporation's assets, other than a disposition described in § 13.1-723, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. Unless the articles of incorporation or a shareholder-approved bylaw otherwise provide, if a corporation retains a business activity that represented at least 20 percent of total assets at the end of the most recently completed fiscal year, and 20 percent of either (i) income from continuing operations before taxes or (ii) revenues from continuing operations for that fiscal year, in each case of the corporation and any of its subsidiaries that are consolidated for purposes of federal income taxes, the corporation will conclusively be deemed to have retained a significant continuing business activity.*

B. ~~For a transaction to be authorized:~~

~~1.~~ *A disposition that requires approval of the shareholders under subsection A shall be initiated by adoption of a resolution by the board of directors authorizing the disposition. After adoption of such a resolution,* the board of directors shall submit the proposed ~~transaction~~ *disposition* to the shareholders ~~with its~~ *for their approval. The board of directors shall also submit to the shareholders a* recommendation *that the shareholders approve the proposed disposition,* unless the board of directors ~~determines~~ *makes a determination* that because of ~~conflict~~ *conflicts* of ~~interests~~ *interest* or other special circumstances it should *not* make ~~no~~ *such a* recommendation ~~and communicates~~*, in which case the board of directors shall transmit to the shareholders* the basis for ~~its~~ *that* determination ~~to the shareholders with the submission of the proposed transaction; and~~

~~2. The shareholders entitled to vote shall approve the transaction as provided in subsection E of this section~~.

C. The board of directors may condition its submission of the proposed ~~transaction~~ *disposition* on any basis.

D. *If a disposition is required to be approved by 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 proposed shareholders' meeting in accordance with § 13.1-658. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the ~~sale, lease, exchange, or other~~ disposition ~~of all, or substantially all, the property of the corporation~~ and *shall* contain or be accompanied by a copy or summary of the agreement pursuant to which the ~~transaction~~ *disposition* will be effected. If only a summary of the agreement is sent to shareholders, the corporation also shall send a copy of the

agreement to any shareholder who requests it.

E. Unless the board of directors, acting pursuant to subsection C ~~of this section~~, requires a greater vote, the ~~transaction~~ *disposition* to be authorized shall be approved by the holders of more than two-thirds of all the votes entitled to be cast on the ~~transaction~~ *disposition*. 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 ~~transaction~~ *disposition* by each voting group entitled to vote on the ~~transaction~~ *disposition* at a meeting at which a quorum of the voting group exists.

F. Unless the parties to the ~~transaction~~ *disposition* have agreed otherwise, after a ~~sale, lease, exchange, or other~~ disposition ~~of property is authorized, the transaction~~ *has been approved by shareholders, and at any time before the disposition has been consummated, it* may be abandoned, subject to any contractual rights, without further shareholder action in accordance with the procedure set forth in the resolution proposing the ~~transaction~~ *disposition* or, if none is set forth, ~~in the manner determined~~ by the board of directors.

G. A ~~transaction that constitutes a distribution is~~ *disposition of assets in the course of dissolution under Article 16 (§ 13.1-742 et seq.) is not* governed by ~~§ 13.1-653 and not by~~ this section.

H. *The assets of a consolidated subsidiary shall be deemed the assets of the parent corporation for the purposes of this section.*

I. Notwithstanding any other provision of this section, no corporation organized to conduct the business of a railroad or other public service or a banking business, or a savings institution, an industrial loan association or a credit union may sell, lease or exchange its properties for the conduct of such business in ~~this~~ *the* Commonwealth except to a corporation of ~~this~~ *the* Commonwealth organized for the same purpose or in the case of a bank to a savings and loan association or a corporation of the United States, and in the case of a savings and loan association to a bank or a corporation of the United States.

§ 13.1-725. Definitions.

For purposes of this article:

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

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

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

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

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

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

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

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

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

An "associate" means as to any specified person:

1. Any entity, other than the corporation and any of its subsidiaries, of which such person is an

officer, director, *manager,* or general partner or is the beneficial owner of ~~ten~~ *10* percent or more of any class of voting shares *or other interests*;

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

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

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

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

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

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

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

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

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

"Fair market value" means:

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

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

An "interested shareholder" means any person that is:

1. The beneficial owner of more than ~~ten~~ *10* percent of any class of the outstanding voting shares of the corporation; however, the term "interested shareholder" shall not include the corporation or any of its subsidiaries, any savings, employee stock ownership, or other employee benefit plan of the corporation or any of its subsidiaries, or any fiduciary with respect to any such plan when acting in such capacity. For the purpose of determining whether a person is an interested shareholder, the number of voting shares deemed to be outstanding shall include shares deemed owned by the interested shareholder through application of subdivision 3 under the definition of "beneficial owner" but shall not include any other voting shares that may be issuable pursuant to any contract, arrangement, or understanding, upon

the exercise of *any* conversion ~~rights~~ *right*, exchange ~~rights~~ *right*, ~~warrants~~ *warrant*, or ~~options~~ *option*, or otherwise; or

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

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

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

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

§ 13.1-727. Exceptions.

A. The voting requirements set forth in § 13.1-726 do not apply to a particular affiliated transaction if the conditions specified in either of the following subdivisions are met:

1. The affiliated transaction has been approved by a majority of the disinterested directors; or

2. In the affiliated transaction consideration will be paid to the holders of each class or series of voting shares and the following conditions will be met:

a. The aggregate amount of the cash and the fair market value as of the valuation date of consideration other than cash to be received per share by holders of each class or series of voting shares in such affiliated transaction is at least equal to the highest of the following:

(1) If applicable, the highest per share price, including any brokerage commissions, transfer taxes, and soliciting dealers' fees paid by the interested shareholder for any shares of such class or series acquired by it (i) within the two-year period immediately preceding the determination date or (ii) in the transaction in which it became an interested shareholder, whichever is higher, plus, in either case, interest compounded annually from the earliest date on which such highest per share acquisition price was paid, being the "share acquisition date," through the date the affiliated transaction is effected at the rate for one-year United States Treasury obligations from time to time in effect, less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of such class or series, since the share acquisition date, up to the amount of such interest;

(2) The fair market value per share of such class or series on the announcement date or on the determination date, whichever is higher being the "measuring date," plus, in either case, interest compounded annually from the measuring date through the date the affiliated transaction is effected at the rate for one-year United States Treasury obligations from time to time in effect, less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of such class or series, since the measuring date, up to the amount of such interest;

(3) If applicable, the price per share equal to the per share amount determined pursuant to subdivision 2 a (2) of this subsection, multiplied by the ratio of (i) the highest per share price including any brokerage commissions, transfer taxes~~,~~ and soliciting dealers' fees~~,~~ paid by the interested shareholder for any shares of such class or series acquired by it within the two-year period immediately preceding the determination date to (ii) the fair market value per share of such class or series on the first day in such two-year period on which the interested shareholder acquired any shares of such class or series; and

(4) If applicable, the highest preferential amount, if any, per share to which the holders of such class or series are entitled in the event of any voluntary or involuntary dissolution of the corporation;

b. The consideration to be received by holders of outstanding shares shall be in cash or in the same form as the interested shareholder has previously paid for shares of the same class or series and if the interested shareholder has paid for shares with varying forms of consideration, the form of the consideration will be either cash or the form used to acquire the largest number of shares of such class or series previously acquired by the interested shareholder;

c. During such portion of the three-year period preceding the announcement date that such interested shareholder has been an interested shareholder, except as approved by a majority of the disinterested directors:

(1) There shall have been no failure to declare and pay at the regular date therefor any full periodic dividends, whether or not cumulative, on any outstanding shares of the corporation;

(2) There shall have been (i) no reduction in the annual rate of dividends paid on any class or series of voting shares, except as necessary to reflect any subdivision of the class or series, and (ii) an increase in such annual rate of dividends as necessary to reflect any reclassification, including any reverse stock split, recapitalization, reorganization, or similar transaction ~~which~~ *that* has the effect of reducing the number of outstanding shares of the class or series; and

(3) Such interested shareholder shall not have become the beneficial owner of any additional voting

shares except as part of the transaction ~~which~~ *that* results in such interested shareholder becoming an interested shareholder;

d. During such portion of the three-year period preceding the announcement date that such interested shareholder has been an interested shareholder, except as approved by a majority of the disinterested directors, such interested shareholder shall not have received the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guarantees, pledges, or other financial assistance or any tax credits or other tax advantages provided by the corporation, whether in anticipation of or in connection with such affiliated transaction or otherwise; and

e. Except as otherwise approved by a majority of the disinterested directors, a proxy or information statement describing the affiliated transaction and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules, or regulations) is mailed to holders of voting shares of the corporation at least ~~twenty-five~~ *25* days before the consummation of such affiliated transaction, whether or not such proxy or information statement is required to be mailed pursuant to such Act, rules, regulations, or subsequent provisions.

B. The provisions of this article do not apply to a particular affiliated transaction if the conditions specified in any one of the following subdivisions are met:

1. The affiliated transaction is with (i) an interested shareholder who has been an interested shareholder continuously or who would have been such but for the unilateral action of the corporation since the latest of (a) January 26, 1988, (b) the date the corporation first became subject to this article by virtue of its having 300 shareholders of record, or (c) the date such person became an interested shareholder with the prior or contemporaneous approval of a majority of the disinterested directors, (ii) any person who becomes an interested shareholder as a result of acquiring shares from a person specified in (i) of this subdivision by gift, testamentary bequest or the laws of descent and distribution or in a transaction in which consideration was not exchanged and who continues thereafter to be an interested shareholder, or who would have so continued but for the unilateral action of the corporation, (iii) a person who became an interested shareholder inadvertently or as a result of the unilateral action of the corporation and who, as soon as practicable thereafter, divested beneficial ownership of sufficient shares so that such person ceased to be an interested shareholder, and who would not, at any time within the three-year period immediately preceding the announcement date have been an interested shareholder but for such inadvertency or the unilateral action of the corporation, or (iv) an interested shareholder whose acquisition of voting shares making such person an interested shareholder was approved by a majority of the disinterested directors prior to such shareholder's determination date.

2. The corporation does not have more than 300 shareholders of record, unless the foregoing results from action taken by or on behalf of an interested shareholder or a transaction in which a person becomes an interested shareholder.

3. The corporation is an investment company registered under the Investment Company Act of 1940.

4. The corporation's articles of incorporation initially filed with the Commission expressly provide that the corporation shall not be governed by this article.

5. The corporation, by action of its shareholders, adopts an amendment to its articles of incorporation or bylaws expressly electing not to be governed by this article, provided that, in addition to any other vote required by law, such amendment to the articles of incorporation or bylaws shall be approved by the affirmative vote of a majority of the shares entitled to vote that are not owned by an interested shareholder. An amendment adopted pursuant to this subdivision shall not be effective until ~~eighteen~~ *18* months after the date such amendment was approved by the shareholders and shall not apply to any affiliated transaction between such corporation and any person who became an interested shareholder of such corporation on or prior to the date of such amendment. A bylaw amendment adopted pursuant to this subdivision shall not be further amended by the board of directors. In the event the articles of incorporation or bylaws are subsequently amended to eliminate a prior amendment electing not to be governed by this article, such subsequent amendment shall not restrict an affiliated transaction between the corporation and any person who became an interested shareholder at a time after such prior amendment became effective and who continued to be an interested shareholder immediately before and immediately after the adoption of such subsequent amendment, provided such person thereafter remains an interested shareholder continuously, or would have so remained but for the unilateral action of the corporation.

§ 13.1-728.1. Definitions.

As used in this article:

"Acquiring person," with respect to any ~~issuing~~ public corporation, means any person who has made or proposes to make a control share acquisition of shares of such ~~issuing~~ public corporation.

"Beneficial ownership" means the sole or shared power to dispose or direct the disposition of shares, or the sole or shared power to vote or direct the voting of shares, or the sole or shared power to acquire

shares, including any such power which is not immediately exercisable, whether such power is direct or indirect or through any contract, arrangement, understanding, relationship or otherwise. A person shall not be deemed to be a beneficial owner of shares tendered pursuant to a tender or exchange offer made by such person until the tendered shares are accepted for purchase or exchange. A person shall not be deemed to be a beneficial owner of shares as to which such person may exercise voting power solely by virtue of a revocable proxy conferring the right to vote. A member of a national securities exchange shall not be deemed to be a beneficial owner of shares held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, pursuant to the rules of such exchange, may direct the vote of such shares, without instructions, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the shares to be voted but is otherwise precluded by the rules of such exchange from voting without instructions.

"Control share acquisition" means the direct or indirect acquisition, other than in an excepted acquisition, by any person of beneficial ownership of shares of ~~an issuing~~ *a* public corporation that, except for this article, would have voting rights and would, when added to all other shares of such ~~issuing~~ public corporation which then have voting rights and are beneficially owned by such person, would cause such person to become entitled, immediately upon acquisition of such shares, to vote or direct the vote of, shares having voting power within any of the following ranges of the votes entitled to be cast in an election of directors: (i) one-fifth or more but less than one-third of such votes; (ii) one-third or more but less than a majority of such votes; or (iii) a majority or more of such votes. If voting rights are granted pursuant to this article in respect of any such range to shares so acquired by any person, any acquisition by such person of additional shares shall not, for purposes of the preceding sentence, constitute a control share acquisition unless, as a result of such acquisition, the voting power of the shares beneficially owned by such person would be in excess of such range in respect of which voting rights had previously been granted. If this article applies to acquisitions of shares of ~~an issuing~~ *a* public corporation at the time of a control share acquisition of any shares of such corporation, then shares acquired by the same person within ~~ninety~~ *90* days before or after such control share acquisition and shares acquired by the same person pursuant to a plan to make a control share acquisition are deemed to have been acquired in the same control share acquisition for the purposes of this article, regardless of the applicability of this article at the time of any other acquisitions of shares during such periods or pursuant to such a plan.

"Excepted acquisition" means the acquisition of shares of ~~an issuing~~ *a* public corporation in any of the following circumstances:

1. Before January 26, 1988;

2. Pursuant to a binding contract in effect before January 26, 1988;

3. Pursuant to the laws of wills and decedents' estates;

4. Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this article;

5. Pursuant to a merger or plan of share exchange effected in compliance with Article 12 (§ ~~13.1-716~~ *13.1-715.1* et seq.) of this chapter if the ~~issuing~~ public corporation is a party to the agreement of merger or plan of share exchange;

6. Pursuant to a tender or exchange offer that is made pursuant to an agreement to which the ~~issuing~~ public corporation is a party;

7. Directly from the ~~issuing~~ public corporation, or from any of its wholly owned subsidiaries, or from any corporation having beneficial ownership of shares of the ~~issuing~~ public corporation having at least a majority, before such transaction, of the votes entitled to be cast in the election of directors of such ~~issuing~~ public corporation; or

8. In good faith and not for the purpose of circumventing this chapter by or from any person (a "transferor") whose voting rights had previously been authorized by shareholders in compliance with this article, or whose previous acquisition of beneficial ownership of shares would have constituted a control share acquisition but for any of subdivisions 1 through 7 in this definition; however, any acquisition described in this subdivision 8 shall constitute a control share acquisition if as a result thereof any person acquires beneficial ownership of shares of such issuing public corporation having voting power in the election of directors in excess of the range of votes within which the transferor was authorized by this article to exercise voting power immediately before such acquisition.

"Interested shares" means the shares of ~~an issuing~~ *a* public corporation the voting of which in an election of directors may be exercised or directed by any of the following persons: (i) an acquiring person with respect to a control share acquisition; (ii) any officer of such ~~issuing~~ public corporation; or (iii) any employee of such ~~issuing~~ public corporation who is also a director of the corporation.

~~"Issuing public corporation" means a domestic corporation that has 300 or more shareholders.~~

"Person" ~~means any individual, domestic corporation, foreign corporation, partnership, unincorporated association or other entity, and any~~ *includes an* associate of any ~~such~~ person. For this purpose,

"associate" shall mean (i) any other person who directly or indirectly controls, or is controlled by or under common control with, any such person or who is acting or intends to act jointly or in concert with any such person in connection with the acquisition of or exercise of beneficial ownership over shares; (ii) any corporation or organization of which any such person is an officer, director, *manager* or partner or as to which any such person performs a similar function; (iii) any other person having direct or indirect beneficial ownership of ~~ten~~ *10* percent or more of any class of equity securities of any such person; (iv) any trust or estate in which any such person has a beneficial interest or as to which any such person serves as trustee or in a similar fiduciary capacity; and (v) any relative or spouse of any such person, or any relative of such spouse, any one of whom has the same residence as any such person. For this purpose, "control" shall mean the possession, direct or indirect, of the power to direct or to cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, arrangement or understanding, or otherwise.

The "votes" entitled to be cast by any share shall, if any voting group is entitled to vote for less than the total number of directors to be elected at any election, be determined by multiplying the number of votes entitled to be cast by the holder of such share by the number of directors for whom such holder is entitled to vote; however, beneficial ownership of a majority of the shares comprising any such voting group shall be deemed to entitle such beneficial owner to cast all the votes of the shares in such voting group.

§ 13.1-728.2. Application.

Unless, at the time of any control share acquisition with respect to ~~an~~ ~~issuing~~ *a* public corporation, such corporation's articles of incorporation or bylaws provide that this article does not apply to acquisitions of shares of such corporation, shares of such corporation acquired in such control share acquisition have only such voting rights as are conferred by § 13.1-728.3. Unless by midnight of the fourth day following (i) the receipt by the secretary of the corporation at the principal office of the corporation, of a notice expressly and specifically describing a proposed control share acquisition, or (ii) in case the proposed control share acquisition is to be made by tender offer, a public announcement, the corporation's articles of incorporation or bylaws provide that this article does not apply, then the provisions of § 13.1-728.3 shall apply to shares to be acquired in such control share acquisition.

§ 13.1-728.3. Voting rights.

A. Notwithstanding any contrary provision of this chapter, shares acquired in a control share acquisition have no voting rights unless voting rights are granted by resolution adopted by the shareholders of the ~~issuing~~ public corporation. If such a resolution is adopted, such shares shall thereafter have the voting rights they would have had in the absence of this article.

B. To be adopted under this section, the resolution shall be approved by a majority of all the votes which could be cast in a vote on the election of directors by all the outstanding shares other than interested shares. Interested shares shall not be entitled to vote on the matter, and in determining whether a quorum exists, all interested shares shall be disregarded. For the purpose of this subsection, the interested shares shall be determined as of the record date for determining the shareholders entitled to vote at the meeting.

C. If no resolution is adopted under this section in respect of shares acquired in a control share acquisition and beneficial ownership of such shares is subsequently transferred in circumstances where the transferor no longer has beneficial ownership of such shares and the transferee is not engaged in a control share acquisition, then such shares shall thereafter have the voting rights they would have had in the absence of this article.

§ 13.1-728.4. Control share acquisition statement.

Any acquiring person may, after any control share acquisition or before any proposed one, deliver a control share acquisition statement to the ~~issuing~~ public corporation at its principal office. The control share acquisition statement shall set forth all of the following:

1. The identity of the acquiring person and each other member of any group of which the person is a part for purposes of determining the shares owned or to be owned, beneficially, by the acquiring person.

2. A statement that the control share acquisition statement is given pursuant to this article.

3. The number of shares of the issuing public corporation beneficially owned by the acquiring person and each other member of the group.

4. The range of voting power under which the control share acquisition falls or would, if consummated, fall.

5. A description in reasonable detail of the terms of the control share acquisition or the proposed control share acquisition, including but not limited to:

a. The source of funds or other consideration and the material terms of the financial arrangements for the control share acquisition;

b. Any plans or proposals of the acquiring person to liquidate the ~~issuing~~ public corporation, to sell all or substantially all of its assets, to merge it or exchange its shares with any other person, to change

the location of its principal executive office or a material portion of its business activities, to change materially its management or policies of employment, to alter materially its relations with suppliers or customers or the communities in which it operates, or to make any other material change in its business, corporate structure, management or personnel;

c. Any plans or proposals of the acquiring person to acquire additional shares (including additional shares within the range set forth in the statement) or to dispose of any shares; and

d. Such other information which could reasonably be expected to affect materially the decision of a shareholder with respect to granting voting rights to shares acquired or proposed to be acquired in the control share acquisition.

6. If the control share acquisition has not taken place, representations of the acquiring person, together with a statement in reasonable detail of the facts upon which they are based, that the control share acquisition, if consummated, will not be contrary to law, and that the acquiring person has the financial capacity to make the proposed control share acquisition. For this purpose, financial capacity shall only be deemed to include (i) cash and cash equivalents in excess of normal working capital requirements and (ii) funds to be provided under legally binding commitments from financial institutions having the capability to advance such funds. If the funds to be provided under such commitments are included in the demonstration of financial capacity, the control share acquisition statement shall be accompanied by complete copies of all such commitments and a written description of all oral understandings concerning the terms and conditions of such commitments.

§ 13.1-728.5. Meeting of shareholders.

A. If the acquiring person so requests at the time of delivery of a control share acquisition statement and gives an undertaking to pay the corporation's expenses of a special meeting, within ~~ten~~ *10* days thereafter the directors of the ~~issuing~~ public corporation shall call a special meeting of shareholders for the purpose of considering the voting rights to be granted the shares acquired or to be acquired in the control share acquisition.

B. Unless the acquiring person agrees in writing to another date, the special meeting of shareholders shall be held within ~~fifty~~ *50* days after receipt by the ~~issuing~~ public corporation of the request.

C. If the acquiring person so requests in writing at the time of delivery of the control share acquisition statement, the special meeting shall not be held sooner than ~~thirty~~ *30* days after receipt by the ~~issuing~~ public corporation of the acquiring person's statement.

D. If the acquiring person makes no request under subsection A ~~of this section~~ but delivers, no later than ~~thirty~~ *30* days before the intended date of notice of an annual meeting of shareholders, a control share acquisition statement with respect to shares acquired in a control share acquisition, the voting rights to be granted such shares shall be considered by any such annual meeting.

E. Notwithstanding any contrary provision of this chapter, an appointment of a proxy that confers authority to vote on the granting of voting rights pursuant to this article shall be solicited separately from any offer to purchase, or from any solicitation of an offer to sell, shares of the ~~issuing~~ public corporation, and may not be solicited sooner than ~~thirty~~ *30* days before the meeting unless otherwise agreed to in writing by the acquiring person and the ~~issuing~~ public corporation. No such appointment may be solicited or voted unless the appointment expressly provides that it is revocable at all times until the completion of the vote.

F. Notwithstanding subsection A ~~of this section~~, the directors of the ~~issuing~~ public corporation may decline to call a special meeting of shareholders requested under such subsection if they determine that, at the time of such request, the acquiring person does not beneficially own shares having at least five percent of the votes entitled to be cast at an election of directors. If the directors so decline and if the control share acquisition statement accompanying such request was delivered no later than ~~thirty~~ *30* days before the intended date of notice of an annual meeting of shareholders, the voting rights to be granted shares acquired or to be acquired in the control share acquisition described in the control share acquisition statement shall be considered at such annual meeting.

G. The control share acquisition statement required pursuant to subsections A, C, D and E ~~of this section~~ shall be delivered under and meet the requirements of § 13.1-728.4.

§ 13.1-728.6. Notice to shareholders.

A. If a special meeting of shareholders is required to be called pursuant to § 13.1-728.5, notice of the special meeting shall be given as promptly as reasonably practicable by the ~~issuing~~ public corporation to all shareholders of record as of the record date set for the meeting, whether or not entitled to vote at the meeting.

B. Notice of the special or annual ~~shareholders~~ *shareholders'* meeting at which the voting rights are to be considered shall include or be accompanied by the following:

1. A copy of the control share acquisition statement delivered pursuant to this article.

2. A statement by the board of directors of the corporation, authorized by its directors, of its position or recommendation, or that it is taking no position or making no recommendation, with respect to the

granting of voting rights to shares acquired in the control share acquisition or the proposed control share acquisition.

§ 13.1-728.7. Redemption.

A. If authorized in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, the shares acquired in such control share acquisition with respect to which no control share acquisition statement has been filed with the ~~issuing~~ public corporation may, at any time during the period ending ~~sixty~~ *60* days after the last acquisition of such shares by the acquiring person, be redeemed by the corporation at the redemption price specified in subsection C ~~of this section~~.

B. If authorized in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, shares acquired in such control share acquisition with respect to which the shareholders have failed to grant voting rights at a special meeting or, if no special meeting for such purpose has been convened, at an annual meeting may, at any time during the period ending ~~sixty~~ *60* days after such meeting, be redeemed by the corporation at the redemption price specified in subsection C ~~of this section~~.

C. The redemption price for shares to be redeemed under this section shall be the number of such shares multiplied by the dollar amount (rounded to the nearest cent) equal to the average per share price, including any brokerage commissions, transfer taxes and soliciting dealer's fees, paid by the acquiring person for such shares. The corporation may rely conclusively on public announcements by, or filings with the Securities and Exchange Commission by, the acquiring person as to the prices so paid.

§ 13.1-728.8. Appraisal rights.

A. Unless otherwise provided in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, in the event shares acquired in a control share acquisition are accorded full voting rights and the acquiring person has beneficial ownership of shares entitled to cast a majority of the votes which could be cast in an election of directors, all shareholders of the ~~issuing~~ public corporation other than the acquiring person have the right to ~~dissent from the granting of voting~~ *appraisal* rights and to ~~demand~~ *obtain* payment of the fair value of their shares under Article 15 (§ 13.1-729 et seq.) of this chapter as though such granting of voting rights were a corporate action described in subsection A of § 13.1-730, except that the provisions of subsection ~~C~~ *B* of § 13.1-730 shall not be applicable and the failure to vote in favor of the granting of voting rights shall be deemed to constitute compliance with the requirements of subsection A of § 13.1-733.

B. For the purposes of this section, "fair value" shall in no event be less than the highest price per share paid in the control share acquisition, as adjusted for any subsequent share dividends or reverse share splits or similar changes.

§ 13.1-728.9. Nonexclusivity.

Except as expressly provided in this article, neither the provisions of this article nor their application to any acquiring person shall limit actions that may be taken, or require the taking of any action, by the board of directors or shareholders with respect to any potential changes in control of any ~~issuing~~ public corporation. In the case of any action taken or not taken by directors, the provisions of § 13.1-690 shall apply, and, in determining the best interests of the corporation, a director may consider the possibility that those interests may best be served by the continued independence of the corporation.

Article 15.

~~Dissenters'~~ *Appraisal* Rights.

§ 13.1-729. Definitions.

In this article:

"Affiliate" means a person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive officer thereof. For purposes of subdivision B 4 of § 13.1-730, a person is deemed to be an affiliate of its senior executive officers.

"Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

"Corporation" means the issuer of the shares held by a ~~dissenter before the corporate action~~ *shareholder demanding appraisal and,* ~~except that (i) with respect to a merger, "corporation" means~~ *for matters covered by §§ 13.1-734 through 13.1-740, includes* the surviving ~~domestic or foreign corporation or limited liability company by merger of that issuer, and (ii) with respect to a share exchange, "corporation" means the acquiring corporation by share exchange, rather than the issuer, if the plan of share exchange places the responsibility for dissenters' rights on the acquiring corporation~~ *entity in a merger*.

~~"Dissenter" means a shareholder who is entitled to dissent from corporate action under § 13.1-730 and who exercises that right when and in the manner required by §§ 13.1-732 through 13.1-739.~~

"Fair value~~,~~" ~~with respect to a dissenter's shares,~~ means the value of the ~~shares immediately~~ *corporation's shares determined:*

a. Immediately before the effectuation of the corporate action to which the ~~dissenter~~ *shareholder* objects~~,~~ ~~excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable~~*;*

b. Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

c. Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to subdivision A 5 of § 13.1-730.

"Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

"Preferred shares" means a class or series of shares whose holders have preference over any other class or series of shares with respect to distributions.

"Record shareholder" means the person in whose name shares are registered in the records of ~~a~~ *the* corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with ~~a~~ *the* corporation.

~~"Beneficial shareholder" means the person who is a beneficial owner of shares held by a nominee as the record shareholder.~~

"Senior executive officer" means the chief executive officer, chief operating officer, chief financial officer and anyone in charge of a principal business unit or function.

"Shareholder" means ~~the~~ *both a* record shareholder ~~or the~~ *and a* beneficial shareholder.

§ 13.1-730. Right to appraisal.

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

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

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

3. Consummation of a ~~sale or exchange of all, or substantially all, of the property of the corporation~~ *disposition of assets pursuant to § 13.1-724* if the shareholder ~~was~~ *is* entitled to vote on the ~~sale or exchange or if the sale or exchange was in furtherance of a dissolution on which the shareholder was entitled to vote, provided that such dissenter's rights shall not apply in the case of (i) a sale or exchange pursuant to court order, or (ii) a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale~~ *disposition*;

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

5. Any ~~corporate action taken pursuant to a shareholder vote~~ *other amendment to the articles of incorporation, merger, share exchange or disposition of assets* to the extent *provided by* the articles of incorporation, bylaws~~,~~ or a resolution of the board of directors ~~provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares~~.

B. ~~A shareholder entitled to dissent and obtain payment for his shares under this article may not challenge the corporate action creating his entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation~~ *Notwithstanding subsection A, the availability of appraisal rights under subdivisions A 1 through A 4 shall be limited in accordance with the following provisions:*

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

a. Listed on the New York Stock Exchange or the American Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or

b. Not so listed or designated, but has at least 2,000 shareholders and the outstanding shares of such class or series have a market value of at least $20 million, exclusive of the value of such shares held by corporation's subsidiaries, senior executive officers, directors and beneficial shareholders owning more than 10 percent of such shares.

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

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

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

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

4. Subdivision 1 of this subsection shall not be applicable and appraisal rights shall be available pursuant to subsection A for the holders of any class or series of shares where:

a. Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to the corporate action by a person, or by an affiliate of a person, who:

(1) Is, or at any time in the one-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, the beneficial owner of 20 percent or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if such offer was made within one year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; or

(2) Directly or indirectly has, or at any time in the one-year period immediately preceding approval by the board of directors of the corporation of the corporate action requiring appraisal rights had, the power, contractually or otherwise, to cause the appointment or election of 25 percent or more of the directors to the board of directors of the corporation; or

b. Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to such corporate action by a person, or by an affiliate of a person, who is, or at any time in the one-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, a senior executive officer or director of the corporation or a senior executive officer of any affiliate thereof, and that senior executive officer or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

(1) Employment, consulting, retirement or similar benefits established separately and not as part of or in contemplation of the corporate action;

(2) Employment, consulting, retirement or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the manner as is provided in § 13.1-691; or

(3) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

5. For the purposes of subdivision 4 of this subsection only, the term "beneficial owner" means any person who, directly or indirectly, through any contract, arrangement or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares, provided that a member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities if the member is precluded by the rules of such exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting shares of the corporation beneficially owned by any member of the group.

C. Notwithstanding any other provision of this ~~article, with respect to a plan of merger~~ *section, the articles of incorporation as originally filed* or ~~share exchange or a sale or exchange of property there shall be no right of dissent in favor of holders of shares of~~ any *amendment thereto may limit or eliminate appraisal rights for any* class or series ~~which~~ *of preferred shares,* ~~at the record~~ *but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective* date ~~fixed to determine the shareholders entitled to receive notice of and to vote at the meeting at which the plan of merger or share exchange or the sale or exchange of property is to be acted on, were (i) listed on a national securities exchange or on the National Association of Securities Dealers Automated~~

~~Quotation System (NASDAQ) or (ii) held by at least 2,000 record shareholders, unless in either case:~~ *of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one year of that date if such action would otherwise afford appraisal rights.*

D. A shareholder may not challenge a completed corporate action described in subsection A, unless such corporate action:

1. ~~The~~ *Was not effectuated in accordance with the applicable provisions of Articles 11 (§ 13.1-705 et seq.), 12 (§ 13.1-715.1 et seq.) or 13 (§ 13.1-723 et seq.) of this chapter or the corporation's* articles of incorporation ~~of the corporation issuing such shares provide otherwise~~, *bylaws or board of directors' resolution authorizing the corporate action*; *or*

2. ~~In the case of a plan of merger or share exchange, the holders of the class or series are required under the plan of merger or share exchange to accept for such shares anything except:~~

~~a. Cash;~~

~~b. Shares or membership interests, or shares or membership interests and cash in lieu of fractional shares (i) of the surviving or acquiring corporation or limited liability company or (ii) of any other corporation or limited liability company which, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting at which the plan of merger or share exchange is to be acted on, were either listed subject to notice of issuance on a national securities exchange or held of record by at least 2,000 record shareholders or members; or~~

~~c. A combination of cash and shares or membership interests as set forth in subdivisions 2 a and 2 b of this subsection; or~~

~~3. The transaction to be voted on is an "affiliated transaction" and is not approved by a majority of "disinterested directors" as such terms are defined in § 13.1-725.~~

~~D. The right of a dissenting shareholder to obtain payment of the fair value of his shares shall terminate upon the occurrence of any one of the following events:~~

~~1. The proposed corporate action is abandoned or rescinded;~~

~~2. A court having jurisdiction permanently enjoins or sets aside the corporate action; or~~

~~3. His demand for payment is withdrawn with the written consent of the corporation.~~

~~E. Notwithstanding any other provision of this article, no shareholder of a corporation located in a county having a county manager form of government and which is exempt from income taxation under § 501 (c) or § 528 of the Internal Revenue Code and no part of whose income inures or may inure to the benefit of any private share holder or individual shall be entitled to dissent and obtain payment for his shares under this article~~ *Was procured as a result of fraud or material misrepresentation.*

§ 13.1-731. Assertion of rights by nominees and beneficial owners.

A. A record shareholder may assert ~~dissenters'~~ *appraisal* rights as to fewer than all the shares registered in ~~his~~ *the record shareholder's* name *but owned by a beneficial shareholder* only if ~~he dissents~~ *the record shareholder objects* with respect to all shares ~~beneficially~~ *of the class or series* owned by ~~any one person~~ *the beneficial shareholder* and notifies the corporation in writing of the name and address of each ~~person~~ *beneficial shareholder* on whose behalf ~~he asserts dissenters'~~ *appraisal* rights *are being asserted*. The rights of a ~~partial dissenter~~ *record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name* under this subsection ~~are~~ *shall be* determined as if the shares as to which ~~he dissents~~ *the record shareholder objects* and ~~his~~ *the record shareholder's* other shares were registered in the names of different *record* shareholders.

B. A beneficial shareholder may assert ~~dissenters'~~ *appraisal* rights as to shares *of any class or series* held on ~~his~~ behalf *of the shareholder* only if *such shareholder*:

1. ~~He~~ Submits to the corporation the record shareholder's written consent to the ~~dissent not~~ *assertion of such rights no* later than the ~~time the beneficial shareholder asserts dissenters' rights~~ *date referred to in subdivision B 2 b of § 13.1-734*; and

2. ~~He~~ Does so with respect to all shares of ~~which he is~~ *the class or series that are beneficially owned by* the beneficial shareholder ~~or over which he has power to direct the vote~~.

§ 13.1-732. Notice of appraisal rights.

A. If proposed corporate action ~~creating dissenters' rights under~~ *described in subsection A of* § 13.1-730 is *to be* submitted to a vote at a shareholders' meeting, the meeting notice shall state that *the corporation has concluded that* shareholders are, *are not* or may be entitled to assert ~~dissenters'~~ *appraisal* rights under this article ~~and be accompanied by a copy of this article~~.

~~B. If corporate action creating dissenters' rights under § 13.1-730 is taken without a vote of shareholders, the corporation, during the ten-day period after the effectuation of such corporate action, shall notify in writing all~~ *the corporation concludes that appraisal rights are or may be available, a copy of this article and a statement of the corporation's position as to the availability of appraisal rights shall accompany the meeting notice sent to those* record shareholders entitled to ~~assert dissenters'~~

exercise appraisal rights ~~that the action was taken and send them the dissenters' notice described in § 13.1-734~~.

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

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

A. If proposed corporate action ~~creating dissenters'~~ *requiring appraisal* rights under § 13.1-730 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert ~~dissenters'~~ *appraisal* rights ~~(i) shall~~ *with respect to any class or series of shares:*

1. Shall deliver to the corporation before the vote is taken written notice of ~~his~~ *the shareholder's* intent to demand payment ~~for his shares~~ if the proposed action is effectuated*;* and ~~(ii) shall~~

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

B. A shareholder who does not satisfy the requirements of subsection A ~~of this section~~ is not entitled to payment ~~for his shares~~ under this article.

§ 13.1-734. Appraisal notice and form.

A. If proposed corporate action ~~creating dissenters'~~ *requiring appraisal* rights under § 13.1-730 ~~is authorized at a shareholders' meeting~~ *becomes effective,* the corporation~~, during the ten-day period after the effectuation of such corporate action,~~ shall deliver a ~~dissenters'~~ *written appraisal* notice ~~in writing~~ *and form required by subdivision B 1* to all shareholders who satisfied the requirements of § 13.1-733. *In the case of a merger under § 13.1-719, the parent corporation shall deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.*

B. The ~~dissenters'~~ *appraisal* notice shall *be sent no earlier than the date the corporate action became effective and no later than 10 days after such date and shall*:

~~1. State where the payment demand shall be sent and where and when certificates for certificated shares shall be deposited;~~

~~2. Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;~~

~~3.~~ Supply a form ~~for demanding payment~~ that ~~includes~~ *specifies* the date of the first announcement ~~to news media or~~ to shareholders of the *principal* terms of the proposed corporate action and requires ~~that~~ the ~~person~~ *shareholder* asserting ~~dissenters'~~ *appraisal* rights certify *(i)* whether or not ~~he acquired~~ beneficial ownership of ~~the~~ *those* shares *for which appraisal rights are asserted was acquired* before ~~or after~~ that date *and that the shareholder did not vote for the transaction*;

~~4. Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date of delivery of the dissenters' notice; and~~

2. State:

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

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

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

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

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

~~5~~ *3.* Be accompanied by a copy of this article.

§ 13.1-735.1. Perfection of rights; right to withdraw.

A. A shareholder who receives notice pursuant to § 13.1-734 and who wishes to exercise appraisal rights must certify on the form sent by the corporation whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to § 13.1-738. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under § 13.1-738. In addition, a shareholder who wishes to exercise appraisal rights must execute and return the form and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to subdivision B 2 b of § 13.1-734. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the executed form, that

shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection B.

B. A shareholder who has complied with subsection A may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to subdivision B 2 e of § 13.1-734. A shareholder who fails to withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

C. A shareholder who does not execute and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in subsection B of § 13.1-734, shall not be entitled to payment under this article.

§ 13.1-737. Payment.

A. Except as provided in § 13.1-738, within ~~thirty~~ *30* days after ~~receipt of a payment demand made pursuant to~~ *the form required by subsection B 2 b of* § ~~13.1-735~~ *13.1-734 is due*, the corporation shall pay ~~the dissenter~~ *in cash to those shareholders who complied with subsection A of § 13.1-735.1* the amount the corporation estimates to be the fair value of ~~his~~ *their* shares~~,~~ plus ~~accrued~~ interest. ~~The obligation of the corporation under this paragraph may be enforced (i) by the circuit court in the city or county where the corporation's principal office is located, or, if none in this Commonwealth, where its registered office is located or (ii) at the election of any dissenter residing or having its principal office in the Commonwealth, by the circuit court in the city or county where the dissenter resides or has its principal office. The court shall dispose of the complaint on an expedited basis.~~

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

1. ~~The corporation's~~ *Financial statements of the corporation that issued the shares to be appraised, consisting of a* balance sheet as of the end of a fiscal year ending not more than ~~sixteen~~ *16* months before the ~~effective~~ date of ~~the corporate action creating dissenters' rights~~ *payment*, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

2. ~~An explanation of how the corporation estimated~~ *A statement of the corporation's estimate of* the fair value of the shares ~~and of how the interest was calculated~~*, which estimate must equal or exceed the corporation's estimate given pursuant to subdivision B 2 c of § 13.1-734*; *and*

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

~~4. A copy of this article.~~

§ 13.1-738. After-acquired shares.

A. A corporation may elect to withhold payment required by § 13.1-737 from ~~a dissenter unless he was the~~ *any shareholder who did not certify that* beneficial ~~owner~~ *ownership of all* of the *shareholder's* shares ~~on~~ *for which appraisal rights are asserted was acquired before* the date ~~of the first publication by news media or the first announcement to shareholders generally, whichever is earlier, of the terms of the proposed corporate action, as~~ set forth in the ~~dissenters'~~ *appraisal* notice *sent pursuant to subdivision B 1 of § 13.1-734*.

B. ~~To the extent~~ *If* the corporation ~~elects~~ *elected* to withhold payment under subsection A ~~of this section~~*, it must, within 30 days* after ~~taking the proposed corporate action, it shall~~ *the form required by subdivision B 2 b of § 13.1-734 is due, notify all shareholders who are described in subsection A:*

1. Of the information required by subdivision B 1 of § 13.1-737;

2. Of the corporation's estimate ~~the~~ *of* fair value ~~of the shares, plus accrued interest, and shall~~ *pursuant to subdivision B 2 of § 13.1-737 and its* offer to pay ~~this amount to each dissenter who agrees to accept it in full satisfaction of his demand. The corporation shall send with its offer an explanation of how it estimated the fair value of the shares and of how the interest was calculated, and a statement of the dissenter's right to demand payment under § 13.1-739~~ *such value plus interest;*

3. That they may accept the corporation's estimate of fair value plus interest in full satisfaction of their demands or demand for appraisal under § 13.1-739;

4. That those shareholders who wish to accept such offer must so notify the corporation of their acceptance of the corporation's offer within 30 days after receiving the offer; and

5. That those shareholders who do not satisfy the requirements for demanding appraisal under § 13.1-739 shall be deemed to have accepted the corporation's offer.

C. Within 10 days after receiving a shareholder's acceptance pursuant to subsection B, the corporation shall pay in cash the amount it offered under subdivision B 2 to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

D. Within 40 days after sending the notice described in subsection B, the corporation shall pay in cash the amount it offered to pay under subdivision B 2 to each shareholder described in subdivision B

5.

§ 13.1-739. Procedure if shareholder dissatisfied with payment or offer.

A. A ~~dissenter may~~ *shareholder paid pursuant to § 13.1-737 who is dissatisfied with the amount of the payment must* notify the corporation in writing of ~~his own~~ *that shareholder's stated* estimate of the fair value of ~~his~~ *the* shares ~~and amount of interest due,~~ and demand payment of ~~his~~ *that* estimate *plus interest* (less any payment under § 13.1-737)~~, or~~. *A shareholder offered payment under § 13.1-738 who is dissatisfied with that offer must* reject the ~~corporation's~~ offer ~~under § 13.1-738~~ and demand payment of the *shareholder's estimate of the* fair value of ~~his~~ *the* shares ~~and~~ *plus* interest ~~due, if the dissenter believes that the amount paid under § 13.1-737 or offered under § 13.1-738 is less than the fair value of his shares or that the interest due is incorrectly calculated~~.

B. A ~~dissenter~~ *shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection A within 30 days after receiving the corporation's payment or offer of payment under § 13.1-737 or 13.1-738, respectively,* waives ~~his~~ *the* right to demand payment under this section ~~unless he notifies the corporation of his demand in writing under subsection A of this section within thirty days after the corporation made or offered payment for his shares~~ *and shall be entitled only to the payment made or offered pursuant to those respective sections*.

§ 13.1-740. Court action.

A. If a *shareholder makes a* demand for payment under § 13.1-739 *that* remains unsettled, the corporation shall commence a proceeding within ~~sixty~~ *60* days after receiving the payment demand and petition the ~~circuit~~ court ~~in the city or county described in subsection B of this section~~ to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the ~~sixty~~ *60*-day period, it shall pay *in cash to* each ~~dissenter whose demand remains unsettled~~ *shareholder* the amount *the shareholder* demanded *pursuant to § 13.1-737 plus interest*.

B. The corporation shall commence the proceeding in the *circuit court of the* city or county where ~~its~~ *the corporation's* principal office ~~is located~~, or, if none in ~~this~~ *the* Commonwealth, where its registered office, is located. If the corporation is a foreign corporation without a registered office in ~~this~~ *the* Commonwealth, it shall commence the proceeding in the *circuit court of the* city or county in ~~this~~ *the* Commonwealth where the *principal office, or, if none in the Commonwealth, where the* registered office of the domestic corporation merged with ~~or whose shares were acquired by~~ the foreign corporation was located *at the time the transaction became effective*.

C. The corporation shall make all ~~dissenters~~ *shareholders*, whether or not residents of ~~this~~ *the* Commonwealth, whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties shall be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

D. The corporation may join as a party to the proceeding any shareholder who claims to ~~be a dissenter~~ *have demanded an appraisal* but who has not, in the opinion of the corporation, complied with the provisions of this article. If the court determines that ~~such~~ *a* shareholder has not complied with the provisions of this article, ~~he~~ *that shareholder* shall be dismissed as a party.

E. The jurisdiction of the court in which the proceeding is commenced under subsection B ~~of this section~~ is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers *shall* have the powers described in the order appointing them, or in any amendment to it. The ~~dissenters~~ *shareholders demanding appraisal* are entitled to the same discovery rights as parties in other civil proceedings. *There shall be no right to a jury trial.*

F. Each ~~dissenter~~ *shareholder* made a party to the proceeding is entitled to judgment (i) for the amount, if any, by which the court finds the fair value of ~~his~~ *the shareholder's* shares~~,~~ plus interest~~,~~ exceeds the amount paid by the corporation *to the shareholder for such shares* or (ii) for the fair value~~,~~ plus ~~accrued~~ interest~~,~~ of ~~his after-acquired~~ *the shareholder's* shares for which the corporation elected to withhold payment under § 13.1-738.

§ 13.1-741. Court costs and counsel fees.

A. The court in an appraisal proceeding commenced under § 13.1-740 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the ~~dissenters~~ *shareholders demanding appraisal*, in amounts the court finds equitable, to the extent the court finds ~~the dissenters did~~ *such shareholders acted arbitrarily, vexatiously or* not ~~act~~ in good faith ~~in demanding payment under § 13.1-739~~ *with respect to the rights provided by this article*.

B. The court *in an appraisal proceeding* may also assess the ~~reasonable~~ fees and expenses of *counsel and* experts~~, excluding those of counsel,~~ for the respective parties, in amounts the court finds equitable:

1. Against the corporation and in favor of any or all ~~dissenters~~ *shareholders demanding appraisal* if the court finds the corporation did not substantially comply with the requirements of §§ 13.1-732

~~through 13.1-739~~*, 13.1-734, 13.1-737 or 13.1-738*; or

2. Against either the corporation or a ~~dissenter~~ *shareholder demanding appraisal*, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed ~~did~~ *acted arbitrarily, vexatiously or* not ~~act~~ in good faith with respect to the rights provided by this article.

C. If the court *in an appraisal proceeding* finds that the services of counsel for any ~~dissenter~~ *shareholder* were of substantial benefit to other ~~dissenters~~ *shareholders* similarly situated, *and that the fees for those services should not be assessed against the corporation,* the court may award to ~~these~~ *such* counsel reasonable fees to be paid out of the amounts awarded the ~~dissenters~~ *shareholders* who were benefited.

D. ~~In a proceeding commenced under subsection A of § 13.1-737 the court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters who are parties to the proceeding, in amounts the court finds equitable, to the extent the court finds that such parties did not act in good faith in instituting the proceeding.~~ *To the extent the corporation fails to make a required payment pursuant to § 13.1-737, 13.1-738 or 13.1-739, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all costs and expenses of the suit, including counsel fees.*

§ 13.1-742. Dissolution by directors and shareholders.

A. A corporation's board of directors may propose dissolution for submission to the shareholders.

B. For a proposal to dissolve to be adopted:

1. The board of directors shall recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

2. The shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection E ~~of this section~~.

C. The board of directors may condition its submission of the proposal for dissolution on any basis.

D. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 13.1-658. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

E. Unless the board of directors, acting pursuant to subsection C ~~of this section~~, requires a greater vote, dissolution to be authorized must be approved by the holders of more than two-thirds of all votes entitled to be cast on the proposal to dissolve. 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 proposed dissolution~~ by each voting group entitled to vote on the ~~transaction~~ *proposed dissolution* at a meeting at which a quorum of the voting group exists.

§ 13.1-743. Articles of dissolution.

A. At any time after dissolution is ~~authorized~~ *approved by the shareholders*, the corporation may dissolve by filing with the Commission articles of dissolution setting forth:

1. The name of the corporation;

2. The date dissolution was authorized;

3. Either (i) a statement that dissolution was authorized by unanimous consent of the shareholders, or (ii) a statement that the proposed dissolution was submitted to the shareholders by the board of directors in accordance with this ~~chapter~~ *article*, and a statement of*:*

a. The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on dissolution; and

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

B. If the Commission finds that the articles of dissolution comply with the requirements of law and that the corporation has paid all fees and taxes, and delinquencies thereof, imposed by laws administered by the Commission, it shall issue a certificate of dissolution.

C. A corporation is dissolved upon the effective date of the certificate of dissolution.

D. For purposes of §§ 13.1-742 through 13.1-746.2, "dissolved corporation" means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

§ 13.1-746. Known claims against dissolved corporation.

A. A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

B. The dissolved corporation shall deliver to each of its known claimants written notice of the dissolution at any time after its effective date. The written notice shall:

1. Provide a reasonable description of the claim that the claimant may be entitled to assert;

2. State whether the claim is admitted, or not admitted, and if admitted (i) the amount that is admitted, which may be as of a given date, and (ii) any interest obligation if fixed by an instrument of indebtedness;

3. Provide a mailing address where a claim may be sent;

4. State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which confirmation of the claim must be delivered to the dissolved corporation; and

5. State that, except to the extent that any claim is admitted, the claim will be barred if written confirmation of the claim is not delivered by the deadline.

C. A claim against the dissolved corporation is barred to the extent that it is not admitted:

1. If the dissolved corporation delivered written notice to the claimant in accordance with subsection B ~~of this section~~ and the claimant does not deliver written confirmation of the claim to the dissolved corporation by the deadline; or

2. If the dissolved corporation delivered written notice to the claimant that his claim is not admitted, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within ~~ninety~~ *90* days from the delivery of written confirmation of the claim to the dissolved corporation.

D. For purposes of this section, "claim" does not include (i) a contingent liability or a claim based on an event occurring after the effective date of dissolution or (ii) a liability or claim the ultimate maturity of which is more than ~~sixty~~ *60* days after the delivery of written notice to the claimant pursuant to subsection B ~~or this section~~.

E. If a liability exists but the full extent of any damages is or may not be ascertainable, and a proceeding to enforce the claim is commenced pursuant to subdivision *C* 2 ~~of subsection C of this section~~, the claimant may amend the pleadings after filing to include any damages that occurred or are alleged to have occurred after filing, and the court having jurisdiction of such claim may continue such proceeding during its pendency if it appears that further damages are or may be still occurring.

§ 13.1-746.1. Other claims against dissolved corporation.

A. A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

B. The notice shall:

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

2. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

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

C. If the dissolved corporation publishes a newspaper notice in accordance with subsection B, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation prior to the earlier of the expiration of any applicable statute of limitations or three years after the publication date of the newspaper notice:

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

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

3. A claimant whose claim does not meet the definition of a claim in subsection D of § 13.1-746.

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

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

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

§ 13.1-746.2. Court proceedings.

A. A dissolved corporation that has published a notice under § 13.1-746.1 may file an application with the circuit court of the city or county where the dissolved corporation's principal office, or, if none in the Commonwealth, its registered office, is or was last located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection C of § 13.1-746.1.

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

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

D. Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection A shall satisfy the dissolved corporation's obligations with respect to claims that do not meet the definition of a claim in subsection D of § 13.1-746, and such claims may not be enforced against a shareholder who received assets in liquidation.

§ 13.1-746.3. Director duties.

A. The board of directors shall cause the dissolved corporation to apply its remaining assets to discharge or make reasonable provision for the payment of claims and make distributions of assets to shareholders after payment or provision for claims.

B. Directors of a dissolved corporation that has disposed of claims under § 13.1-746, 13.1-746.1 or 13.1-746.2 shall not be liable for breach of subsection A with respect to claims against the dissolved corporation that are barred or satisfied under § 13.1-746, 13.1-746.1 or 13.1-746.2.

§ 13.1-747. Grounds for judicial dissolution.

A. The circuit court in any city or county described in subsection C ~~of this section~~ may dissolve a corporation:

1. In a proceeding by a shareholder if it is established that:

a. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock; or

b. The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent; or

c. The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

d. The corporate assets are being misapplied or wasted;

2. In a proceeding by a creditor if it is established that:

a. The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or

b. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;

3. In a proceeding by the corporation to have its voluntary dissolution continued under court supervision;

4. Upon application by the board of directors when it is established that circumstances make it impossible to obtain a representative vote by shareholders on the question of dissolution and that the continuation of the business of the corporation is not in the interest of the shareholders but it is ~~desirable~~ in their interest that the assets and business be liquidated; or

5. When the Commission has instituted a proceeding for the involuntary termination of corporate existence and entered an order finding that the corporate existence of the corporation should be terminated but that liquidation of its business and affairs should precede the entry of an order of termination of corporate existence.

B. The circuit court in the city or county named in subsection C ~~of this section~~ shall have full power to liquidate the assets and business of the corporation at any time after the termination of corporate existence, pursuant to the provisions of this ~~chapter or any laws of this Commonwealth in effect at any time prior to January 1, 1986,~~ *article* upon the application of any person, for good cause, with regard to any assets or business that may remain. The jurisdiction conferred by this clause may also be exercised by any such court in any city or county where any property may be situated whether of a domestic or a foreign corporation that ceased to exist.

C. Venue for a proceeding brought under this section lies in the city or county where the corporation's principal office is or was located, or, if none in ~~this~~ *the* Commonwealth, where its registered office is or was last located.

D. It is not necessary to make directors or shareholders parties to a proceeding to be brought under this section unless relief is sought against them individually.

E. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with such powers and duties as the court may direct, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

§ 13.1-748. Receivership or custodianship.

A. A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage while the proceeding is pending, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

B. The court may appoint an individual, a domestic corporation, or a foreign corporation authorized to transact business in ~~this~~ *the* Commonwealth, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

C. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

1. The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in his own name as receiver of the corporation in all courts of ~~this~~ *the* Commonwealth; and

2. The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interest of its shareholders and creditors.

D. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interest of the corporation, its shareholders, and creditors.

E. The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and ~~his~~ *the custodian's* counsel from the assets of the corporation or proceeds from the sale of the assets.

§ 13.1-749. Decree of dissolution.

A. If after a hearing the court determines that one or more grounds for judicial dissolution described in § 13.1-747 exist, it may enter a decree directing that the corporation shall be dissolved. The clerk of the court shall deliver a certified copy of the decree to the Commission, which shall enter an order of involuntary dissolution.

B. After the order of involuntary dissolution has been entered, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with § 13.1-745 and the notification of claimants in accordance with §*§* 13.1-746, *13.1-746.1, and 13.1-746.2*. When all of the assets of the corporation have been distributed to its creditors and shareholders, the court shall so advise the Commission, which shall enter an order of termination of corporate existence.

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

A. Unless otherwise provided in the articles of incorporation, in a proceeding under subdivision A 1 of § 13.1-747 to dissolve a corporation that is not a public corporation, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

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

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

D. If the parties are unable to reach an agreement as provided for in subsection C, the court, upon

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

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

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

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

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

§ 13.1-750. Articles of termination of corporate existence.

A. When a corporation has distributed all of its assets to its creditors and shareholders and voluntary dissolution proceedings have not been revoked, it shall file articles of termination of corporate existence with the Commission. The articles shall set forth:

1. The name of the corporation;

2. That all the assets of the corporation have been distributed to its creditors and shareholders; and

3. That the dissolution of the corporation has not been revoked.

B. With the articles of termination of corporate existence, the corporation shall file a statement certifying that the corporation has filed returns and has paid all state taxes to the time of the certificate. In contemplation of submitting the required statement, the corporation may file returns and pay taxes before such returns and taxes would otherwise be due.

C. If the Commission finds that the articles of termination of corporate existence comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of termination of corporate existence. Upon the issuance of such certificate, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in this chapter.

D. The statement "that all the assets of the corporation have been distributed to its creditors and shareholders" means that the corporation has divested itself of all its assets by the payment of claims or liquidating dividends or by assignment to a trustee or trustees for the benefit of claimants or shareholders. If any shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative who is entitled to a share in the distribution of the assets cannot be found, the corporation may thereupon, and without awaiting the one year mentioned in § 55-210.7, pay ~~his~~ *such person's* share to the State Treasurer as abandoned property on complying with all applicable requirements of § 55-210.12 except subdivision *B* 4 ~~of subsection B of that section~~.

§ 13.1-752. Automatic termination of corporate existence.

A. If any domestic corporation fails to file the annual report required by this chapter in a timely

manner, the Commission shall mail notice to it of impending termination of its corporate existence. Whether or not such notice is mailed, if the corporation fails to file the annual report before the last day of the fourth month immediately following its annual report due date each year, the corporate existence of the corporation shall automatically cease as of that day and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to collect the assets of the corporation; sell, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders; pay, satisfy and discharge its liabilities and obligations; and do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

B. 1. Any domestic corporation shall pay the annual registration fee required by law on or before the corporation's annual report due date determined in accordance with subsection C of § 13.1-775 of each year. If the corporation pays the annual registration fee for the year assessed after such date of that year, the corporation shall incur a penalty of ~~ten~~ *10* percent of the registration fee, or ~~ten dollars~~ *$10*, whichever is greater.

2. If any domestic corporation fails to pay by the due date of the year assessed the annual registration fee, the Commission shall mail notice to the corporation of its impending termination of corporate existence. The corporate existence of the corporation shall be automatically terminated if any such fee is unpaid as of the last day of the fourth month immediately following the due date of that year, and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the corporation, (ii) sell, convey and dispose of such of its properties as are not to be distributed in kind to its ~~stockholders~~ *shareholders*, (iii) pay, satisfy and discharge its liabilities and obligations and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its ~~stockholders~~ *shareholders* according to their respective rights and interests.

C. If any domestic corporation whose registered agent has filed with the Commission ~~his~~ *a* statement of resignation pursuant to § 13.1-636 fails to file a statement of change pursuant to § 13.1-635 within ~~thirty-one~~ *31* days after the date on which the statement of resignation was filed, the Commission shall mail notice to the corporation of impending termination of its corporate existence. If the corporation fails to file the statement of change before the last day of the second month immediately following the month in which the impending termination notice was mailed, the corporate existence of the corporation shall be automatically terminated as of that day and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed as specified in subdivision B 2 ~~of this section~~.

§ 13.1-757. Authority to transact business required.

A. A foreign corporation may not transact business in ~~this~~ *the* Commonwealth until it obtains a certificate of authority from the Commission.

B. The following activities, among others, do not constitute transacting business within the meaning of subsection A ~~of this section~~:

1. Maintaining, defending, or settling any proceeding;

2. Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

3. Maintaining bank accounts;

4. Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;

5. Selling through independent contractors;

6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;

7. Creating or acquiring indebtedness, deeds of trust, and security interests in real or personal property;

8. Securing or collecting debts or enforcing deeds of trust and security interests in property securing the debts;

9. Owning, without more, real or personal property;

10. Conducting an isolated transaction that is completed within ~~thirty~~ *30* days and that is not one in the course of repeated transactions of a like nature;

11. For a period of less than ~~ninety~~ *90* consecutive days, producing, directing, filming, crewing or acting in motion picture feature films, television series or commercials, or promotional films which are sent outside of the Commonwealth for processing, editing, marketing and distribution. The term "transacting business" as used in this subsection shall have no effect on personal jurisdiction under § 8.01-328.1; or

12. Serving, without more, as a general partner of, or as a partner in a partnership which is a general partner of, a domestic or foreign limited partnership ~~which~~ *that* does not otherwise transact business in ~~this~~ *the* Commonwealth.

C. The list of activities in subsection B ~~of this section~~ is not exhaustive.

§ 13.1-758. Consequences of transacting business without authority.

A. A foreign corporation transacting business in ~~this~~ *the* Commonwealth without a certificate of authority may not maintain a proceeding in any court in ~~this~~ *the* Commonwealth until it obtains a certificate of authority.

B. The successor to a foreign corporation that transacted business in ~~this~~ *the* Commonwealth without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in ~~this~~ *the* Commonwealth until the foreign corporation or its successor obtains a certificate of authority.

C. A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court shall further stay the proceeding until the foreign corporation or its successor obtains the certificate.

D. If a foreign corporation transacts business in ~~this~~ *the* Commonwealth without a certificate of authority, each officer, director and employee who does any of such business in ~~this~~ *the* Commonwealth knowing that a certificate of authority is required shall be liable for a penalty of not less than $500 and not more than $5,000. Any such penalty may be imposed by the Commission or by any court in the Commonwealth before which an action against the corporation may lie, after the corporation and the individual have been given notice and an opportunity to be heard.

E. Notwithstanding subsections A and B ~~of this section~~, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in ~~this~~ *the* Commonwealth.

F. Suits, actions and proceedings may be begun against a foreign corporation that transacts business in ~~this~~ *the* Commonwealth without a certificate of authority by serving process on any director, officer or agent of the corporation doing such business, or, if none can be found, on the clerk of the Commission *or on the corporation in any other manner permitted by law*. If any foreign corporation transacts business in ~~this~~ *the* Commonwealth without a certificate of authority, it shall by transacting such business be deemed to have thereby appointed the clerk of the Commission its attorney for service of process. Service *upon the clerk* shall be made ~~on the clerk~~ in accordance with § 12.1-19.1.

§ 13.1-762. Corporate name of foreign corporation.

A. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

1. Shall contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," unless the name of a domestic corporation organized for the same or similar purposes would not be required to contain such a word or abbreviation. Such words and their corresponding abbreviations may be used interchangeably for all purposes.

2. Shall not contain:

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

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

3. Except as authorized by subsection C ~~of this section~~, shall be distinguishable upon the records of the Commission from:

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

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

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

d. The name of a domestic limited liability company or a foreign limited liability company registered to transact business in ~~this~~ *the* Commonwealth;

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

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

g. The name of a domestic business trust or a foreign business trust registered to transact business in ~~this~~ *the* Commonwealth;

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

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

j. The name of a domestic limited partnership or a foreign limited partnership registered to transact

business in ~~this~~ *the* Commonwealth;

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

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

B. If the corporate name of a foreign corporation does not satisfy the requirements of subsection A ~~of this section~~, to obtain or maintain a certificate of authority to transact business in ~~this~~ *the* Commonwealth:

1. The foreign corporation may add the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," to its corporate name for use in ~~this~~ *the* Commonwealth. Such words and their corresponding abbreviations may be used interchangeably for all purposes; or

2. If its real name is unavailable, the foreign corporation may use a designated name that is available if it informs the Commission of the designated name.

C. A foreign corporation may apply to the Commission for authorization to use in ~~this~~ *the* Commonwealth the name of another corporation, incorporated or authorized to transact business in ~~this~~ *the* Commonwealth, that is not distinguishable upon its records from the name applied for. The Commission shall authorize use of the name applied for if:

1. The other entity consents to the use in writing and submits an undertaking in 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.

2. [Repealed.]

D. If a foreign corporation authorized to transact business in ~~this~~ *the* Commonwealth changes its corporate name to one that does not satisfy the requirements of this section, it may not transact business in ~~this~~ *the* Commonwealth under the changed name until it adopts a name satisfying the requirements of this section and obtains an amended certificate of authority under § 13.1-760.

E. The Commission, in determining whether a corporate name is distinguishable upon its records from the name of any of the business entities listed in subdivision A 3, shall not consider any word, phrase, or abbreviation required or permitted under this chapter, Chapters 7 (§ 13.1-542 et seq.), 10 (§ 13.1-801 et seq.), 13 (§ 13.1-1100 et seq.), and 14 (§ 13.1-1200 et seq.) of this title, and Chapter 2.1 (§ 50-73.1 et seq.) of Title 50 to be contained in the name of a business entity formed or organized under the laws of ~~this~~ *the* Commonwealth or authorized or registered to transact business in ~~this~~ *the* Commonwealth.

§ 13.1-765. Resignation of registered agent of foreign corporation.

A. The registered agent of a foreign corporation may resign ~~his~~ *the* agency appointment by signing and filing with the Commission ~~his~~ *a* statement of resignation accompanied by ~~his~~ *a* certification that ~~he~~ *the registered agent* has mailed a copy thereof to the principal office of the corporation by certified mail. The statement of resignation may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

§ 13.1-767. Withdrawal of foreign corporation.

A. A foreign corporation authorized to transact business in ~~this~~ *the* Commonwealth may not withdraw from ~~this~~ *the* Commonwealth until it obtains a certificate of withdrawal from the Commission.

B. A foreign corporation authorized to transact business in ~~this~~ *the* Commonwealth may apply to the Commission for a certificate of withdrawal. The application shall be on forms prescribed and furnished by the Commission and shall set forth:

1. The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

2. That the foreign corporation is not transacting business in ~~this~~ *the* Commonwealth and that it surrenders its authority to transact business in ~~this~~ *the* Commonwealth;

3. That the foreign corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in ~~this~~ *the* Commonwealth;

4. A mailing address to which the clerk *of the Commission* may mail a copy of any process served on ~~him~~ *the clerk* under subdivision 3 of this subsection; and

5. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

C. The Commission shall not allow any foreign corporation to withdraw from the Commonwealth unless such corporation files with the Commission a statement certifying that the corporation has filed returns and has paid all state taxes to the time of the certificate. In such case the corporation may file returns and pay taxes before they would otherwise be due. If the Commission finds that the application

complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of withdrawal.

D. Before any foreign corporation authorized to transact business in ~~this~~ *the* Commonwealth terminates its corporate existence, it shall file with the Commission an application for withdrawal. Whether or not such application is filed, the termination of the corporate existence of such foreign corporation shall not take away or impair any remedy available against such corporation for any right or claim existing or any liability incurred prior to such termination. Any such action or proceeding against such foreign corporation may be defended by such corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. The right of a foreign corporation that has terminated its corporate existence to institute and maintain in its corporate name actions, suits or proceedings in the courts of ~~this~~ *the* Commonwealth shall be governed by the law of the state of its incorporation.

E. Service of process on the clerk of the Commission is service of process on a foreign corporation that has withdrawn pursuant to this section ~~and~~. *Service upon the clerk* shall be made ~~upon the clerk~~ in accordance with § 12.1-19.1 *and service upon the foreign corporation may be made in any other manner permitted by law*.

§ 13.1-768. Automatic revocation of certificate of authority.

A. If any foreign corporation fails to file the annual report required by this chapter in a timely manner, the Commission shall mail notice to it of impending revocation of its certificate of authority to do business in ~~this~~ *the* Commonwealth. Whether or not such notice is mailed, if the corporation fails to file the annual report before the last day of the fourth month immediately following its annual report due date each year, such foreign corporation shall automatically cease to be authorized to do business in ~~this~~ *the* Commonwealth and its certificate of authority shall be automatically revoked as of that day.

B. 1. Any foreign corporation shall pay the annual registration fee required by law on or before the corporation's annual report due date determined in accordance with subsection C of § 13.1-775 of each year. If the corporation pays the annual registration fee for the year assessed after such date of that year, the corporation shall incur a penalty of ~~ten~~ *10* percent of the registration fee, or ~~ten dollars~~ *$10*, whichever is greater.

2. If any foreign corporation fails to pay by the due date of the year assessed the annual registration fee, the Commission shall mail notice to the corporation of impending revocation of its certificate of authority. The corporation shall automatically cease to be authorized to do business in ~~this~~ *the* Commonwealth if any such fee is unpaid as of the last day of the fourth month immediately following the due date of that year, and its certificate of authority shall be automatically revoked.

C. If any foreign corporation whose registered agent has filed with the Commission ~~his~~ *a* statement of resignation pursuant to § 13.1-765 fails to file a statement of change pursuant to § 13.1-764 within ~~thirty-one~~ *31* days after the date on which the statement of resignation was filed, the Commission shall mail notice to the corporation of impending revocation of its certificate of authority. If the corporation fails to file the statement of change before the last day of the second month immediately following the month in which the impending revocation notice was mailed, the corporation shall automatically cease to be authorized to transact business in ~~this~~ *the* Commonwealth and its certificate of authority shall be automatically revoked as of that day.

§ 13.1-769. Revocation of certificate of authority by Commission.

A. The certificate of authority to do business in ~~this~~ *the* Commonwealth of any foreign corporation may be revoked by order of the Commission when it finds that the corporation:

1. Has continued to exceed the authority conferred upon it by law;

2. Has failed to maintain a registered office or a registered agent in ~~this~~ *the* Commonwealth as required by law;

3. Has failed to file any document required by this chapter to be filed with the Commission; or

4. No longer exists~~, by virtue of dissolution, termination, merger, or consolidation~~ under the laws of the state or country of its incorporation.

B. Before entering any such order the Commission shall issue a rule against the corporation giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

C. The authority of a foreign corporation to transact business in ~~this~~ *the* Commonwealth ceases on the date shown on the order revoking its certificate of authority.

D. The Commission's revocation of a foreign corporation's certificate of authority appoints the clerk of the Commission the foreign corporation's agent for service of process in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in ~~this~~ *the* Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign corporation and shall be made on the clerk in accordance with § 12.1-19.1.

E. Revocation of a foreign corporation's certificate of authority does not terminate the authority of

the registered agent of the corporation.

§ 13.1-769.1. Reentry of a foreign corporation whose certificate of authority has been surrendered or revoked.

A foreign corporation whose certificate of authority issued by the Commission has been surrendered or revoked may apply to the Commission for reentry within five years thereafter unless the certificate of authority was revoked by order of the Commission upon a finding that the corporation has continued to exceed or abuse the authority conferred upon it by law. The Commission shall enter an order reentering the certificate of authority upon receiving an annual report, together with payment of a reentry fee of $100 plus all registration fees and penalties that were due before the certificate of authority was surrendered or revoked and that would have become due thereafter if the corporation had not had its certificate of authority surrendered or revoked. The application for reentry may be by letter signed by an officer or director of the corporation. A corporation need not refile a copy of its charter or any amendment thereof that is then on file in the office of the clerk of the Commission. After the authority of a foreign corporation to transact business in the Commonwealth has been surrendered or revoked, the clerk shall retain in the files of ~~his~~ *the clerk's* office the charter and amendments thereto filed by the corporation and its original application for authority to transact business for a period of five years. A duly authenticated copy of any amendments made to the articles of incorporation by a foreign corporation and any mergers entered into by a foreign corporation from the date of surrender or revocation of its certificate of authority to the date of application for reentry shall be filed with the application for reentry. If the name of a foreign corporation, whose certificate of authority issued by the Commission has been surrendered or revoked, is not distinguishable upon the records of the Commission at the time application is made for reentry, such foreign corporation shall adopt a designated name for use in the Commonwealth that is distinguishable upon the records of the Commission. Upon compliance with the provisions of this section the Commission shall enter an order reentering the certificate of authority to do business in the Commonwealth.

§ 13.1-770. Corporate records.

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

B. A corporation shall maintain appropriate accounting records.

C. A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class and series, if any, of shares showing the number and class and series, if any, of shares held by each.

D. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

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

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

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

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

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

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

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

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

§ 13.1-771. Inspection of records by shareholders.

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

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

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

2. Accounting records of the corporation; and

3. The record of shareholders.

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

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

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

3. ~~He~~ *The shareholder* describes with reasonable particularity ~~his~~ *the shareholder's* purpose and the records ~~he~~ *the shareholder* desires to inspect; and

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

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

E. This section does not affect:

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

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

F. For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the shareholder's behalf.

§ 13.1-772. Scope of inspection right.

A. A shareholder's agent or attorney has the same inspection and copying rights as the shareholder ~~he~~ *the agent or attorney* represents.

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

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

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

§ 13.1-773.1. Inspection of records by directors.

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

B. The circuit court of the city or county where the corporation's principal office, or if none in the Commonwealth, its registered office, is located may order inspection and copying of the books, records and documents upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

C. If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's reasonable costs, including reasonable counsel fees, incurred in connection with the application if the director proves that the corporation refused inspection without a reasonable basis for doubt about the director's right to inspect the records demanded.

§ 13.1-774. Financial statements for shareholders.

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

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

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

§ 13.1-775. Annual report of domestic and foreign corporations.

A. Each domestic corporation, and each foreign corporation authorized to transact business in ~~this~~ *the* Commonwealth, shall file, within the time prescribed by this ~~chapter~~ *section*, an annual report setting forth:

1. The name of the corporation, the address of its principal office and the state or country under whose laws it is incorporated;

2. The address of the registered office of the corporation in ~~this~~ *the* Commonwealth, including both (i) the post-office address with street and number, if any, and (ii) the name of the county or city in which it is located, and the name of its registered agent in ~~this~~ *the* Commonwealth at such address;

3. The names and post-office addresses of the directors and the principal officers of the corporation; and

4. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by class.

B. The report shall be made on forms furnished by the Commission and shall supply the information as of the date of the report.

C. Except as otherwise provided in this subsection, the annual report of a domestic or foreign corporation shall be filed with the Commission by the last day of the twelfth month next succeeding the date it was incorporated or authorized to transact business in ~~this~~ *the* Commonwealth, and by such date in each year thereafter. The report shall be filed no earlier than three months prior to its due date each year. If the report appears to be incomplete or inaccurate, the Commission shall return it for correction or explanation. Otherwise the Commission shall file it in the clerk's office. At the discretion of the Commission the annual report due date for a corporation may be extended, on a monthly basis for a period of not less than one month nor more than ~~eleven~~ *11* months, at the request of its registered agent of record or as may be necessary to distribute annual report due dates of corporations as equally as practicable throughout the year on a monthly basis.

§ 13.1-775.1. Annual registration fees for domestic and foreign corporations.

A. Every domestic corporation and every foreign corporation authorized to do business in ~~this~~ *the* Commonwealth, whose number of authorized shares is 5,000 shares or less, shall pay into the state treasury by its due date each calendar year an annual registration fee of ~~fifty dollars~~ *$50*.

Any such corporation whose number of authorized shares is more than 5,000 shall pay an annual registration fee of $50 plus $15 for each 5,000 shares or fraction thereof in excess of 5,000 shares up to a maximum of $850.

The annual registration fee shall be irrespective of any specific license tax or other tax or fee imposed by law upon the corporation for the privilege of carrying on its business in ~~this~~ *the* Commonwealth or upon its franchise, property or receipts.

B. The ~~State Corporation~~ Commission shall ascertain from its records the number of authorized shares of each corporation authorized to do business in ~~this~~ *the* Commonwealth, as of the first day of the second month next preceding the month of the corporation's annual registration fee due date each year, and shall assess against each corporation the registration fee herein imposed. In any year in which a corporation's due date is extended pursuant to this chapter the registration fee assessment shall be increased by a prorated amount to cover the period of extension. A statement of the assessment, when made, shall be forwarded by the clerk of the ~~State Corporation~~ Commission to the Comptroller and to each corporation.

C. Any corporation which fails to pay the registration fee herein imposed within the time prescribed shall incur a penalty as provided in subdivision B 1 of § 13.1-752 or ~~§~~ 13.1-768, as the case may be, which shall be added to the amount of the registration fee. The penalty shall be in addition to any other penalty or liability provided by law.

D. The fees paid into the state treasury under this section shall be set aside as a special fund to be used only by the ~~State Corporation~~ Commission as it deems necessary to defray all costs of staffing, maintaining and operating the office of the clerk of the Commission, together with all other costs

incurred by the Commission in supervising, implementing and administering the provisions of Part 5 (§ 8.9A-501 et seq.) of Title 8.9A, this title, except for Chapters 5 (§ 13.1-501 et seq.) and 8 (§ 13.1-557 et seq.) and Article 6 (§ 55-142.1 et seq.) of Chapter 6 of Title 55, provided that one-half of the fees collected shall be credited to the general fund. The excess of fees collected over the projected costs of administration in the next fiscal year shall be paid into the general fund prior to the close of the fiscal year.

§ 13.1-776. Definitions.

As used in this article, unless the context otherwise requires, the term:

"Asserted shareholder" means an entity holding a certificate for one or more shares of stock of a corporation on which it is stated to be the owner thereof but which is not listed as a shareholder on the records of the corporation.

"Corporation" shall have the meaning provided in § 13.1-603.

"Entity" means one or more persons, partnerships, unincorporated associations, corporations or other organizations entitled to hold property in its own name.

"Lost shareholder" means a shareholder shown by the records of a corporation to have been a ~~stockholder~~ *shareholder* for more than seven years but who, throughout that period, neither claimed a dividend or other sum nor corresponded in writing with the corporation or otherwise indicated an interest as evidenced by a memorandum or other record on file with the corporation and the corporation does not know the location of the shareholder at the end of such seven-year period.

"Shareholder" means an entity shown by the records of a corporation to be the owner of one or more shares of its outstanding capital stock.

§ 13.1-898.1. Merger of nonstock and stock corporations.

A. One or more nonstock corporations incorporated under this chapter may merge with one or more stock corporations incorporated under Chapter 9 (§ 13.1-601 et seq.) of this title. The surviving corporation may be or, pursuant to subdivision D 1, become a stock corporation or a nonstock corporation.

B. The board of directors of each stock corporation shall adopt and its shareholders, if required by § 13.1-718, shall approve, and the governing body of each nonstock corporation shall adopt and its members, if required by § 13.1-895, shall approve, the plan of merger.

C. The plan of merger shall set forth:

1. The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

2. The terms and conditions of the merger and the mode of carrying the same into effect;

3. The manner and basis of converting the shares of each stock corporation and the membership interests of each nonstock corporation into shares, obligations or other securities of the surviving stock corporation or membership interests of the surviving nonstock corporation, and, if any shares of any such stock corporation or membership interests of any such nonstock corporation are not to be converted solely into shares or other securities of the stock corporation or membership interests of the nonstock corporation surviving from such merger, the cash, other property, rights or securities of any other corporation or entity which the holders of shares of any such nonstock corporation are to receive in exchange for, or upon conversion of such shares or membership interests, which cash, other property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of any stock corporation or membership interests of any nonstock corporation surviving from such merger.

D. The plan of merger may set forth:

1. Amendments to, or a restatement of, the articles of incorporation of the surviving corporation; and

2. Other provisions relating to the merger.

E. The plan of merger required by subsection B ~~of this section~~, in the case of each nonstock corporation, shall be adopted and approved in the manner provided in this article and, in the case of each stock corporation, shall be adopted and approved in the manner provided in Article 12 (§ ~~13.1-716~~ *13.1-715.1 et seq.*) of Chapter 9 of this title.

F. After a plan of merger is approved by the shareholders and members, or adopted by the board of directors if shareholders and/or member approval is not required, the surviving corporation shall file with the Commission articles of merger setting forth:

1. The plan of merger;

2. If shareholder approval was not required, a statement to that effect, including the reason approval was not required;

3. If approval of the shareholders of one or more stock corporations party to the merger was required, with respect to each such corporation, either:

a. A statement that the plan of merger was adopted by the unanimous consent of the shareholders; or

b. A statement that the plan was submitted to the shareholders by the board of directors in

accordance with the Virginia Stock Corporation Act (§ 13.1-601 et seq.), and a statement of:

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

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

4. If the members of any merging nonstock corporation have voting rights, then as to each such corporation, either:

a. A statement that the plan of merger was adopted by the unanimous consent of the members; or

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

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

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

5. If any merging nonstock corporation has no members having voting rights, then a statement of that fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

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

§ 13.1-1070. Merger.

A. Pursuant to a written plan of merger, a domestic limited liability company may merge with one or more domestic or foreign limited liability companies, partnerships, limited partnerships, business trusts or corporations if:

1. The merger is not prohibited by the articles of organization or operating agreement of any domestic limited liability company that is a party to the merger, and each domestic limited liability company party to the merger approves the plan of merger in accordance with § 13.1-1071 and complies with the terms of its articles of organization and operating agreement;

2. Each domestic partnership that is a party to the merger complies with the applicable provisions of Article 9 (§ 50-73.124 et seq.) of Chapter 2.2 of Title 50;

3. Each domestic limited partnership that is a party to the merger complies with the applicable provisions of Article 7.1 (§ 50-73.48:1 et seq.) of Chapter 2.1 of Title 50;

4. Each domestic business trust that is a party to the merger complies with the applicable provisions of Article 11 (§ 13.1-1257 et seq.) of Chapter 14 of this title;

5. Each domestic corporation that is a party to the merger complies with the applicable provisions of Article 12 (§ ~~13.1-716~~ *13.1-715.1* et seq.) of Chapter 9 of this title;

6. The merger is permitted by the laws under which each foreign limited liability company, foreign partnership, foreign limited partnership, foreign business trust, and foreign corporation party to the merger is organized, formed or incorporated, and each such foreign limited liability company, partnership, limited partnership, business trust or corporation complies with those laws in effecting the merger;

7. No member of a domestic limited liability company that is a party to the merger will, as a result of the merger, become personally liable for the liabilities or obligations of any other person or entity unless that member approves the plan of merger or otherwise consents to becoming personally liable;

8. In the case of a merger of a limited liability company to which one or more domestic or foreign corporations are parties, a domestic or foreign corporation, limited liability company or business trust party to the merger is the surviving entity of the merger.

B. The plan of merger shall set forth:

1. The name of each domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation planning to merge and the name of the surviving domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation into which each other domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation plans to merge;

2. The name of the state or country under whose law each domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation planning to merge is organized, formed or incorporated and the name of the state or country of organization, formation or incorporation of the surviving domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation;

3. The terms and conditions of the merger; and

4. The manner and basis of converting the membership interests of each domestic limited liability company, the shares of beneficial interest of each domestic business trust, the partnership interests of each domestic partnership or limited partnership and the shares of each domestic corporation party to the merger into membership interests, partnership interests, shares of beneficial interest, shares, obligations or other securities of the surviving or any other domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation or into cash or other property in whole or in part, and the manner and basis of converting rights to acquire the membership interests of each domestic limited liability company, the partnership interests of each domestic partnership or limited partnership, the shares of beneficial interest of each domestic business trust, and the shares of each domestic corporation party to the merger into rights to acquire membership interests, partnership interests, shares of beneficial interest, shares, obligations or other securities of the surviving or any other domestic or foreign limited liability company, partnership, limited partnership, business trust, or corporation or into cash or other property in whole or in part.

C. The plan of merger may set forth:

1. If a domestic limited liability company is to be the surviving entity, amendments to the articles of organization or an operating agreement of that limited liability company;

2. If the merger is not to be effective upon the issuance of the certificate of merger described in subsection C of § 13.1-1072 by the Commission, the future effective date or time of the merger; and

3. Other provisions relating to the merger.

§ 13.1-1276. Effect of entity conversion.

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

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

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

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

4. The articles of trust attached to the articles of entity conversion constitute the articles of trust of the surviving entity;

5. The shares or interests of the converting entity are reclassified into beneficial ownership interests in accordance with the plan of entity conversion; and the shareholders, members or partners of, or other persons having an ownership or beneficial interest in, the converting entity are entitled only to the rights provided in the plan of entity conversion or, in the case of a converting entity that is a corporation, to the rights, if any, they may have under subdivision A **4** *5* of § 13.1-730;

6. The surviving entity is deemed to:

a. Be a business trust for all purposes;

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

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

7. The converting entity shall cease to be a corporation, limited liability company, limited partnership, partnership or other entity, as the case may be, when the certificate of entity conversion becomes effective.

§ 38.2-1000. Incorporation of domestic stock insurers.

Domestic stock insurers shall be incorporated under the provisions of Article 3 (§ 13.1-618 et seq.) of Chapter 9 of Title 13.1. A foreign insurer may become a domestic insurer under the provisions of Article 11 (§ 13.1-705 et seq.) or Article 12 (§ ~~13.1-716~~ *13.1-715.1* et seq.) of Chapter 9 of Title 13.1. Except as otherwise provided in this title, domestic stock insurers shall be subject to all the general restrictions and shall have all the general powers imposed and conferred by law.

§ 38.2-1017. Applicability of Title 13.1.

Except as otherwise provided in this title, Article 12 (§ ~~13.1-716~~ *13.1-715.1* et seq.) of Chapter 9 of Title 13.1 shall apply to mergers involving a domestic stock insurer and Article 11 (§ 13.1-894 et seq.) of Chapter 10 of Title 13.1 shall apply to mergers involving a domestic mutual insurer.

§ 50-73.48:1. Merger.

A. Pursuant to a written plan of merger, a domestic limited partnership that has filed a certificate of limited partnership with the Commission in accordance with § 50-73.11, former § 50-73.11:1, § 50-73.77 or § 50-73.125 may merge with one or more domestic or foreign partnerships, limited partnerships, limited liability companies, business trusts or corporations if:

1. The merger is not prohibited by the partnership agreement of any domestic limited partnership that is a party to the merger, and each domestic limited partnership party to the merger approves the plan of merger in accordance with § 50-73.48:2 and complies with the terms of its partnership agreement;

2. Each domestic partnership that is a party to the merger complies with the applicable provisions of

Article 9 (§ 50-73.124 et seq.) of Chapter 2.2 of Title 50;

3. Each domestic limited liability company that is a party to the merger complies with the applicable provisions of Article 13 (§ 13.1-1070 et seq.) of Chapter 12 of Title 13.1;

4. Each domestic business trust that is a party to the merger complies with the applicable provisions of Article 11 (§ 13.1-1257 et seq.) of Chapter 14 of Title 13.1;

5. Each domestic corporation that is a party to the merger complies with the applicable provisions of Article 12 (§ ~~13.1-716~~ *13.1-715.1* et seq.) of Chapter 9 of Title 13.1;

6. The merger is permitted by the laws under which each foreign partnership, limited partnership, foreign limited liability company, foreign business trust, and foreign corporation party to the merger is formed, organized or incorporated, and each such foreign partnership, limited partnership, limited liability company, business trust or corporation complies with those laws in effecting the merger;

7. No partner of a domestic limited partnership that is a party to the merger will, as a result of the merger, become personally liable for the liabilities or obligations of any other person or entity unless that partner approves the plan of merger or otherwise consents to becoming personally liable;

8. In the case of a merger of a limited partnership to which one or more domestic or foreign corporations are parties, a domestic or foreign corporation, limited liability company or business trust party to the merger is the surviving entity of the merger.

B. The plan of merger shall set forth:

1. The name of each domestic or foreign limited partnership, limited liability company, business trust or corporation planning to merge and the name of the surviving domestic or foreign partnership, limited partnership, limited liability company, business trust or corporation into which each other domestic or foreign partnership, limited partnership, limited liability company, business trust or corporation plans to merge;

2. The name of the state or country under whose law each domestic or foreign partnership, limited partnership, limited liability company, business trust or corporation planning to merge is formed, organized or incorporated and the name of the state or country of formation, organization or incorporation of the surviving domestic or foreign partnership, limited partnership, limited liability company, business trust or corporation;

3. The terms and conditions of the merger; and

4. The manner and basis of converting the partnership interests of each domestic partnership or limited partnership, the membership interests of each domestic limited liability company, the shares of beneficial interest of each domestic business trust, and the shares of each domestic corporation party to the merger into partnership interests, membership interests, shares of beneficial interest, shares, obligations or other securities of the surviving or any other domestic or foreign partnership, limited partnership, limited liability company, business trust, or corporation or into cash or other property in whole or in part, and the manner and basis of converting rights to acquire the partnership interests of each domestic partnership or limited partnership, the membership interests of each domestic limited liability company, the shares of beneficial interest of each domestic business trust, and the shares of each domestic corporation party to the merger into rights to acquire partnership interests, membership interests, shares of beneficial interest, shares, obligations or other securities of the surviving or any other domestic or foreign partnership, limited partnership, limited liability company, business trust or corporation or into cash or other property in whole or in part.

C. The plan of merger may set forth:

1. If a domestic limited partnership is to be the surviving entity, amendments to the certificate of limited partnership or partnership agreement of that limited partnership;

2. If the merger is not to be effective upon the issuance of the certificate of merger described in subsection C of § 50-73.48:3 by the Commission, the future effective date or time of the merger; and

3. Other provisions relating to the merger.

§ 50-73.128. Merger of partnerships.

A. Pursuant to a written plan of merger approved as provided in subsection C, a partnership may be merged with one or more domestic or foreign partnerships, limited partnerships, limited liability companies, business trusts, or corporations if:

1. The merger is not prohibited by the partnership agreement of any domestic partnership that is a party to the merger, and each domestic partnership party to the merger approves the plan of merger in accordance with subsection C ~~of this section~~ and complies with the terms of its partnership agreement;

2. Each domestic limited partnership that is a party to the merger complies with the applicable provisions of Article 7.1 (§ 50-73.48:1 et seq.) of Chapter 2.1 of Title 50;

3. Each domestic limited liability company that is a party to the merger complies with the applicable provisions of Article 13 (§ 13.1-1070 et seq.) of Chapter 12 of Title 13.1;

4. Each domestic business trust that is a party to the merger complies with the applicable provisions of Article 11 (§ 13.1-1257 et seq.) of Chapter 14 of Title 13.1;

5. Each domestic corporation that is a party to the merger complies with the applicable provisions of Article 12 (§ ~~13.1-716~~ *13.1-715.1* et seq.) of Chapter 9 or Article 11 (§ 13.1-894 et seq.) of Chapter 10 of Title 13.1; and

6. The merger is permitted by the laws under which each foreign limited liability company, foreign partnership, foreign limited partnership, foreign business trust, and foreign corporation party to the merger is organized, formed or incorporated, and each such foreign limited liability company, partnership, limited partnership, business trust, or corporation complies with those laws in effecting the merger.

B. The plan of merger shall set forth:

1. The name of each partnership, limited partnership, limited liability company, business trust, or corporation that is a party to the merger;

2. The name of the surviving entity into which the other partnerships, limited partnerships, limited liability companies, business trusts, or corporations will merge;

3. Whether the surviving entity is a partnership, a limited partnership, a limited liability company, a business trust, or a corporation and the status of each partner;

4. The terms and conditions of the merger;

5. The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and

6. The street address of the surviving entity's chief executive office.

C. The plan of merger shall be approved:

1. In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

2. In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the State or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

D. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

E. The merger takes effect on the later of:

1. The approval of the plan of merger by all parties to the merger, as provided in subsection C;

2. The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

3. Any later effective date stated pursuant to subsection J of § 50-73.83 in a statement of merger filed pursuant to § 50-73.131 or, if no statement of merger is filed, any effective date specified in the plan of merger.

2. That §§ 13.1-722, 13.1-722.1, 13.1-735, and 13.1-736 of the Code of Virginia are repealed.