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HOUSE BILL NO. 2478

Offered January 9, 2019

Prefiled January 9, 2019

A BILL to amend and reenact §§ 13.1-603, 13.1-604, 13.1-604.1, 13.1-606 through 13.1-612, 13.1-614 through 13.1-616, 13.1-619, 13.1-623, 13.1-624, 13.1-625, 13.1-627, 13.1-629 through 13.1-632, 13.1-634, 13.1-635, 13.1-636, 13.1-638 through 13.1-649, 13.1-651 through 13.1-670, 13.1-671.1, 13.1-672.1 through 13.1-680, 13.1-682, 13.1-685, 13.1-687 through 13.1-690.1, 13.1-692 through 13.1-699, 13.1-700.1 through 13.1-711, 13.1-713 through 13.1-721.1, 13.1-722.2, 13.1-722.3, 13.1-722.5, 13.1-722.6, 13.1-722.8 through 13.1-722.13, 13.1-723, 13.1-724, 13.1-725, 13.1-727, 13.1-728.1, 13.1-728.4 through 13.1-728.7, 13.1-728.9 through 13.1-734, 13.1-735.1, 13.1-737 through 13.1-746.1, 13.1-746.3, 13.1-747, 13.1-748, 13.1-749.1, 13.1-750, 13.1-751, 13.1-755, 13.1-757 through 13.1-761, and 13.1-763 through 13.1-775 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 9 of Title 13.1 an article numbered 1.1, consisting of sections numbered 13.1-614.1 through 13.1-614.8, by adding in Article 8.1 of Chapter 9 of Title 13.1 a section numbered 13.1-672.7, by adding sections numbered 13.1-681.1 and 13.1-712.1, by adding in Article 12.1 of Chapter 9 of Title 13.1 sections numbered 13.1-722.1:1 and 13.1-722.7:1, and by adding sections numbered 13.1-722.12:1 and 13.1-768.1; and to repeal §§ 13.1-722.4, 13.1-722.7, and 13.1-722.14 of the Code of Virginia, relating to the Virginia Stock Corporation Act.

Patron—Kilgore

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-603, 13.1-604, 13.1-604.1, 13.1-606 through 13.1-612, 13.1-614 through 13.1-616, 13.1-619, 13.1-623, 13.1-624, 13.1-625, 13.1-627, 13.1-629 through 13.1-632, 13.1-634, 13.1-635, 13.1-636, 13.1-638 through 13.1-649, 13.1-651 through 13.1-670, 13.1-671.1, 13.1-672.1 through 13.1-680, 13.1-682, 13.1-685, 13.1-687 through 13.1-690.1, 13.1-692 through 13.1-699, 13.1-700.1 through 13.1-711, 13.1-713 through 13.1-721.1, 13.1-722.2, 13.1-722.3, 13.1-722.5, 13.1-722.6, 13.1-722.8 through 13.1-722.13, 13.1-723, 13.1-724, 13.1-725, 13.1-727, 13.1-728.1, 13.1-728.4 through 13.1-728.7, 13.1-728.9 through 13.1-734, 13.1-735.1, 13.1-737 through 13.1-746.1, 13.1-746.3, 13.1-747, 13.1-748, 13.1-749.1, 13.1-750, 13.1-751, 13.1-755, 13.1-757 through 13.1-761, and 13.1-763 through 13.1-775 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 9 of Title 13.1 an article numbered 1.1, consisting of sections numbered 13.1-614.1 through 13.1-614.8, by adding in Article 8.1 of Chapter 9 of Title 13.1 a section numbered 13.1-672.7, by adding sections numbered 13.1-681.1 and 13.1-712.1, by adding in Article 12.1 of Chapter 9 of Title 13.1 sections numbered 13.1-722.1:1 and 13.1-722.7:1, and by adding sections numbered 13.1-722.12:1 and 13.1-768.1 as follows:

§ 13.1-603. Definitions.

~~In~~ *As used in* this chapter:

"Articles of incorporation" means all documents constituting, at any particular time, the charter of a corporation. It includes the original charter issued by the General Assembly, a court or the Commission and all amendments including certificates of consolidation, serial designation, reduction, correction, and merger. It excludes articles of share exchange filed by an acquiring corporation. When the articles of incorporation have been restated pursuant to any articles of restatement, amendment, domestication, or merger, it includes only the restated articles of incorporation, including any articles of serial designation, without the accompanying articles of restatement, amendment, domestication, or merger. *When used with respect to a foreign corporation, the "articles of incorporation" of such entity means the document that is equivalent to the articles of incorporation of a domestic corporation.*

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

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

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

"Commission" means the State Corporation Commission of Virginia.

"Conspicuous" means so written, displayed, or presented that a reasonable person against whom the writing is to operate should have noticed it. For example, text that is italicized, is in boldface,

contrasting colors, or capitals, or is underlined, is conspicuous.

"Corporation" or "domestic corporation" means a corporation authorized by law to issue shares, irrespective of the nature of the business to be transacted, organized under this chapter or existing pursuant to the laws of the Commonwealth on January 1, 1986, or which, by virtue of articles of incorporation, amendment, or merger, has become a domestic corporation of the Commonwealth, even though also being a corporation organized under laws other than the laws of the Commonwealth, or that has become a domestic corporation of the Commonwealth pursuant to Article 12.1 (§ ~~13.1-722.2~~ *13.1-722.1:1* et seq.) *or Article 12.2 (§ 13.1-722.8 et seq.)* of this chapter or Article 15 (§ 13.1-1081 et seq.) of Chapter 12.

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

"Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in Article 8.1 (§ 13.1-672.1 et seq.) ~~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 *subdivision B 5 of § 13.1-619,* § 13.1-672.4, 13.1-691, 13.1-699, or 13.1-701, does not have (i) a financial interest in a matter that is the subject of such action or (ii) a familial, financial, professional, employment, or other relationship with a person who has a financial interest in the matter, either of which would reasonably be expected to ~~affect adversely~~ *impair* the objectivity of the ~~director~~ *director's judgment* when participating in the action, and if the action is to be taken under § 13.1-699 or 13.1-701, is also not a party to the proceeding. The presence of one or more of the following circumstances shall not by itself prevent a person from being a disinterested director: (i) nomination or election of the director to the ~~current~~ board by any ~~person~~ *director who is not a disinterested director with respect to the matter or by any person that has a material relationship with that director,* acting alone or participating with others~~, who is so interested in the matter~~; (ii) service as a director of another corporation of which ~~an interested person~~ *a director who* is ~~also~~ *not* a *disinterested* director *with respect to the matter, or any person that has a material relationship with that director, is or was also a director*; or (iii) at the time action is to be taken under § 13.1-672.4, status as a named defendant, as a director against whom action is demanded, or as a director who approved the act being challenged.

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

"Document" means (i) any tangible medium on which information is inscribed, and includes ~~any writing or written instrument~~ *handwritten, typed, printed, or similar instruments and copies of such instruments*, or (ii) an electronic record.

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

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

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

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

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

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

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

"Effective date of notice" is defined in *subdivision 9 of* § 13.1-610.

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

"Electronic record" means information that is stored in an electronic or other *nontangible* medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with ~~subsection J~~ *subdivision 10* of § 13.1-610.

"Electronic transmission" or "electronically transmitted" means any form or process of communication, not directly involving the physical transfer of paper or ~~other~~ *another* tangible medium,

that (i) is suitable for the retention, retrieval, and reproduction of information by the recipient, and (ii) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with ~~subsection J~~ *subdivision 10* of § 13.1-610.

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

"Eligible interests" means interests or memberships.

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

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

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

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

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

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

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

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

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

"Foreign nonstock corporation" ~~has the same meaning as "foreign corporation" as specified in § 13.1-803~~ *means a corporation that is incorporated under a law other than the law of the Commonwealth and would, based on its public organic record, be a nonstock corporation if incorporated under the law of the Commonwealth.*

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

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

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

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

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

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

"Individual" means a natural person.

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

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

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

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

"Interest holder liability" means:

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

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

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

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

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

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

"Means" denotes an exhaustive definition.

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

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

"Notice" is defined in § 13.1-610.

~~"Organic 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.

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

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

"Person" includes an individual and an entity.

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

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

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

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

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

"Record date" means the date ~~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~~ *fixed for determining* the identity of ~~its~~ *the corporation's* shareholders and their shareholdings for purposes of this chapter. The ~~determination~~ *determinations* shall be made as of the close of business at the principal office of the corporation on the record date unless another time for doing so is specified when the record date is fixed.

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

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

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

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

"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~~ *a record shareholder*.

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

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

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

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

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

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

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

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

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

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

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

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

§ 13.1-604. Filing requirements.

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

B. ~~The~~ *To be entitled to be filed with the Commission, this chapter shall require or permit 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~~ *and* may contain other information as well.

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

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

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

1. By the chairman or any vice-chairman of the board of directors, the president, or any other of its officers ~~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 signed in the name of the corporation by an officer or director listed in the report or, if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

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

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

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

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

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

1. The plan or filed document shall specify the nationally recognized news or information medium in

which the facts can be found or otherwise state the manner in which the facts can be objectively ascertained. The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

2. The facts may include:

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

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

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

3. As used in this subsection:

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

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

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

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

b. 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~~ *nor has* notice of the fact ~~from~~ *been given by* the corporation *to the affected shareholders,* then the corporation shall file with the Commission articles of amendment setting forth the fact promptly after the time when the fact referred to is first ~~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, ~~13.1-710, 13.1-711, 13.1-720, 13.1-722.12, 13.1-743~~ *13.1-707, 13.1-718, 13.1-722.4, 13.1-722.11,* or ~~13.1-750~~ *13.1-742,* 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 one or more amendments to the corporation's articles of incorporation containing terms and conditions permitted by this chapter; (ii) through a plan of merger, share exchange, *domestication,* or ~~entity~~ conversion; or (iii) through dissolution or termination, 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, ~~entity~~ *domestication,* conversion, dissolution, or termination, 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. Any provision relating to the amendment or amendments; plan of merger, share exchange, *domestication,* or ~~entity~~ conversion; or dissolution or termination approved by the court;

3. The name of the court and the date of the court's order or decree approving the amendment, plan of merger, share exchange, ~~or entity~~ *domestication,* conversion~~;~~ ~~or~~, dissolution, or termination;

4. The title and case number, if any, 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, ~~entity~~ *domestication,* conversion, dissolution, or termination comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment, merger, share exchange, ~~entity~~

domestication, conversion, dissolution, or termination.

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.

§ 13.1-606. Effective time and date of document.

A. ~~A~~ *Except as otherwise provided in § 13.1-607 and Article 1.1 (§ 13.1-614.1 et eq.), a* certificate issued by the Commission is effective at the time such certificate is issued, unless the certificate relates to articles filed with the Commission and the articles state that the certificate shall become effective at a later time ~~and~~ *or* date specified in the articles. In that event, the certificate shall become effective at the earlier of the time and date so specified or 11:59 p.m. on the fifteenth day after the date on which the certificate is issued by the Commission. *If a delayed effective date is specified, but no time is specified, the effective time shall be 12:01 a.m. on the date specified.* Any other document filed with the Commission shall be effective when accepted for filing unless otherwise provided for in this chapter.

B. Notwithstanding subsection A ~~of this section~~, any certificate that has a delayed effective time ~~and~~ *or* date shall not become effective if, prior to the effective time and date, the parties to the articles to which the certificate relates ~~file a request for~~ *deliver a statement of* cancellation ~~with~~ *to* the Commission and the Commission, by order, cancels the certificate.

C. Notwithstanding subsection A ~~of this section~~, for purposes of §§ 13.1-630 and 13.1-762, any certificate that has a delayed effective date shall be deemed to be effective when the certificate is issued.

D. For articles with a delayed effective date and time, the effective date and time shall be Eastern time.

§ 13.1-607. Correcting filed articles.

A. ~~The board of directors of a corporation may authorize correction of any articles~~ *Articles* filed with the Commission *may be corrected* if (i) the articles contain an inaccuracy; (ii) the articles were not properly authorized or defectively ~~executed~~ *signed,* attested, sealed, verified, or acknowledged; or (iii) the electronic transmission of the articles to the Commission was defective.

B. Articles are corrected by filing with the Commission articles of correction ~~setting forth~~ *that*:

1. ~~The~~ *Set forth the* name of the corporation prior to filing;

2. ~~A description of~~ *Describe* the articles to be corrected, including their effective date;

3. ~~Each inaccurate or defective matter that is~~ *Specify the inaccuracy or defect* to be corrected;

4. ~~The correction of each inaccurate or defective matter~~ *Correct the inaccuracy or defect*; and

5. ~~A statement~~ *State* that the ~~board of directors~~ *corporation* authorized the correction and the date of such authorization.

C. *If the Commission finds that the articles of correction comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of correction.* Upon the issuance of a certificate of correction by the Commission, the articles of correction shall become effective as of the effective date and time 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 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~~ *delivered with* a copy of any document admitted to the records of the Commission, bearing the signature of the 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 *of good standing* 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~~ *the* Commonwealth, the date of its incorporation, *which is the original date of incorporation of the domesticated corporation if the corporation was domesticated from a foreign jurisdiction,* and the period of its duration if less than perpetual~~;~~, or ~~that~~ (ii) the foreign corporation is authorized to transact business in the Commonwealth; and

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

C. A domestic corporation or a foreign corporation authorized to transact business in ~~this~~ *the*

Commonwealth shall be deemed to be in good standing if:

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

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

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

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

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

§ 13.1-610. Notices and other communications.

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

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

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

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

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

~~E.~~ *5.* Any consent under ~~subsection D~~ *subdivision 4* may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if (i) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent or other person responsible for the giving of notice or other communications~~. The~~*; however, the* inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

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

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

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

~~G.~~ *7.* Receipt of an electronic acknowledgment from an information processing system described in subdivision ~~F 1~~ *6 a* establishes that an electronic transmission was received. However, such receipt of an electronic acknowledgment, by itself, does not establish that the content sent corresponds to the content received.

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

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

~~1.~~ *a.* If in physical form, the earliest of when it is actually received or when it is left at:

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

~~b.~~ *(2)* A director's residence or usual place of business;

~~c.~~ *(3)* The corporation's ~~principal place of business~~ *office*; or

~~d.~~ *(4)* The corporation's registered office when left with the corporation's registered agent;

~~2.~~ *b.* If mailed postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail;

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

~~4.~~ *d.* If an electronic transmission, when it is received as provided in ~~subsection F~~ *subdivision 7*; and

~~5.~~ *e.* If oral, when communicated.

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

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

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

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

§ 13.1-610.1. Householding.

A. A corporation shall be deemed to have delivered written notice or any other report or statement under this chapter, the articles of incorporation or the bylaws to all shareholders who share a common address as shown on the corporation's current record of shareholders if:

1. The corporation delivers one copy of the notice, report or statement to the common address;

2. The corporation addresses the notice, report or statement to those shareholders either as a group or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented; and

3. Each of those shareholders consents, including any implied consent pursuant to subsection B, to delivery of a single copy of such notice, report or statement to the shareholders' common address.

B. Any shareholder who fails to object by written notice to the corporation, within 60 days of written notice by the corporation of its intention to ~~send~~ *deliver* single copies of notices, reports, or statements to shareholders who share a common address as permitted by subsection A, shall be deemed to have consented to receiving such single copy at the common address, *provided that the notice of intention states that consent may be revoked and the method for revoking such consent.*

C. Any consent pursuant to this section shall be revocable by any shareholder who delivers written notice of revocation to the corporation. If such written notice of revocation is delivered, the corporation shall begin providing individual notices, reports, or other statements to the revoking shareholder no later than 30 days after delivery of the written notice of revocation.

§ 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~~ *Three or fewer* 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.

§ 13.1-612. Penalty for signing false document.

A. It shall be unlawful for any person to sign a document ~~he~~ *that the person* knows is false in any material respect with intent that the document be delivered to the Commission for filing.

B. Anyone who violates the provisions of this section shall be guilty of a Class 1 misdemeanor.

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

A. The Commission shall have no power to grant a hearing with respect to any certificate issued by the Commission with respect to any articles filed with the Commission except on a petition by a

shareholder filed with the Commission and *delivered to* the corporation within 30 days after the effective date of the certificate, in which the shareholder asserts that the certification of corporate action contained in the articles contains a misstatement of a material fact as to compliance with statutory requirements, specifying the particulars thereof. After hearing, on notice in writing to the corporation and the shareholder, the Commission shall determine the issues and revoke or refuse to revoke its order accordingly.

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

C. Notwithstanding any provision of subsection A to the contrary, the Commission shall have the power to act upon *articles of correction filed by the corporation pursuant to § 13.1-607 or upon* a petition filed by a corporation at any time to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person or persons without authority to act for the corporation, or ~~of its~~ *on the Commission's* own motion to correct Commission records so as to eliminate the effects of clerical errors committed by its staff.

Article 1.1.

Ratification of Defective Corporate Actions.

§ 13.1-614.1. Definitions.

As used in this article:

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 13.1-614.2. Defective corporate actions.

A. A defective corporate action shall not be void or voidable if ratified in accordance with § 13.1-614.3 or validated in accordance with § 13.1-614.8.

B. Ratification under § 13.1-614.3 or validation under § 13.1-614.8 shall not be deemed to be the exclusive means of ratifying or validating any defective corporate action, and the absence or failure of ratification in accordance with this article shall not, of itself, affect the validity or effectiveness of any corporate action properly ratified under this chapter, common law, or otherwise, nor shall it create a presumption that any such corporate action is or was a defective corporate action void or voidable.

C. In the case of an over-issuance of shares, putative shares shall be valid shares effective as of the date originally issued or purportedly issued upon:

1. The effectiveness under this article and under Article 11 (§ 13.1-705 et seq.) of an amendment of the articles of incorporation authorizing, designating, or creating such shares; or

2. The effectiveness of any other corporate action under this article ratifying the authorization, designation, or creation of such shares.

§ 13.1-614.3. Ratification of defective corporate actions.

A. To ratify a defective corporate action under this section, other than the ratification of an election of the initial board of directors under subsection B, the board of directors shall adopt resolutions ratifying the action in accordance with § 13.1-614.4, stating:

1. The defective corporate action to be ratified and, if the defective corporate action involved the issuance of putative shares, the number and type of putative shares purportedly issued;

2. The date of the defective corporate action;

3. The nature of the failure of authorization with respect to the defective corporate action to be ratified; and

4. That the board of directors approves the ratification of the defective corporate action.

B. In the event that a defective corporate action to be ratified relates to the election of the initial board of directors of the corporation under subdivision A 2 of § 13.1-623, a majority of the persons who, at the time of the ratification, are exercising the powers of directors may take an action stating:

1. The name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation;

2. The earlier of the date on which such persons first took such action or were purported to have been elected as the initial board of directors; and

3. That the ratification of the election of such person or persons as the initial board of directors is approved.

C. If any provision of this chapter, the articles of incorporation or bylaws, any corporate resolution or any plan or agreement to which the corporation is a party in effect at the time action under subsection A is taken requires shareholder approval or would have required shareholder approval at the date of the occurrence of the defective corporate action, the ratification of defective corporate action approved in the action taken by the directors under subsection A shall be submitted to the shareholders for approval in accordance with § 13.1-614.4.

D. Unless otherwise provided in the action taken by the board of directors under subsection A, after the action by the board of directors has been taken and, if required, approved by the shareholders, the board of directors may abandon the ratification at any time before the validation effective time without further action of the shareholders.

§ 13.1-614.4. Action of ratification.

A. The quorum and voting requirements applicable to a ratifying action by the board of directors under subsection A of § 13.1-614.3 shall be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time such ratifying action is taken.

B. If the ratification of the defective corporate action requires approval by the shareholders under subsection C of § 13.1-614.3, and if the approval is to be given at a meeting, the corporation shall notify each holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for notice of the meeting and as of the date of the occurrence of defective corporate action, provided that notice shall not be required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice shall state that the purpose, or one of the purposes, of the meeting, is to consider ratification of a defective corporate action and shall be accompanied by (i) either a copy of the action taken by the board of directors in accordance with subsection A of § 13.1-614.3 or the information required by subdivisions A 1 through A 4 of § 13.1-614.3 and (ii) a statement that any claim that the ratification of such defective corporate action and any putative shares issued as a result of such defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within 120 days from the applicable validation effective time.

C. Except as provided in subsection D with respect to the voting requirements to ratify the election of a director, the quorum and voting requirements applicable to the approval by the shareholders required by subsection C of § 13.1-614.3 shall be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time of such shareholder approval.

D. The approval by shareholders to ratify the election of a director requires that the votes cast within the voting group favoring such ratification exceed the votes cast opposing such ratification of the election at a meeting at which a quorum is present.

E. Putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders under subsection C of § 13.1-614.3, and without giving effect to any ratification of putative shares that becomes effective as a result of such vote, shall neither be entitled to vote nor counted for quorum purposes in any vote to approve the ratification of any defective corporate action.

F. If the approval under this section of putative shares would result in an over-issuance of shares, in addition to the approval required by § 13.1-614.3, the corporation shall approve an amendment of the articles of incorporation under Article 11 (§ 13.1-705 et seq.) to increase the number of shares of an authorized class or series or to authorize the creation of a class or series of shares so there is no over-issuance of shares.

§ 13.1-614.5. Notice.

A. Unless shareholder approval is required under subsection C of § 13.1-614.3, prompt notice of an action taken under § 13.1-614.3 shall be given to each holder of valid and putative shares, regardless of whether entitled to vote, as of (i) the date of such action by the board of directors and (ii) the date of the defective corporate action ratified, provided that notice shall not be required to be given to holders of valid and putative shares whose identities or addresses for notice cannot be determined from the records of the corporation.

B. The notice shall contain (i) either a copy of the action taken by the board of directors in accordance with subsection A or B of § 13.1-614.3 or the information required by subdivisions A 1 through 4 or B 1, 2, and 3 of § 13.1-614.3, as applicable, and (ii) a statement that any claim that the ratification of the defective corporate action and any putative shares issued as a result of such defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within 120 days from the applicable validation effective time.

C. No notice under this section is required with respect to any action required to be submitted to shareholders for approval under subsection C of § 13.1-614.3 if notice is given in accordance with § 13.1-614.4.

D. A notice required by this section may be given in any manner permitted by § 13.1-610 and for any public corporation may be given by means of a filing or furnishing of such notice with the U.S. Securities and Exchange Commission.

§ 13.1-614.6. Effect of ratification.

From and after the validation effective time, and without regard to the 120-day period during which a claim may be brought under § 13.1-614.8:

1. Each defective corporate action ratified in accordance with § 13.1-614.3 shall not be void or voidable as a result of the failure of authorization identified in the action taken under subsection A or B of § 13.1-614.3 and shall be deemed a valid corporate action effective as of the date of the defective corporate action;

2. The issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken under § 13.1-614.3 shall not be void or voidable, and each such putative share or fraction of a putative shall be deemed to be an identical share or fraction of a valid share as of the time it was purportedly issued; and

3. Any corporate action taken subsequent to the defective corporate action ratified in accordance with this article in reliance on such defective corporate action having been validly effected and any subsequent defective corporate action resulting directly or indirectly from such original defective corporate action shall be valid as of the time taken.

§ 13.1-614.7. Filings.

A. If the defective corporate action ratified under this article would have required under any other section of this chapter a filing with the Commission in accordance with this chapter, then, regardless of whether a filing was previously made in respect of such defective corporate action and in lieu of a filing otherwise required by this chapter, the corporation shall make the required filing or, as appropriate, an amended filing in accordance with this section, and such filing shall serve to amend or substitute for any other filing with the Commission with respect to such defective corporate action required by the chapter.

B. The filed document shall set forth:

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

2. The date of the defective corporate action;

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

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

5. The information required by subsection C.

C. The filed document shall also contain the following information:

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

2. If a filing was previously made in respect of the defective corporate action and such filing requires any change to give effect to the ratification of such defective corporate action in accordance with § 13.1-614.3, the filed document shall set forth (i) the name, title, and filing date of the filing previously made and any articles of correction to that filing and (ii) a statement that a filing containing all of the information required to be included under the applicable section or sections of the chapter to give effect to such defective corporate action is attached as an exhibit, and (iii) the date and time that such filing is deemed to have become effective; or

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

D. If the Commission finds that the filed document complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of ratification of defective corporate action.

§ 13.1-614.8. Commission proceedings regarding validity of corporate actions.

A. Upon application by the corporation, any successor entity to the corporation, a director of the corporation, any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation, including any such shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner as of the date of the defective corporate action ratified under § 13.1-614.3, or any other person claiming to be substantially and adversely affected by a ratification under § 13.1-614.3, the Commission may:

1. Determine the validity and effectiveness of any corporate action or defective corporate action;

2.Determine the validity and effectiveness of any ratification under § 13.1-614.3;

3. Determine the validity of any putative shares; and

4. Modify or waive any of the procedures specified in § 13.614.3 or 13.1-614.4 to ratify a defective corporate action.

B. In connection with an action under this section, the Commission may make such findings or orders and take into account any factors or considerations regarding such matters as it deems proper under the circumstances.

C. Service of process of the application under subsection A on the corporation may be made in any manner provided by statutes of the Commonwealth or by rule of the Commission for service on the corporation, and no other party need be joined in order for the Commission to adjudicate the matter. In an action filed by the corporation, the Commission may require notice of the action be provided to other persons specified by the Commission and permit such other persons to intervene in the action.

D. Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of any defective corporate action and any putative shares issued as a result of such defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought in a petition filed within 120 days of the validation effective time.

§ 13.1-615. Fees to be collected by Commission; application of payment; 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 that is not accepted for filing, at any time within one year from the date of its payment. When the Commission receives payment of an annual registration fee assessed against a domestic or foreign corporation, such payment shall be applied against any unpaid annual registration fees previously assessed against such corporation, including any penalties incurred thereon, beginning with the assessment or penalty that has remained unpaid for the longest period of time.

B. The Commission shall not file or issue with respect to any domestic or foreign corporation any

document or certificate specified in this chapter, except the annual report required by § 13.1-775, a statement of change pursuant to § 13.1-635 or 13.1-764, and a statement of resignation pursuant to § 13.1-636 or 13.1-765, 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 by or on behalf of such corporation. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign corporation that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is on or before the due date of the corporation's annual registration fee payment in any year, provided that the Commission shall not issue a certificate of domestication with respect to a foreign corporation until the annual registration fee has been paid by or on behalf of that corporation.

C. A domestic or foreign corporation shall not be required to pay the annual registration fee assessed against it pursuant to subsection B of § 13.1-775.1 in any year if (i) the Commission issues or files any of the following types of certificate or instrument and (ii) the certificate or instrument is effective on or before the annual registration fee due date:

1. A certificate of termination of corporate existence, a certificate of incorporation surrender, or a certificate of ~~entity~~ conversion for a domestic corporation;

2. A certificate of withdrawal for a foreign corporation;

3. A certificate of merger or an authenticated copy of an instrument of merger for a domestic or foreign corporation that has merged into a surviving domestic corporation or eligible entity or into a surviving foreign corporation or eligible entity; or

4. An authenticated copy of an instrument of ~~entity~~ conversion for a foreign corporation that has converted to a different entity type.

The Commission shall cancel the annual registration fee assessments specified in this subsection that remain unpaid.

D. A foreign corporation that has amended its articles of incorporation to reduce the number of shares it is authorized to issue, effective prior to its annual registration fee 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 registration fee assessment date pursuant to subsection B of § 13.1-775.1 shall have its annual registration fee reassessed to reflect the new number of authorized shares.

E. Annual registration fee assessments that have been paid shall not be refunded.

§ 13.1-615.1. Charter and entrance fees for corporations.

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

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

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

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

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

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

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

F. *For any domestic nonstock corporation that files articles of restatement to become a domestic*

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

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

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

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

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

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

a. Articles of incorporation~~,~~ *or* domestication~~, or incorporation surrender~~.

b. Articles of entity conversion to convert ~~a domestic limited liability company~~ *an eligible entity* to a corporation.

c. Articles of amendment or restatement.

d. Articles of merger or share exchange.

e. Articles of correction.

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

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

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

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

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

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

~~2.~~ *3.* For filing any one of the following, the fee shall be $10:

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

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

c. An application for use of an indistinguishable name.

d. Articles of dissolution.

e. Articles of revocation of dissolution.

f. Articles of termination of corporate existence.

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

h. A notice of release of a registered name.

~~3.~~ *4.* For issuing a certificate pursuant to § 13.1-781, the fee shall be $6.

§ 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 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 *regarding*:

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

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

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

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

e. Imposing interest holder liability on shareholders;

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

5. A provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any, or one or more classes or categories of, business opportunities, before the pursuit or taking of the opportunity by the director or other person, provided that any application of such a provision to an officer or a related person of that officer (i) also requires approval of that application by the board of directors, subsequent to the effective date of the provision, by action of disinterested directors taken in compliance with the same procedures as are set forth in § 13.1-691, and (ii) may be limited by the approving action of the board of directors.

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.

§ 13.1-623. Organization of corporation.

A. After incorporation:

1. If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

2. If initial directors are not named in the articles *of incorporation*, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

a. To elect a board of directors and complete the organization of the corporation; or

b. To elect *a board of* directors who shall complete the organization of the corporation.

B. Action required or permitted by this ~~Act~~ *chapter* to be taken by incorporators *or the initial directors* at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator *or initial director*.

C. An organizational meeting may be held in or out of ~~this~~ *the* Commonwealth.

§ 13.1-624. Bylaws.

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

B. The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles of incorporation.

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

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

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

~~3.~~ A requirement that *any or all internal corporate claims shall be brought exclusively in* a circuit court or a federal district court in the Commonwealth ~~or the jurisdiction~~ *and, if so specified, in any additional courts in the Commonwealth or in any other jurisdictions with* in which the corporation ~~has~~ *maintains* its principal office ~~shall be the sole and exclusive forum for~~. *As used in this subdivision, "internal corporate claims" means* (i) any derivative action *or proceeding* brought on behalf of the corporation; (ii) any action for breach of duty to the corporation or the corporation's shareholders by any current or former officer ~~or~~, director*, or shareholder* of the corporation; ~~or~~ (iii) any action ~~against the corporation or any current or former officer or director of the corporation~~ *asserting a claim* arising pursuant to this chapter or the corporation's articles of incorporation or bylaws*; or (iv) any action asserting a claim governed by the internal affairs doctrine that is not included in clause (i), (ii), or (iii). Notwithstanding any other provision of this chapter to the contrary, to the extent any provision of this chapter allows or requires an action or proceeding to be brought in the circuit court of the county or city where the corporation's principal office or registered office is located or in any other specified court location, such action or proceeding shall instead be brought in a court in the Commonwealth specified in a bylaw, if any, authorized by this subdivision and adopted prior to the commencement of such action or proceeding.*

D. *A provision of the bylaws adopted under subdivision C 2 shall not have the effect of conferring jurisdiction on any court or over any person or claim, and shall not apply if none of the courts specified by such provision has the requisite personal and subject matter jurisdiction. If the court or*

courts specified in a provision adopted under subdivision C 2 do not have the requisite personal and subject matter jurisdiction and another court of the Commonwealth does have such jurisdiction, then the internal corporate claim may be brought in such other court of the Commonwealth, notwithstanding that such other court of the Commonwealth is not specified in such provision, and in any other court specified in such provision that has the requisite jurisdiction. No provision of the articles of incorporation or the bylaws may prohibit bringing an internal corporate claim in the courts of the Commonwealth or require any such claim to be determined by arbitration.

E. Notwithstanding subdivision B 2 of § 13.1-714, the shareholders in amending, repealing, or adopting a bylaw described in ~~subsection~~ *subdivision* C *1* may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in, or to add any procedure or condition to, such a bylaw ~~in order~~ to provide for a reasonable, practicable, and orderly process.

§ 13.1-625. Emergency bylaws.

A. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection D of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

1. Procedures for calling a meeting of the board of directors;

2. Quorum requirements for the meeting; and

3. Designation of additional or substitute directors.

B. All provisions of the regular bylaws ~~consistent~~ *not inconsistent* with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

C. Corporate action taken in good faith in accordance with the emergency bylaws:

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.

§ 13.1-627. General powers.

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

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

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

3. To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Commonwealth;

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 *securities and* obligations, which may be convertible into or include the option to purchase other securities or property of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

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

9. To conduct its business, locate offices, and exercise the powers granted by this chapter ~~within~~ *in* or ~~without~~ *outside of* 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. *Except as otherwise provided in subsection B, to be a promoter, partner, member, associate, or*

manager of any partnership, joint venture, trust, or other entity;

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

~~14.~~ *15.* To pay compensation, or to pay additional compensation, to any or all directors, officers and employees on account of services previously rendered to the corporation, whether or not an agreement to pay such compensation was made before such services were rendered;

~~15.~~ *16.* 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.~~ *17.* To cease its corporate activities and surrender its corporate franchise; and

~~17.~~ *18.* To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

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

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

D. Each corporation ~~which~~ *that* 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.

§ 13.1-629. Lack of power to act.

A. Except as provided in subsection B ~~of this section~~, *the validity of* corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

B. A corporation's power to act may be challenged:

1. In a proceeding by a shareholder against the corporation to enjoin the act;

2. In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other

legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

3. In a proceeding against ~~a~~ *the* corporation before the Commission.

C. In a shareholder's proceeding under subdivision 1 of subsection B ~~of this section~~ to enjoin an unauthorized corporate act, *if equitable and if all affected persons are parties to the proceeding,* the court may enjoin or set aside the act and may award damages for loss, except anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

§ 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~~ *the corporation (i)* will ~~transact one~~ *conduct any* of the special kinds of businesses listed in § 13.1-620 unless it proposes in fact to engage in such special kind of business *or (ii) is organized for a purpose other than that permitted by § 13.1-626 and its articles of incorporation*;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 13.1-631. 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. The corporate name applied for need not comply with subsection A of § 13.1-630. If the Commission finds that the corporate name applied for is

distinguishable upon the records of the Commission, 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, signed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

D. A reserved corporate name may be used by its owner in connection with (i) the formation *of,* or an amendment to change the name of, a domestic stock or nonstock corporation, limited liability company, business trust, or limited partnership; (ii) an application for a certificate of authority or registration to transact business in the Commonwealth as a foreign stock or nonstock corporation, limited liability company, business trust, or limited partnership; or (iii) an amended application for such authority or registration, provided that the proposed name complies with the provisions of § 13.1-630, 13.1-762, 13.1-829, 13.1-924, 13.1-1012, 13.1-1054, 13.1-1214, 13.1-1244, 50-73.2, or 50-73.56, as the case may be.

§ 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~~ *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 $20~~.

C. Except as provided in subsection ~~E~~ *F*, registration is effective for one year after the date an application is filed.

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

~~D.~~ *E.* A foreign corporation whose registration is effective may renew it for the succeeding year by filing with the Commission, during the 60-day period preceding the date of expiration of the registration, a renewal application that complies with the requirements of subsection B~~, and paying a renewal fee of $20~~. The renewal application is effective when filed in accordance with this section and, except as provided in subsection ~~E~~ *F*, 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.~~ *F.* A foreign corporation whose registration is effective may thereafter obtain a certificate of authority to transact business in the Commonwealth under 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 the Commonwealth. The registration terminates when the domestic corporation is incorporated or the foreign corporation obtains a certificate of authority to transact business in the Commonwealth or consents to the authorization of another foreign corporation to transact business in the Commonwealth under the registered name.

~~F.~~ *G* A foreign corporation 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 $10~~.

§ 13.1-634. Registered office and registered agent.

A. Each corporation shall continuously maintain in ~~this~~ *the* Commonwealth:

1. A registered office that may be the same as any of its places of business; and

2. A registered agent, who shall be:

a. An individual who is a resident of ~~this~~ *the* Commonwealth and *(i)* either an officer or director of the corporation or *(ii)* a member of the Virginia State Bar~~,~~ and whose business office is identical with the registered office; or

b. A domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in ~~this~~ *the* Commonwealth, the business office of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice or demand may be served and shall continuously maintain at least one such person at that office. Whenever

any such person accepts service, a photographic copy of such instrument shall be attached to the return.

B. The sole duty of the registered agent is to forward to the corporation at its last known address any process, notice, or demand that is served on the registered agent.

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

A. A corporation may change its registered office or registered agent, ~~or both, upon~~ *by* filing with the Commission a statement of change on a form prescribed and furnished by the Commission that sets forth:

1. The name of the corporation;

2. The address of its current registered office;

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

4. The name of its current registered agent;

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

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

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

C. A corporation's registered agent may sign a statement *of change* as required above if (i) the business address of the registered agent changes to another post office address within the Commonwealth or (ii) the name of the registered agent has been legally changed. A corporation's new registered agent may sign and submit for filing a statement *of change* as required above if (a) the former registered agent is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § 13.1-634. In either instance, the registered agent or surviving entity shall forthwith file a statement *of change* as required above, which shall recite that a copy of the statement *of change* shall be mailed to the principal office address of the corporation on or before the business day following the day on which the statement *of change* is filed.

§ 13.1-636. Resignation of registered agent.

A. A registered agent may resign ~~the agency appointment~~ *as agent for the corporation* by signing and filing with the Commission a statement of resignation *stating (i) the name of the corporation, (ii) the name of the agent, and (iii) that the agent resigns from serving as registered agent for the corporation. The statement of resignation shall be* accompanied by a certification that the registered agent ~~shall mail~~ *will have* a copy ~~thereof~~ *of the statement mailed* to the principal office of the corporation by certified mail on or before the business day following the day on which the statement is filed. The 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,~~ *A statement of resignation takes effect on the earlier of (i) 12:01 a.m.* on the thirty-first day after the date on which the statement was filed *with the Commission or (ii) the date on which a statement of change in accordance with § 13.1-635 is filed with the Commission*.

§ 13.1-638. Authorized shares.

A. The articles of incorporation shall 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~~, *before* the issuance of shares of a class or series, *describe* the terms, including the preferences, rights and limitations of that class or series. 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, that are identical with those of other shares of the same class or series.

B. The articles of incorporation shall authorize:

1. One or more classes or series of shares that together have ~~unlimited~~ *full* voting rights; and

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 otherwise provided by this chapter;

2. Are redeemable or convertible as specified in the articles of incorporation:

a. At the option of the corporation, the shareholder, or another person or upon the occurrence of a specified event;

b. For cash, indebtedness, securities, or other property; and

c. At prices and in amounts specified or determined in accordance with a formula;

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

4. Have preference over any other class or series of shares with respect to distributions, including 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 *the holders of* all or a specified 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 preferences, rights, and limitations of 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 adoption of an amendment of the articles of incorporation:

1. Classify any unissued shares into one or more classes or into one or more series within one or more classes;

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

3. Reclassify any unissued shares of any series of any class into one or more classes or into one or more series 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.

C. Unless the articles of incorporation otherwise provide, the board of directors, without shareholder action, may, by adoption of an amendment of the articles of incorporation, delete from the articles of incorporation any provisions originally adopted by the board of directors without shareholder action fixing the *terms, including the* preferences, limitations, and rights of any class of shares or series within a class, provided there are no shares of such class or series then outstanding.

D. Unless the articles of incorporation otherwise provide, the board of directors of a corporation that is registered as an open-end management investment company under the *federal* Investment Company Act of 1940, without shareholder action, may, by adoption of an amendment of the articles of incorporation:

1. Classify any unissued shares into one or more classes or into one or more series within one or more classes; or

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

3. Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within one or more classes.

E. When the board of directors has adopted an amendment of the articles of incorporation pursuant to subsection A, C, or D, the corporation shall file with the Commission articles of amendment ~~that set forth:~~

~~1. The name of the corporation;~~

~~2. The text of the amendment, including any determination made pursuant to subsection B;~~

~~3. The date it was adopted; and~~

~~4. A statement that the amendment was duly adopted by the board of directors~~ *pursuant to § 13.1-710 with the addition, when the board of directors has acted pursuant to subsection A, of any determination made pursuant to subsection 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. Shares of any class or series that are ~~the subject of~~ *classified or reclassified under this section by* the articles of amendment shall not be issued until the certificate of amendment is effective.

§ 13.1-640. Issued and outstanding shares.

A. A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

B. The reacquisition, redemption or conversion of outstanding shares is subject to the limitations of subsection C of this section and to § 13.1-653.

C. At all times that shares of the corporation are issued and outstanding, one or more shares that together have ~~unlimited~~ *full* voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution shall be outstanding.

§ 13.1-641. Fractional shares.

A. ~~A~~ *Unless the articles of incorporation provide otherwise, a* corporation may, if authorized by its board of directors*, issue fractions of a share or in lieu of doing so may*:

1. ~~Issue fractions of a share or pay in money~~ *Pay in cash* 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*; or*

3. Arrange for disposition of fractional shares held by the shareholders.

B. Each certificate representing scrip shall be conspicuously labeled "Scrip" and shall contain the *applicable* 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~~ *rights* to vote~~,~~ *, and* to receive ~~dividends, and to participate in the assets of the corporation~~ *distributions, including distributions* upon dissolution. The holder of scrip is not entitled to any ~~of these~~ rights *of a shareholder* unless the scrip provides for them.

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

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

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

E. When a corporation is to pay in ~~money~~ *cash* 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~~ *a longer or shorter period* 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~~ *cash* 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 20 days after the effective date of the notice.

E. If a subscription for unissued shares is forfeited for nonpayment under subsection D, 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 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.

§ 13.1-643. Issuance of shares.

A. The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

B. Any issuance of shares must be authorized by the board of directors. Shares may be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

C. ~~A good faith determination by~~ *Before the corporation issues shares,* the board of directors*, or if authorized by subdivision D 7 of § 13.1-689, a committee of the board of directors or a senior executive officer, shall determine* that the consideration received or to be received for the shares to be issued is adequate. *That determination* is conclusive insofar as the adequacy of consideration *for the issuance of shares* relates to whether the shares are validly issued, fully paid and nonassessable. When ~~the board of directors has made~~ such a determination *has been made* and the corporation has received the consideration, the shares issued therefor are fully paid and nonassessable.

D. The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the benefits are received or the note is paid. If the services are not performed, the benefits are not received, or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

E. Where it cannot be determined that outstanding shares are fully paid and nonassessable, there shall be a conclusive presumption that such shares are fully paid and nonassessable if the board of directors makes a good faith determination that there is no substantial evidence that the full consideration for such shares has not been paid.

§ 13.1-644. Liability of shareholders and others.

A. A purchaser from a corporation of ~~its~~ *the corporation's* own shares is not liable to the corporation or ~~its~~ *the corporation's* creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued as provided in § 13.1-643 or specified in the subscription agreement ~~under § 13.1-642~~.

B. A person who becomes a transferee of shares in good faith and without knowledge that the consideration determined for the shares pursuant to § 13.1-643 or specified in the subscription agreement ~~pursuant to § 13.1-642~~ has not been paid is not personally liable for any unpaid portion of the consideration, but the initial transferor remains liable therefor.

C. An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not, in any event, be personally liable to the corporation as transferee of a purchaser from the corporation of ~~its~~ *the corporation's* own shares but the estate of the purchaser and ~~his~~ *the purchaser's* assets in the hands of such personal representative shall be so liable.

D. *A shareholder is not personally liable for any liabilities of the corporation, including liabilities arising from the acts of the corporation, except to the extent provided in a provision of the articles of incorporation permitted by subdivision B 3 (e) of § 13.1-619.*

E. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

§ 13.1-645. Share dividends.

A. Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series *of shares*. An issuance of shares under this subsection is a share dividend.

B. Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless (i) the articles of incorporation so authorize, (ii) a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (iii) there are no outstanding shares of the class or series to be issued. For purposes of this subsection, if a security convertible into or carrying a right to subscribe for or acquire shares of the class or series to be issued is outstanding, the holders shall be deemed to be holders of the class or series.

C. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

§ 13.1-646. Share rights, options, warrants, and other awards.

A. Subject to the provisions of § 13.1-651, a corporation may issue rights, options or warrants for the purchase of shares or other securities of the corporation. Unless reserved to the shareholders in the articles of incorporation, the board of directors may authorize the issuance of rights, options, or warrants and determine (i) the terms *and conditions* 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 *by the board of directors* 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 issued by a corporation may include, without limitation, restrictions or conditions that *(i)* preclude or limit the exercise, transfer, or receipt thereof by designated persons or classes of persons or ~~that~~ *by any transferee or transferees of such persons or classes of persons or (ii)* invalidate or void such rights, options, or warrants held by designated persons or classes of persons *or by any transferee or transferees of such 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.

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

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

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

A. Shares may but need not be represented by certificates. Unless this chapter or another statute expressly provides otherwise, the rights and obligations of shareholders are identical *regardless of* 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~~ *the* 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 *of shares* within a class, *(i)* the designations, rights, preferences, and limitations applicable to each class and ~~the~~ *series; (ii) any* variations in rights, preferences, and limitations ~~determined for each~~ *among the holders of the same class or* series ~~(~~*;* and *(iii)* 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, *who may be the same individual,* 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 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 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.

§ 13.1-648. Shares without certificates.

A. Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the ~~issue~~ *issuance* of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

B. Within a reasonable time after the ~~issue~~ *issuance* or transfer of shares without certificates, the corporation shall ~~send~~ *deliver to* the shareholder a written statement of the information required on certificates by subsections B and C of § 13.1-647, and, if applicable, § 13.1-649.

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

A. The articles of incorporation, *the* 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 *or contained*, 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~~ *or*

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 *or series* of its shares, or ~~another~~ ~~person~~ *other persons* to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

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

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

§ 13.1-651. Shareholders' preemptive rights.

A. Unless limited or denied in the articles of incorporation and subject to the limitations in ~~subsections D through G~~ *subsection C*, 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, *do not* have ~~no~~ *a* 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~~ *when there are preemptive rights, the following apply:*

1. The shareholders of the corporation 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.

2. A shareholder may waive the shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

~~D. Unless expressly conferred in the articles of incorporation, there~~ *3. There* is no preemptive right with respect to:

~~1.~~ *a.* Shares issued *as compensation* to officers ~~or~~, employees, *or agents* of the corporation ~~or of~~, its subsidiaries ~~pursuant to a plan approved by the shareholders~~, *or affiliates*;

b. Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, employees, or agents of the corporation, its subsidiaries, or affiliates;

c. Shares that are issued within six months from the effective date of the certificate of incorporation; or

~~2.~~ *d.* Shares ~~sold~~ *issued for consideration* other than for ~~money~~ *cash*.

~~E.~~ *4.* Holders of shares of any class with preferential rights to distributions ~~or assets~~ have no preemptive rights with respect to shares of any *other* class.

~~F.~~ *5.* 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.

~~G.~~ *6.* Holders of shares *of any class* 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~~.

~~H. Except to the extent that the articles of incorporation expressly provide otherwise, shares~~ *7. 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.

~~I.~~ *D.* For purposes of this section, "shares" includes any warrants, rights, or options to acquire any ~~such~~ shares or any security or other obligation of the corporation convertible into *or carrying a right to subscribe for or acquire*any such shares or ~~into~~ warrants, rights, or options to 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~~ *reissuance* of acquired shares *or if the board of directors has authorized the reduction in the number of authorized shares by the number of shares acquired*, the number of authorized shares ~~is~~ *shall be* reduced by the number of shares acquired~~,~~ effective ~~upon~~ *when* the ~~issuance of a~~ certificate of amendment *is effective*. The corporation shall ~~file with~~ *deliver to* the Commission *for filing* articles of amendment ~~setting~~ *that shall set* forth:

1. The name of the corporation;

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

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

4. A statement that the reduction in the number of authorized shares was ~~authorized~~ *required by the articles of incorporation or was adopted* by the board of directors *with the date of adoption*.

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

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

§ 13.1-653. Distributions to shareholders.

A. ~~A~~ *The* 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.

B. *The board of directors may fix the record date for determining shareholders entitled to a distribution.* If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, ~~it~~ *the record date* 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 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 *accounting principles* 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. Except as provided in subsection G, the effect of a distribution under subsection C 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~~ *cash* or other property is transferred or debt *to a shareholder* 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~~ *payment* of principal and interest ~~are~~ *is* made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If ~~the~~ *such* 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. Unless directors are elected by written consent in lieu of an annual meeting as permitted by § 13.1-657, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws, except that a corporation registered under the *federal* 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 *federal* Investment Company Act of 1940 unless the articles of incorporation or bylaws of the corporation require an annual meeting to be held.

B. Except as otherwise determined by the board of directors acting pursuant to subsection C of § 13.1-660.2, ~~shareholders'~~ *annual* meetings may be held ~~at such place~~, in or ~~out~~ *outside* of the Commonwealth~~, as may be provided in the bylaws or, where not inconsistent~~ *at the place stated in or*

fixed in accordance with the bylaws~~, in the notice of the meeting~~. *If no place is so stated or fixed, annual meetings shall be held at the corporation's principal office.*

C. The failure to hold an annual meeting at the time stated in or fixed in accordance with ~~a~~ *the* 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 a corporation that is not a public corporation and that has 35 or fewer shareholders of record, if the holders of at least 20 percent of all *the* votes entitled to be cast on ~~any~~ *an* 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~~ *For such a corporation, the* articles of incorporation may provide for an increase or decrease in the percentage stated in this subdivision *or may prohibit shareholders from calling a special meeting*.

B. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing, including an electronic transmission, to that effect received by the ~~corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a~~ *corporation's secretary before the start of the* 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~~ *shall be the first* date ~~the first~~ *on which a signed* shareholder ~~signs the~~ demand *is delivered to the corporation's secretary. No written demand for a special meeting shall be effective unless, within 60 days of the earliest date on which such a demand delivered to the corporation's secretary as required by this section was signed, written demands signed by shareholders that satisfy the requirements of subsection A have been delivered to the corporation's secretary*.

D. Except as otherwise determined by the board of directors acting pursuant to subsection C of § 13.1-660.2, ~~shareholders'~~ *special* meetings *of shareholders* may be held ~~at such place~~ in or ~~out~~ *outside* of ~~this~~ *the* Commonwealth ~~as may be provided in the bylaws or, where not inconsistent~~ *at the place stated in or fixed in accordance* with the bylaws~~, in the notice of the meeting~~. *If no place is so stated or fixed, special meetings shall be held at the corporation's principal office.*

E. 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 *of shareholders*.

§ 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 the 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 or action by written consent in lieu ~~thereof~~ *of an annual meeting* did not become effective within 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~~ *one or more shareholders* who signed a demand for a special meeting ~~that satisfies the requirements of~~ *valid under subsection A of* § 13.1-655 if:

a. Notice of the special meeting was not given within 30 days after the ~~date the demand was~~ *first day on which the requisite number of such demands have been* 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 *date,* time, and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date or dates for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, *fix the quorum required for specific matters to be considered at the meeting, or direct that the shares represented at the meeting constitute a quorum for action on those matters,* and enter other orders necessary to accomplish the purpose or purposes of the meeting.

§ 13.1-657. Action without meeting.

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

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

incorporation of a public corporation authorized action by shareholders by less than unanimous written consent as of April 1, 2018, the shareholders of the public corporation shall not be entitled to act by less than unanimous written consent even if so authorized by the articles of incorporation if the articles of incorporation or bylaws of such public corporation allow the holders of 30 percent or fewer of all votes entitled to be cast to demand the calling of a special meeting of shareholders. For action by shareholders by less than unanimous written consent to be valid:

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

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

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

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

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

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

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

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

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

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

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

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

~~F.~~ *H.* If this chapter requires that notice of a proposed action be given to nonvoting shareholders and the action is to be ~~adopted or~~ taken by written consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the action not more than 10 days after (i) written

consents sufficient to ~~adopt or~~ take the action have been delivered to the ~~corporation~~ *corporation's secretary,* or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection ~~D~~ *E*. The notice shall reasonably describe the action ~~adopted or~~ taken and contain or be accompanied by the same material that, under any provision of this chapter, would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

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

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

§ 13.1-658. Notice of meeting.

A. ~~A~~ *Except as otherwise provided in subsection F, a* corporation shall notify shareholders of the date, time, and place, if any, of each annual and special shareholders' meeting~~. Such notice shall be given~~ no ~~less~~ *fewer* than 10 nor more than 60 days before the meeting date except that notice of a shareholders' meeting to act on an amendment of the articles of incorporation, a plan of merger, share exchange, domestication, or ~~entity~~ conversion, a proposed sale of assets pursuant to § 13.1-724, or the dissolution of the corporation shall be given not ~~less~~ *fewer* than 25 nor more than 60 days before the meeting date. *If the board of directors has authorized participation by means of remote communication pursuant to § 13.1-660.2 for holders of any class or series of shares, the notice to the holders of such class or series of shares shall describe the means of remote communication to be used.* The notice shall include the record date for determining the shareholders entitled to vote at the meeting, if such date is different ~~than~~ *from* the record date for determining shareholders entitled to notice of the meeting. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

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

C. Notice of a special meeting *of shareholders* 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 *shareholders'* meeting is the day before the ~~effective date of the~~ *first* notice *is delivered* to shareholders.

E. Unless the bylaws require otherwise, if an annual or special *shareholders'* meeting is adjourned to a different date, time, or place, notice need not be given *of the new date, time, or place* if the new date, time, or place, if any, is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or shall be fixed under § 13.1-660, however, ~~not less than 10 days before the meeting date~~ notice of the adjourned meeting shall be given ~~under this section~~ *not fewer than 10 days before the meeting date* to shareholders entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

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

§ 13.1-659. Waiver of notice.

A. A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time ~~of the meeting that is the subject of such~~ *stated in the* notice. The waiver shall be in writing, be signed by the shareholder entitled to the notice, and be delivered to the *corporation's* secretary ~~of~~ *for filing by* the corporation ~~for inclusion in~~ *with* the minutes or ~~filing with the~~ corporate records.

B. A shareholder's attendance at a meeting:

1. Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

2. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

§ 13.1-660. Record date for meeting.

A. The bylaws may fix or provide the manner of fixing in advance the record date or dates for one or more voting groups ~~in order to make a determination of shareholders for any purpose~~ *to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote or take action by written consent, or to take any other action*. If the bylaws do not fix or provide ~~for~~ *the manner of* fixing a record date, the board of directors ~~of the corporation~~ may fix ~~as~~ *in advance* the record date ~~the date on which it takes such action or a future date~~ *or dates*.

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

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

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

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

§ 13.1-660.1. 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.

§ 13.1-660.2. Remote participation in shareholders' meetings.

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

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

1. Verify that each person participating remotely *as a shareholder* is a shareholder or a shareholder's proxy; and

2. Provide such shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting, substantially concurrently with such proceedings.

C. Unless the articles of incorporation or bylaws require the meeting of shareholders to be held at a place, the board of directors may determine that any meeting of shareholders shall not be held at any place and shall instead be held solely by means of remote communication in conformity with subsection B.

§ 13.1-661. Shareholders' list for meeting.

A. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under subsection E of § 13.1-660 to determine the shareholders entitled to vote at the meeting, a corporation ~~shall~~ also *shall* prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list shall be arranged by voting group, and

within each *voting* group by class or series of shares, and show the address of and number of shares held by each shareholder. *Nothing contained in this subsection shall require the corporation to include on such list the electronic mail address or other electronic contact information of a shareholder.*

B. The shareholders' list for notice shall be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the county or city where the meeting will be held. A shareholders' list for voting shall be similarly available for inspection promptly after the record date for voting. The original share transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such list or to vote at any meeting of shareholders. A shareholder, or the shareholder's agent or attorney, is entitled on written demand to inspect and, subject to the requirements ~~set forth in~~ *of* subsection D of § 13.1-771, to copy a list, during ~~the~~ regular business hours and at the shareholder's expense, during the period it is available for inspection.

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

D. If the corporation refuses to allow a shareholder~~,~~ *or* the shareholder's agent~~,~~ or ~~the shareholder's~~ attorney to inspect a shareholders' list before or at the meeting ~~as provided in subsections B and C~~, or to copy a list as permitted by subsection B, the circuit court of the county or city where the corporation's principal office, or if none in the Commonwealth its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

E. Refusal or failure to prepare or make available ~~a~~ *the* shareholders' list does not affect the validity of action taken at 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 *or series*, is entitled to one vote on each matter voted on at a shareholders' meeting. *Only shares are entitled to vote.*

B. Unless the articles of incorporation provide otherwise, in the election of directors each outstanding share, regardless of class *or series*, 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. ~~Shares that have been called for redemption~~ *Redeemable shares* are not entitled to vote ~~on any matter and, except as to any right of conversion, shall not be deemed outstanding shares~~ after *delivery of written* notice of redemption is ~~mailed to the holders~~ *effective* and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution ~~with~~ *under an* irrevocable ~~instruction and authority~~ *obligation* 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 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~~ *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~~ *through an entity of which a majority of the voting power is held directly or indirectly by the corporation or that is otherwise controlled by the* corporation.

E. If a corporation holds in a fiduciary capacity its own shares ~~or shares of a second corporation that owns~~ *directly, or indirectly through an entity of which a majority of the voting power is held* directly or indirectly ~~a majority of shares entitled to vote for directors of the first~~ *by the corporation or that is otherwise controlled by the* 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 § 6.2-1011 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~~ *officers*, 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~~ *three* or ~~more~~ *fewer* 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 such person without a transfer of such shares into such person's name. Shares standing in the name of a trustee may be voted by the trustee, but no trustee is entitled to vote shares held by the trustee without a transfer of such shares into the trustee's name.

J. Shares standing in the name of a receiver or a trustee in proceedings under the *federal* Bankruptcy Reform Act of 1978 may be voted by such person. Shares held by or under the control of a receiver or a trustee in proceedings under the *federal* Bankruptcy Reform Act of 1978 may be voted by such person without the transfer thereof into such person's name if authority to do so is contained in an order of the court by which 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 § 6.2-1010 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, 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 the shareholder's shares in person or by proxy.

B. A shareholder, or the shareholder's agent or attorney-in-fact, may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. ~~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~~ *An electronic* transmission *shall contain or be accompanied by information from which the recipient can determine the date of the transmission and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact*.

C. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspectors of election or the officer or agent of the corporation authorized to ~~tabulate~~ *count* votes. An appointment is valid for ~~11 months unless a longer period is expressly~~ *the term* provided in the appointment form *and, if no term is provided, is valid for 11 months unless the appointment is irrevocable under subsection D.*

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

1. A pledgee;

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

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

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

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

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

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

G. ~~A~~ *Unless it otherwise provides, an appointment made irrevocable under subsection D continues in effect after a transfer of the shares and a transferee takes subject to the appointment, except that a* transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when ~~the transferee acquired~~ *acquiring* the shares and the

existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

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

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

§ 13.1-664. Shares held by intermediaries and nominees.

A. A ~~corporation~~ *corporation's board of directors* may establish a procedure ~~by~~ *under* which ~~the beneficial owner of~~ *a person on whose behalf* shares ~~that~~ are registered in the name of ~~a~~ *an intermediary or* nominee ~~is recognized~~ *may elect to be treated* by the corporation as the *record* shareholder~~. The extent of this recognition may be determined~~ *by filing with the corporation's secretary a beneficial ownership certificate. The terms, conditions, and limitations of this treatment shall be specified* in the procedure. *To the extent such person is treated under such procedure as having rights or privileges that the record shareholder otherwise would have, the record shareholder shall not have those rights or privileges.*

B. The procedure ~~may set forth~~ *shall specify*:

1. The types of *intermediaries or* nominees to which it applies;

2. The rights or privileges that the corporation recognizes in a *person with respect to whom a* beneficial ~~owner~~ *ownership certificate is filed*;

3. The manner in which the procedure is selected ~~by the nominee~~, *which shall include that the beneficial ownership certificate be signed or assented to by or on behalf of the record shareholder and the person on whose behalf the shares are held*;

4. The information that must be provided when the procedure is selected;

5. The period for which selection of the procedure is effective; ~~and~~

6. ~~Other aspects of the rights and duties created~~ *Requirements for notice to the corporation with respect to the arrangement; and*

7. The form and contents of the beneficial ownership certificate.

C. The procedure may specify any other aspects of the rights and duties that may be included in a beneficial ownership certificate.

§ 13.1-664.1. Inspectors of election.

A. A public corporation shall, and any other corporation may, appoint one or more inspectors to act at a *shareholder's* meeting ~~of shareholders~~ in connection with determining voting results. Each inspector~~, before entering upon the discharge of his duties,~~ shall ~~certify~~ *verify* in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of ~~his~~ *the inspector's* ability. *An inspector may be an officer or employee of the corporation. An inspector may appoint or retain other persons to assist the inspector in the performance of the inspector's duties under subsection B, and may rely on information provided by such persons and other persons, including those appointed to count votes, unless the inspectors believe reliance is unwarranted.*

B. The inspectors shall ~~(i) ascertain~~*:*

1. Ascertain the number of shares outstanding and the voting power of each~~, (ii) determine~~*;*

2. Determine the shares represented at a meeting ~~and the~~*;*

3. Determine the validity of proxy appointments and ballots~~, (iii) count~~*;*

4. Count all votes~~, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify in~~*; and*

5. Make a written report ~~their determination~~ of the ~~number of shares represented at the meeting and their count of the votes~~ *results*. ~~The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors and may rely on information provided by such persons and other persons, including those appointed to tabulate votes, unless the inspectors believe reliance is unwarranted. In any court proceeding there shall be a rebuttable presumption that the report of the inspectors is correct.~~

C. No ~~ballot~~ *ballots*, proxies, or votes, nor any revocations thereof or changes thereto, ~~shall~~ *may* 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~~ *the* Commonwealth, where its registered office is located, upon application by a shareholder, shall determine otherwise.

D. In performing their duties, the inspectors may examine (i) the proxy appointment forms *or electronic transmissions* and any other information provided in accordance with subsection B of § 13.1-663, (ii) any envelope or related writing submitted with those appointment forms, (iii) any ballots, (iv) any evidence or other information specified in § 13.1-665, and (v) the relevant books and records of the corporation relating to its shareholders and their entitlement to vote, including any securities position list provided by a depository clearing agency.

E. The inspectors also may consider other information that they believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection B, including for the

purpose of evaluating inconsistent, incomplete, or erroneous information and reconciling information submitted *by or* on behalf of banks, brokers, their nominees, or similar persons that indicates more votes being cast than a proxy ~~is~~ authorized by ~~the record shareholder to cast or more votes being cast than~~ the record shareholder is entitled to cast. If the inspectors consider other information allowed by this subsection, they shall ~~specify~~ in their report under subsection B *specify* the information considered by them, including the purpose or purposes for which the information was considered, the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for the inspectors' belief that such information is relevant and reliable.

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

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

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

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

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

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

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

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

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

5. ~~Two or more~~ *Three or fewer* persons are the shareholder as *co-tenants or* fiduciaries and the name signed purports to be the name of at least one of the ~~fiduciaries~~ *co-owners* and the person signing appears to be acting on behalf of all the ~~fiduciaries~~ *co-owners*.

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

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

E. Neither the corporation nor the person authorized to count votes, including an inspector *of election* under § 13.1-664.1, ~~who~~ *that* accepts or rejects a vote, ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or subsection B of § 13.1-663 is liable in damages to the shareholder for the consequences of the acceptance or rejection.

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

G. If an inspector of election has been appointed under § 13.1-664.1, the inspector of election also has the authority to request information and make determinations under subsections A, B, C, and D.

H. If authorized by the board of directors, any shareholder vote to be taken at a shareholders' meeting may be voted upon by a ballot submitted by electronic transmission by the shareholder or the

shareholder's proxy, provided that any such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the shareholder or the shareholder's proxy. A share that is voted by a ballot submitted by electronic transmission as permitted by this subsection is deemed present at the shareholders' meeting.

§ 13.1-666. Quorum and voting requirements for voting groups.

A. Shares entitled to vote as a separate voting group may take action ~~on a matter~~ at a meeting only if a quorum of those shares exists ~~with respect to that matter~~ *for the meeting*. Unless the articles of incorporation or this chapter provides otherwise, *shares representing* a majority of the votes entitled to be cast ~~on~~ *at* the ~~matter~~ *meeting* by the voting group constitutes a quorum of that voting group for ~~action on that matter~~ *the meeting. Whenever this chapter requires a particular quorum for a specified action, the articles of incorporation may not provide for a lower quorum. Less than a quorum may adjourn a meeting.*

B. Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or shall be set for that adjourned meeting.

C. If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter requires a greater number of affirmative votes. An abstention or an election by a shareholder not to vote on the action because of the failure to receive voting instructions from the beneficial owner of the shares shall not be considered a vote cast.

D. ~~Less than a quorum may adjourn a meeting~~ *An amendment of the articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection A or C is governed by section § 13.1-668.*

E. The election of directors is governed by § 13.1-669.

F. Whenever a provision of this chapter provides for voting of classes or series of shares as separate voting groups, the rules provided in subsection C of § 13.1-708 for amendments of the articles of incorporation apply to that provision.

§ 13.1-667. Action by single and multiple voting groups.

A. If the articles of incorporation or this chapter provides for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in § ~~13.1-665~~ *13.1-666*.

B. If the articles of incorporation or this chapter provides for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in § 13.1-666. Action may be taken by ~~one~~ *different* voting ~~group~~ *groups* on a matter ~~even though no action is taken by another voting group entitled to vote on the matter~~ *at different times*.

§ 13.1-668. Modifying quorum or voting requirements.

A. The articles of incorporation may provide for (i) a lesser or greater quorum requirement for shareholders *or voting groups of shareholders*, but *in each case* not less than ~~one-third~~ *one third* of the shares eligible to vote~~, or voting groups of shareholders,~~ or (ii) a greater voting requirement for shareholders, or voting groups of shareholders, than is provided by this chapter.

B. An amendment ~~to~~ *of* the articles of incorporation that adds, changes, or deletes a quorum or voting requirement shall meet the *same* quorum requirement and be adopted by the *same* vote and voting groups required to take action under the quorum and voting requirements then in effect.

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

A. Unless otherwise provided in the articles of incorporation or the bylaws, 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~~*] or [*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~~ *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 48 hours before the time set for the meeting of the shareholder's intent to cumulate his votes during the meeting. If one shareholder gives 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~~.

E. If a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors, directors may not be elected by written consent pursuant to § 13.1-657 unless it is unanimous.

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

A. Upon application of, or in a proceeding commenced by, a person specified in subsection B, the circuit court in the county or city in which the principal office of the corporation is located, or, if none in the Commonwealth, in the county or city in which its registered office is located may determine:

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

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

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

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

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

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

1. The corporation;

2. A *record* shareholder, *beneficial shareholder or unrestricted voting trust beneficial owner* of the corporation;

3. A director of the corporation, an individual claiming the office of director, or a director whose membership on a committee of the board of directors is contested, who, in each case, is seeking a determination of ~~his~~ *the individual's* right to such office or membership;

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

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

C. In connection with any application or proceeding ~~pursuant to~~ *under* subsection A, the following shall be named as defendants, unless such person made the application or commenced the proceeding:

1. The corporation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 13.1-670. Voting trusts.

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

C. ~~The~~ *Limits, if any, on the* duration of a voting trust shall be as set forth in the voting trust, except that a voting trust that became effective prior to July 1, 2015, is valid for not more than 10 years after its effective date unless some or all of the parties to the voting trust extend it by signing a written consent to the extension.

D. Any consent to an extension ~~pursuant to subsection C~~ signed by less than all of the parties to the voting trust binds only the parties signing it.

~~E.~~ The voting trustee shall deliver copies of any consent to extension and the list of beneficial owners to the *corporation's* secretary at the corporation's principal office.

§ 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, *regardless of* whether ~~or not~~ *they are* 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~~ *As set* forth *(i)* 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~~ *(ii)* in a written agreement that is signed by all persons who are shareholders at the time of the agreement *and is made known to the corporation*; and

2. Subject to amendment only by all persons who are shareholders at the time of the amendment, 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~~ *before* the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

D. An agreement authorized by this section shall cease to be effective when the corporation becomes a public corporation. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment ~~to~~ *of* 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~~ *have been* issued when the agreement ~~was~~ *is* made.

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

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

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

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

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

1. Was a shareholder of the corporation at the time of the act or omission complained of~~;~~

~~2. Became~~, *became* a shareholder through transfer by operation of law from one who was a shareholder at that time~~;~~, or

~~3. Became~~ *became* a shareholder before public disclosure and without knowledge of the act or omission complained of; ~~and~~

2. Was a shareholder at the time the shareholder made the written demand required by subdivision B 1; and

~~4.~~ *3.* Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

B. No shareholder may commence a derivative proceeding until:

1. A written demand has been made on the corporation to take suitable action; and

2. Ninety days have expired from the date delivery of the *written* demand was made *on the corporation* unless (i) the shareholder has *earlier* been notified ~~before the expiration of 90 days~~ that the demand has been rejected by the corporation or (ii) irreparable injury to the corporation would result by waiting ~~until~~ *for* the ~~end~~ *expiration* of the 90-day period.

C. If the corporation commences ~~a review and evaluation~~ *an inquiry into* of the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

§ 13.1-672.2. Discontinuance or settlement.

A. A derivative proceeding ~~shall~~ *may* not be settled or discontinued without the court's approval. If the court determines that ~~the~~ *a proposed* discontinuance or settlement will substantially *and adversely* affect the interests of the corporation's shareholders or a class *or series* of the corporation's shareholders, the court shall direct that notice be given to the shareholders affected.

B. Notice required ~~under this section~~ *by subsection A* shall be given in such manner as the court shall determine, and the costs of such notice shall be borne in such manner as the court shall direct.

§ 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 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~~, *the matters covered by this article* shall be governed by the laws of the *jurisdiction of formation of the* foreign ~~corporation's state of incorporation~~ *corporation except for matters covered by subsection C of § 13.1-672.1 and §§ 13.1-672.2 and 13.1-672.5*.

§ 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 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 E, the determination in subsection A shall be made by:

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

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

C. If a derivative proceeding ~~has been~~ *is* 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 *or B* have not been met. ~~The~~ *With respect to any allegation that the requirements of subsection A or B have not been met, the* plaintiff shall be entitled to discovery *if, and only* with respect to ~~the issues presented by the motion only if and to the extent that the complaint alleges such~~, facts *that are alleged in the complaint* with particularity.

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

E. ~~The~~ *Upon motion by the corporation, the* court may appoint a panel of ~~independent~~ *disinterested* 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.

§ 13.1-672.5. Payment of and security for expenses.

On termination of a derivative proceeding, the court ~~shall~~ *may*:

1. Order the corporation to pay the plaintiff's ~~reasonable~~ expenses ~~(including counsel fees)~~ incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation; or

2. Order the plaintiff or the plaintiff's attorney to pay *the corporation's or* any defendant's ~~reasonable~~ expenses ~~(including counsel fees)~~ incurred in defending the proceeding if it finds that the proceeding was commenced or maintained arbitrarily, vexatiously, or not in good faith.

§ 13.1-672.6. Shareholder action to appoint a custodian or receiver for a public corporation.

A. The circuit court in any city or county where a public corporation's principal office is or was last located, or, if none in the Commonwealth, where its registered office is or was last located may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers, of and for a public corporation in a proceeding by a shareholder where it is established that:

1. 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

2. The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

B. The court:

1. May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held;

2. Shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

3. Has jurisdiction over the corporation and all of its property, wherever located.

C. The court may appoint an individual or domestic or foreign corporation, authorized to transact business in the Commonwealth, as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

D. The court shall describe the powers and duties of the custodian or receiver in its appointing order,

which may be amended from time to time. Among other powers:

1. A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

2. A 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 the receiver's own name as receiver in all courts of the Commonwealth.

E. The court during a custodianship may ~~designate~~ *redesignate* the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

F. The court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

§ 13.1-672.7. Shareholder defined.

As used in this article, "shareholder" means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner whose entitlement to bring the proceeding under this article is not inconsistent with the voting trust agreement.

§ 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 *the board of directors*, and the business and affairs of the corporation managed under the direction ~~of,~~ ~~its~~, *and subject to the oversight, of the* board of directors, subject to any limitation set forth in the articles of incorporation *permitted by subdivision B 3 of § 13.1-619* or in an agreement authorized under § 13.1-671.1.

§ 13.1-674. Qualifications for directors or for nominees for director.

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

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

C. A director need not be a resident of ~~this~~ *the* Commonwealth or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

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

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

§ 13.1-675. 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 *or bylaws*. The number of directors may be increased or decreased from time to time by amendment ~~to the bylaws, unless~~ *of, in the manner provided in*, the articles of incorporation ~~provide that a change in the number of directors shall be made only by amendment of the articles of incorporation~~ *or bylaws*.

B. ~~The shareholders may adopt a bylaw fixing the number of directors and may direct that such bylaw not be amended by the board of directors.~~

~~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.~~ *C.* Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless *elected by written consent in lieu of an annual meeting as permitted by § 13.1-657 or unless* their terms are staggered under § 13.1-678.

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

§ 13.1-676. Election of directors by certain classes or series of shares.

If the articles of incorporation authorize dividing the shares into classes *or series*, the articles *of incorporation* may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes *or series* of shares. ~~Each~~ *A* class~~,~~ or *series, or multiple* classes *or series*, of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

§ 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, unless their terms are staggered pursuant to § 13.1-678, in which case the term shall expire at the applicable second or third annual shareholders' meeting.

B. The terms of all other directors expire at the next, or if the terms are staggered ~~in accordance with~~ *pursuant to* § 13.1-678, at the applicable second or third, annual shareholders' meeting following their election, *except to the extent a shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election*.

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~~ *Except to the extent otherwise provided in the articles of incorporation, despite* the expiration of a director's term, the director continues to serve until the director's 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 *federal* Investment Company Act of 1940 shall expire according to, and otherwise be governed by, the provisions of the *federal* Investment Company Act of 1940.

§ 13.1-678. Staggered terms for directors.

~~A.~~ The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be *practicable*. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be ~~chosen~~ *elected* for a term of two years or three years, as the case may be, to succeed those whose terms expire.

~~B. If the articles of incorporation permit cumulative voting, any provision establishing staggered terms of directors shall provide that at least three directors shall be elected at each annual shareholders' meeting.~~

§ 13.1-679. Resignation of directors.

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

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

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

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

§ 13.1-680. 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~~ *for* 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 the director.

C. If cumulative voting *in the election of directors* is authorized *by the articles of incorporation*, a director may not be removed if, *in the case of a shareholders' meeting*, the number of votes sufficient to elect him under cumulative voting is voted against his removal *and, if action is taken by less than unanimous consent, voting shares entitled to the number of votes sufficient to elect the director under cumulative voting do not consent to the removal*. If cumulative voting *in the election of directors* is not authorized *by the articles of incorporation*, unless the articles of incorporation *or bylaws* require a

greater vote, a director may be removed if the number of votes cast to remove ~~him~~ *the director* 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 *shareholders'* meeting *if the meeting is* called for the purpose of removing 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.

§ 13.1-681.1. Removal of directors by judicial proceeding.

A. The circuit court in the county or city in which the principal office of the corporation is located, or, if none in the Commonwealth, in the county or city in which its registered office is located, may remove a director from office, and may bar the director from reelection for a period prescribed by the court, in a proceeding commenced by or in the right of the corporation if the court finds that (i) the director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation and (ii) considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation.

B. A shareholder proceeding on behalf of the corporation under subsection A shall comply with all of the requirements of Article 8.1 (§ 13.1-672.1 et seq.) except for those set forth in subdivisions A 1 and 2 of § 13.1-672.1.

§ 13.1-682. Vacancy on board of directors.

A. Unless the articles of incorporation provide otherwise, if a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors:

1. The shareholders may fill the vacancy;

2. The board of directors may fill the vacancy; or

3. If the directors remaining in office ~~constitute~~ ~~fewer~~ *are less* than a quorum of the board *of directors*, they may fill the vacancy by the affirmative vote of a majority of the directors remaining in office.

B. Unless the articles of incorporation provide otherwise, if the vacant office was held by a director elected by a voting group of shareholders, only the shareholders of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders and only the *remaining* directors elected by that voting group, *even if less than a quorum of the board of directors,* are entitled to fill the vacancy if it is filled by the ~~board~~ ~~of~~ *remaining* directors.

C. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection B of § 13.1-679 or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

D. The corporation may file an amended annual report with the Commission indicating the filling of a vacancy.

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

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

B. Action taken under this section is effective *as the act of the board of directors* 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 *that if such date precedes the date when the last director signs* 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~~ *corporation's secretary before* delivery to the ~~corporation~~ *corporation's secretary* of unrevoked written consents signed by all the directors.

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

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

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

§ 13.1-687. Waiver of notice by director.

A. A director may waive any notice required by this ~~Act~~ *chapter*, the articles of incorporation, or bylaws before or after the date and time stated in the notice, and such waiver shall be equivalent to the giving of such notice. Except as provided in subsection B ~~of this section~~, the waiver shall be in writing, signed by the director entitled to the notice, and ~~filed~~ *delivered to the corporation's secretary for filing by the corporation* with the minutes *of the meeting* or corporate records.

B. A director's attendance at or participation in a meeting waives any required notice to ~~him~~ *the director* of the meeting unless the director at the beginning of the meeting or promptly upon ~~his~~ *the director's* arrival objects to holding the meeting or transacting business at the meeting and does not ~~thereafter~~ *after objecting* vote for or assent to action taken at the meeting.

§ 13.1-688. Quorum and voting by directors.

A. Unless the articles of incorporation or bylaws require a greater *or lesser* number for the transaction of all business or any particular business, or unless otherwise specifically provided in this chapter, a quorum of ~~a~~ *the* 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~~ *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 *specified or* fixed ~~or prescribed~~ number of directors determined under subsection A.

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 *or unless otherwise expressly prohibited in this chapter*.

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

2. The ~~director votes against, or abstains~~ *director's dissent or abstention* from~~,~~ the action taken~~.~~ *is entered in the minutes of the meeting; or*

3. The director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the secretary of the corporation or meeting immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

E. Except as *may be* provided in *an agreement authorized by* § 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~~ *establish* one or more committees *of the board of directors to perform functions of the board of directors* and appoint ~~members~~ *two or more directors* of the board of directors to serve on ~~them~~ *each committee*. ~~Each committee shall have two or more members, who serve~~ *While non-board members may also be appointed to a committee, they may not vote on any matter for which the committee is performing a function of the board of directors. Each committee member serves* at the pleasure of the board of directors.

B. ~~The creation~~ *Unless the articles of incorporation or bylaws provide otherwise, the establishment* 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~~ *propose* to shareholders action that this chapter requires to be approved by shareholders;

2. Fill vacancies on the board *of directors* or, *subject to subsection E,* on any ~~of its committees~~ *committee*;

3. Amend *the* 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, *or within limits,* 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 rights, preferences, and limitations of a class or series of shares, except that the board of directors may (i) authorize a committee to do so subject to such limits, if any, as may be prescribed by the board of directors, and (ii) authorize a senior executive officer of the corporation to do so subject to such limits, if any, as may be prescribed by the board of directors or by subsection C of § 13.1-646.

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~~ *resolutions of the board of directors establishing* the committee provide otherwise, in the event of the absence or disqualification of a member of a committee *and there are no alternate members appointed by the board of directors,* the member or members *of the committee* present at any meeting and not disqualified from voting~~, unanimously~~ may *by unanimous action* appoint another director to act in place of the absent or disqualified member *during that member's absence or disqualification*.

§ 13.1-690. General standards of conduct for director.

A. A director shall discharge his duties as a director, including his duties as a member of a committee, in accordance with his good faith business judgment of the best interests of the corporation.

B. Unless ~~he~~ *a director* has knowledge or information concerning the matter in question that makes reliance unwarranted, ~~a~~ *the* director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

1. One or more officers or employees of the corporation whom the director believes, in good faith, to be reliable and competent in the matters presented;

2. Legal counsel, public accountants, or other persons as to matters the director believes, in good faith, are within the person's professional or expert competence; or

3. A committee of the board of directors of which he is not a member if the director believes, in good faith, that the committee merits confidence.

C. A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

D. A person alleging a violation of this section has the burden of proving the violation.

§ 13.1-690.1. Director of open-end management investment company deemed disinterested.

A director of a corporation that is an open-end management investment company, as defined by the *federal* Investment Company Act of 1940, who with respect to the corporation is not an interested person, as defined by the *federal* Investment Company Act of 1940, shall be deemed to be ~~independent and~~ disinterested when making any determination or taking any action as a director *of the corporation*.

§ 13.1-692. Liability for unlawful distributions.

A. A director who votes for or assents to a distribution ~~made in violation~~ *in excess* of *what may be authorized and made pursuant to* 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 is entitled to:

1. Contribution from every other director who could be held liable under subsection A for the unlawful distribution; 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 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.

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

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

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

2. The greater of (i) $100,000 or (ii) the amount of cash compensation received by the officer or director from the corporation during the ~~twelve~~ *12* months immediately preceding the act or omission for which liability was imposed.

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

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

§ 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~~ *described* in the bylaws or in a resolution of the board of directors that is ~~not inconsistent~~ *in accordance* with the bylaws and as may be necessary to enable it to execute documents that comply with subsection F of § 13.1-604.

B. ~~The~~ *Officers shall be elected by the* board of directors ~~may elect individuals to fill one or more offices of the corporation. An~~, *except that 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~~ *corporation* shall have the responsibility for preparing ~~and maintaining custody of~~ *the* minutes of the directors' and shareholders' meetings and for *maintaining and* authenticating *the* records of the corporation *required to be kept under subsection E of § 13.1-770*.

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

E. Election or appointment of an officer does not of itself create any contract rights in the officer or the corporation.

§ 13.1-694. Duties of officers.

A. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

B. In discharging his duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:

1. The performance of properly delegated responsibilities by one or more employees of the corporation whom the officer believes in good faith to be reliable and competent in performing the responsibilities delegated; or

2. Information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer believes in good faith to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer believes in good faith are matters (i) within the particular person's professional or expert competence or (ii) as to which the particular person merits confidence.

§ 13.1-695. Resignation and removal of officers.

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

B. ~~A board of directors may remove any~~ *An* officer *may be removed* 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~~ *by (i) the board of directors; (ii) the appointing officer, if any, unless the bylaws or the board of directors provides otherwise; or (iii) any other officer, if authorized by the bylaws or the board of directors*. ~~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~~ *of record in the office of the clerk of* the Commission as an officer of a corporation, may file a statement to that effect with the Commission.

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

any.

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

§ 13.1-696. Definitions.

~~In~~ *As used 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 who, while a director or officer of 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,~~ *entity or* employee benefit plan~~, or other entity~~. A director or officer is considered to be serving an employee benefit plan at the corporation's request if ~~his~~ *the individual's* duties to the corporation also impose duties on, or otherwise involve services by, ~~him~~ *the individual* 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~~ *and* (ii) when used with respect to an officer, as contemplated in § 13.1-702, the office in a corporation held by the officer. "Official capacity" does not include service for any other ~~foreign or domestic corporation or any partnership, joint venture, trust,~~ *entity or* employee benefit plan~~, or other entity~~.

"Party" 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, a corporation may indemnify an individual ~~made~~ *who is* a party to a proceeding because ~~he~~ *the individual* is or was a director against liability incurred in the proceeding if ~~the director~~:

1. ~~Conducted~~ *The director:*

a. Conducted himself in good faith; and

~~2.~~ *b.* Believed:

~~a.~~ *(1)* In the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

~~b.~~ *(2)* In all other cases, that his conduct was at least not opposed to its best interests; and

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

2. The director engaged in conduct for which broader indemnification has been made permissible or obligatory as authorized by subsection C of § 13.1-704.

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~~ *1* b *(2)*.

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. Unless ordered by a court under subsection C of § 13.1-700.1 *or broader indemnification has been made permissible or obligatory as authorized by subsection C of § 13.1-704*, a corporation may not indemnify a director under this section:

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

2. In connection with any other proceeding charging improper personal benefit to 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.

§ 13.1-698. Mandatory indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director who ~~entirely prevails~~ *was wholly successful, on the merits or otherwise,* in the defense of any proceeding to which ~~he~~ *the director* was a party because ~~he~~ *the director* is or was a director of the corporation against ~~reasonable~~ expenses incurred by ~~him~~ *the director* in connection with the proceeding.

§ 13.1-699. Advance for expenses.

A. A corporation may, *before final disposition of a proceeding, advance funds to* pay for or reimburse the ~~reasonable~~ expenses incurred *in connection with the proceeding* by a director who is a party to a proceeding ~~in advance of final disposition of the proceeding~~ *because the individual is a director* if the director ~~furnishes~~ *delivers to* the corporation a signed written undertaking~~, executed personally or on his behalf,~~ to repay any funds advanced if *(i)* the director is not entitled to mandatory indemnification under § 13.1-698 and *(ii)* it is ultimately determined under § 13.1-700.1 or 13.1-701 that the director ~~has not met the relevant standard of conduct~~ *is not entitled to indemnification.*

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

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

1. The board of directors:

a. If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee *consisting solely* 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 *of directors* 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 advance, reimbursement, or indemnification.

A. An individual who is ~~made~~ a party to a proceeding because he is a director of 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~~ *for indemnification or an advance of expenses* to the court conducting the proceeding or to another court of competent jurisdiction. *After receipt of an application and after giving any notice it considers necessary, the court shall:*

1. Order indemnification if the court determines that the director is entitled to mandatory indemnification under § 13.1-698;

2. Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by § 13.1-704; or

3. Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable (i) to indemnify the director or (ii) to advance expenses to the director, even if, in the case of clause (i) or (ii), the director has not met the relevant standard of conduct set forth in subsection A of § 13.1-697, failed to comply with § 13.1-699, or was adjudged liable in a proceeding referred to in subsection D of § 13.1-697, but if the director was adjudged so liable, indemnification shall be limited to expenses incurred in connection with the proceeding.

B. ~~The court shall order the corporation to make advances and/or reimbursement for expenses or to provide indemnification if it~~ *If the court* determines that the director is entitled to ~~such advances, reimbursement or and~~ indemnification *under subdivision A 1 or to indemnification or advance for expenses under subdivision A 2, it* 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~~ *in connection with obtaining court-ordered indemnification or advance for expenses. If the court* determines that~~, considering all the relevant circumstances,~~ the director is entitled to indemnification ~~even though he was adjudged liable to the corporation and (ii)~~ *or advance for expenses under subdivision A 3, it may* also order the corporation to pay the director's ~~reasonable~~ expenses ~~incurred~~ to obtain ~~the order of~~ *court-ordered* indemnification *or advance for expenses*.

~~D.~~ *C.* Neither (i) the failure of the corporation, including its board of directors, its independent legal counsel and its shareholders, to have made ~~an independent~~ *a* determination prior to the commencement of any action permitted by this section that the applying director is entitled to receive ~~advances and/or~~ *an advance,* reimbursement, *or indemnification* 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~~ *an advance,* reimbursement, or indemnification shall create a presumption to that effect or otherwise of itself be a defense to that director's application for ~~advances~~ *an advance* 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~~ *for a* specific ~~case~~ *proceeding* after a determination has been made that indemnification of the director is permissible because ~~he~~ *the director* 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 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;

2. By special legal counsel:

a. Selected in the manner prescribed in subdivision 1 ~~of this subsection~~; or

b. If there are fewer than two disinterested directors, selected by the board of directors, in which selection directors who do not qualify as disinterested directors may participate; or

3. 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 determination.

C. Authorization of indemnification 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 shall be made by those entitled *to select special legal counsel* under subdivision B 2 ~~to select counsel~~.

§ 13.1-702. Advance for expenses and indemnification for officers.

Unless limited by a corporation's articles of incorporation:

1. An officer of the corporation *who is a party to a proceeding because he is an officer* is entitled to mandatory indemnification under § 13.1-698~~,~~ and is entitled to apply for court-ordered *advance or reimbursement of expenses and* 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 ~~of the corporation~~ *who is a party to a proceeding because the individual is an officer* 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 of the corporation, or who, while a director or officer 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~~ entity, against liability asserted against or incurred by ~~him~~ *the individual* in that capacity or arising from ~~his~~ *the individual's* status as a director or officer, *regardless of* whether ~~or not~~ the corporation would have power to indemnify ~~him~~ *or advance expenses to the individual* against the same liability under ~~§ 13.1-697 or 13.1-698~~ *this article*.

§ 13.1-704. Application of article.

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

B. A corporation, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by ~~its~~ *the* board of directors or shareholders, may obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with § 13.1-697 *or subsection C* and advance funds to pay for or reimburse expenses in accordance with § 13.1-699. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in subsection C of § 13.1-699 and subsection C of § 13.1-701.

~~B.~~ *C.* 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 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. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed, unless the articles of incorporation or any such bylaw or resolution expressly provides otherwise, also to obligate the corporation to advance funds to pay for or reimburse expenses to the fullest extent permitted by law in accordance with § 13.1-699 except that the applicable standard shall be conduct that does not constitute willful misconduct or a knowing violation of criminal law, rather than the standard of conduct prescribed in § 13.1-697. Unless the articles of incorporation, or any such bylaw or resolution expressly provide otherwise, any determination as to the right to any further indemnity shall be made in

accordance with subsection B of § 13.1-701. Each such indemnity may continue as to a person who has ceased to have the capacity referred to above and may inure to the benefit of the heirs, executors, and administrators of such a person.

~~C. No~~ *D. A* right ~~provided to any person pursuant to this section may~~ *of indemnification or advance for expenses created under this article or under subsection B and in effect at the time of an act or omission shall not* be reduced ~~or~~, eliminated, *or impaired* by any amendment of the articles of incorporation or bylaws ~~with respect to any~~ *or a resolution of the board of directors or shareholders adopted after the occurrence of such act or omission unless, in the case of a right created under subsection B, the provision creating such right and in effect at the time of such act or omission explicitly authorizes such reduction, elimination, or impairment after such* act or omission ~~occurring before such amendment~~ *has occurred*.

~~D.~~ *E. Any provision pursuant to subsection B shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise expressly provided. Any provision for indemnification or advance for expenses in the articles of incorporation or bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by subdivision A 4 of § 13.1-721.*

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

§ 13.1-705. Authority to amend articles of incorporation.

A. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles ~~or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles of incorporation is determined~~ as of the effective date of the amendment *or to delete a provision that is not required to be contained in the articles of incorporation.*

B. A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, purpose, or duration of the corporation.

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

A. Where no shares of the corporation are issued and outstanding, a corporation's board of directors may adopt an amendment of the corporation's articles of incorporation without shareholder approval.

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

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

2. To delete the name of the initial registered agent or the address of the initial registered office, if a statement of change described in § 13.1-635 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 the class into a greater number of whole shares of that class; 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~~;

6. If the corporation has or will become a holding company under § 13.1-719.1, to change the corporate name to the former name of the constituent corporation;

7. If the corporation is registered as an open-end management investment company under the *federal* Investment Company Act of 1940, to increase or decrease the aggregate number of shares or the number of shares of any class or series within any class that the corporation is authorized to issue; ~~or~~

8. *To delete a class or series of shares from the articles of incorporation when there are no shares of the class or series, including any rights to any such shares, outstanding; or*

9. To make any other change expressly permitted by this chapter to be made without shareholder ~~action~~ *approval*.

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

A. Except where shareholder approval of an amendment of the articles of incorporation is not

required by this chapter, an amendment ~~to~~ *of* the articles of incorporation shall be adopted in the following manner:

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

2. After adopting the proposed amendment the board of directors shall submit the amendment to the shareholders for their approval. The board of directors shall also ~~transmit to the shareholders a recommendation~~ *recommend* that the shareholders approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall ~~transmit to~~ *inform* the shareholders *of* the basis for that determination; and

3. The shareholders entitled to vote on the amendment shall approve the amendment as provided in subsection D.

B. The board of directors may ~~condition its submission of the proposed~~ *set conditions for the approval of the* amendment ~~on any basis~~ *by the shareholders or the effectiveness of the amendment*.

C. ~~The~~ *If shareholder approval is to be sought at a shareholders' 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 ~~of meeting~~ shall ~~also~~ state that the purpose, or one of the purposes, of the meeting is to consider the ~~proposed~~ amendment and *shall* contain or be accompanied by a copy of the amendment.

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

E. If as a result of an amendment of the articles of incorporation one or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the amendment requires the signing in connection with the amendment, by each such shareholder, of a separate written consent to become subject to such new interest holder liability, unless in the case of a shareholder that already has interest holder liability the terms and conditions of the new interest holder liability (i) are substantially identical to those of the existing interest holder liability or (ii) are substantially identical to those of the existing interest holder liability other than changes that eliminate or reduce such interest holder liability.

F. For purposes of subsection E, "new interest holder liability" means interest holder liability of a person resulting from an amendment of the articles of incorporation if (i) the person did not have interest holder liability before the amendment becomes effective or (ii) the person had interest holder liability before the amendment becomes effective, the terms and conditions of which are changed when the amendment becomes effective.

G. 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 *board of directors or* shareholders authorizing the amendment may prescribe a time after which the holders of the old shares shall no longer be entitled to receive distributions or to vote or to exercise any other rights as shareholders until certificates*, if any,* representing the old shares are surrendered in exchange for certificates representing the new shares. But upon such surrender all distributions not paid because of this provision shall be paid without interest.

H. An amendment of the articles of incorporation may be further amended prior to the effective date of the certificate of amendment of the articles of incorporation; however, if the shareholders of the corporation are required by any provision of this chapter or the articles of incorporation to vote on the amendment of the articles of incorporation, the amendment of the articles of incorporation may not be further amended subsequent to approval of the amendment by such shareholders without the approval of the shareholders.

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

A. Except as otherwise provided in the articles of incorporation, if a corporation has more than one class of shares outstanding, the *holders of 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;~~

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

~~3.~~ *2.* 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.~~ *3.* Change the 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.~~ *4.* Change the shares of all or part of the class into a different number of shares of the same class;

~~6.~~ *5.* 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 to the shares of the class~~, or increase~~*;*

6. Increase the rights, preferences, or number of authorized shares of any class that after giving effect to the amendment, have rights or preferences with respect to distributions ~~or to dissolution~~ that are prior or superior 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.~~ *8.* Cancel or otherwise affect rights to distributions that have accumulated but not yet been ~~declared~~ *authorized* 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, 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 *the holders of* 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 *otherwise provided in* the articles of incorporation ~~provide for different voting rights for shares of the different classes or series~~ *or added as a condition by the board of directors pursuant to subsection B of § 13.1-707*.

D. 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.

§ 13.1-709. Amendment of articles of incorporation by incorporators.

If a corporation has not yet issued shares~~, its board of directors or incorporators, in the event that there is~~ *and it has* no board of directors, *its incorporators* may adopt one or more amendments ~~to~~ *of* the corporation's articles of incorporation.

§ 13.1-710. Articles of amendment.

A. ~~A corporation amending its~~ *After an amendment of* articles of incorporation ~~shall file with~~ *has been adopted and approved as required by this chapter, the corporation shall deliver to* the Commission *for filing* articles of amendment ~~setting~~ *that shall set* 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 *or approval*;

5. If an amendment *(i)* was adopted by the board of directors or the incorporators without shareholder approval, a statement that the amendment was duly ~~approved~~ *adopted* by the board of directors or by a majority of the incorporators, as the case may be, including the reason *that* shareholder and, if applicable, ~~director~~ *board of directors'* approval was not required~~; and~~

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

~~a. A~~*; (ii) was approved by the shareholders, either a* statement that the amendment was adopted by unanimous consent of the shareholders, or

~~b. A~~ *a* statement that the amendment was ~~proposed~~ *adopted* by the board of directors ~~and~~*, was* submitted to the shareholders in accordance with this *article, and was duly approved by the shareholders in the manner required by this* chapter and *by the articles of incorporation; or (iii) is being filed pursuant to subdivision L 5 of § 13.1-604,* 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~~ *to that effect*.

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 approval.

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

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

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

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

2. Whether the restatement contains a new amendment ~~to~~ *of* the articles *of incorporation*;

3. The text of the restated articles of incorporation ~~or amended and restated articles of incorporation, as the case may be~~;

4. If the restatement includes a new amendment that provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment, which may be made dependent upon facts objectively ascertainable outside the articles of restatement in accordance with subsection L of § 13.1-604;

5. The date of the restatement's adoption;

6. If the restatement does not contain a new amendment ~~to~~ *of* the articles, *a statement* that *the restatement was adopted by* the board of directors ~~adopted the restatement~~ *or approved by the shareholders*;

7. If the restatement contains a new amendment ~~to~~ *of* the articles not requiring shareholder approval, ~~the information required by~~ *a statement that the restatement was adopted by the board of directors without shareholder approval pursuant to § 13.1-706 or* subdivision ~~A 5~~ *L 5* of § ~~13.1-710~~ *13.1-604, as the case may be*; and

8. If the restatement contains a new amendment ~~to~~ *of* the articles requiring shareholder approval, ~~the information required by subdivision A 6 of § 13.1-710~~ *a statement that the restatement was adopted by the board of directors, was submitted to the shareholders in accordance with this article, and was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation*.

~~E.~~ *D.* 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 ~~or amended and restated articles of incorporation~~ supersede the original *or previously restated* articles of incorporation and all amendments ~~to~~ *of* them.

~~F.~~ *E.* The Commission may certify restated articles of incorporation or amended and restated articles of incorporation as the articles of incorporation currently in effect.

§ 13.1-712.1. Abandonment of amendment or restatement of articles of incorporation.

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

B. If articles of amendment or restatement of the articles of incorporation have been filed with the Commission but the certificate of amendment or restatement of the articles of incorporation has not become effective, in order to abandon the articles of amendment or restatement a request for a certificate of cancellation shall be signed by the corporation and filed with the Commission prior to the effective time and date of the certificate of amendment or restatement of the articles of incorporation. When the Commission, by order, cancels the certificate of amendment or restatement, the amendment or restatement of the articles of incorporation shall be deemed abandoned and shall not become effective.

The request for a certificate of cancellation shall contain:

1. The name of the corporation;

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

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

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

A. An amendment ~~to~~ *of* 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 *the* shareholders of the corporation. An amendment changing a corporation's name does not ~~abate~~ *affect* a proceeding brought by or against the corporation in its former name.

B. A shareholder who becomes subject to new interest holder liability in respect of the corporation as a result of an amendment of the articles of incorporation shall have that new interest holder liability only in respect of interest holder liabilities that arise after the amendment becomes effective.

C. Except as otherwise provided in the articles of incorporation, the interest holder liability of a shareholder who had interest holder liability in respect of the corporation before the amendment becomes effective and has new interest holder liability after the amendment becomes effective shall be as follows:

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

2. The provisions of the articles of incorporation relating to interest holder liability as in effect immediately prior to the amendment shall continue to apply to the collection or discharge of any interest holder liabilities preserved by subdivision 1, as if the amendment had not occurred.

3. The shareholder shall have such rights of contribution from other persons as are provided by the articles of incorporation relating to interest holder liability as in effect immediately prior to the amendment with respect to any interest holder liabilities preserved by subdivision 1, as if the amendment had not occurred.

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

C. As used in this section, "new interest holder liability" has the same meaning as provided in § 13.1-707.

§ 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* reserves that power exclusively to the shareholders; or

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

C. A shareholder of the corporation does not have a vested property right resulting from any provision in the bylaws.

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

A. A bylaw that increases a 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 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 increases a quorum or voting requirement for the board of directors may provide that it ~~shall~~ *may* 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 subsection A to amend or repeal a bylaw that changes the quorum or voting requirement ~~applicable to meetings of~~ *for* the board of directors must meet the *same* quorum requirement and be adopted by the *same* vote required to take action under the quorum and voting requirement then in effect.

§ 13.1-715.1. Definitions.

As used in this article:

"Acquired entity" means the domestic or foreign corporation or eligible entity that will have all of one or more classes or series of shares or eligible interests acquired in a share exchange.

"Acquiring entity" means the domestic or foreign corporation or eligible entity that will acquire all of one or more classes or series of shares or eligible interests of the acquired entity in a share exchange.

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

"New interest holder liability" means interest holder liability of a person, resulting from a merger or share exchange, that is (i) in respect of an entity which is different from the entity in which the person

held shares or eligible interests immediately before the merger or share exchange became effective or (ii) in respect of the same entity as the one in which the person held shares or eligible interests immediately before the merger or share exchange became effective if (a) the person did not have interest holder liability immediately before the merger or share exchange became effective or (b) the person had interest holder liability immediately before the merger or share exchange became effective, the terms and conditions of which were changed when the merger or share exchange became effective.

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

~~1. Merge~~ *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~~. *"Party to a merger" does not include a survivor created by the merger.*

"Party to a share exchange" means any domestic or foreign corporation or eligible entity that is an acquired entity or an acquiring entity under a plan of 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 a new~~, *resulting in a survivor that is a* domestic ~~or foreign~~ corporation ~~or eligible entity to be~~ created in the merger. When a domestic corporation is the survivor of a merger with a domestic nonstock corporation, it may become, pursuant to subdivision ~~C 5~~ *C 6*, a domestic nonstock corporation, provided that the only parties to the merger are domestic corporations and domestic nonstock corporations.

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

C. The plan of merger shall include:

1. ~~The~~ *As to each party to the merger, its* 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~~, *jurisdiction of formation, and type of entity*;

2. *The survivor's name, jurisdiction of formation, and type of entity and, if the survivor is to be created in the merger, a statement to that effect;*

3. The terms and conditions of the merger;

~~3.~~ *4.* 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.~~ *5.* 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 amendment of the articles of incorporation of the survivor that is a domestic corporation or if the articles of incorporation are amended and restated, as an attachment to the plan, the survivor's restated articles of incorporation, or if a new domestic corporation is to be created by the merger, as an attachment to the plan, the survivor's articles of incorporation; and*

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

D. *In addition to the requirements of subsection C, a plan of merger may contain any other provision not prohibited by law.*

E. 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~~ *F. Unless the* plan of merger ~~may~~ ~~also~~ ~~include~~ ~~a~~ ~~provision~~ ~~that~~ *provides otherwise,* the plan *merger* 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 by any provision of this chapter to vote on the plan, the plan may not be amended subsequent to approval of the plan by such shareholders to change any of the following, unless the amendment is ~~approved~~ ~~by~~ *subject to the approval of* the shareholders:

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

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

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

~~F.~~ ~~1.~~ *G.* One or more domestic corporations may merge pursuant to this section into another domestic corporation if the articles of incorporation of each of them could lawfully contain all the corporate powers and purposes of all of them.

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

§ 13.1-717. Share exchange.

A. Through a share exchange:

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

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

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

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

D. The plan of share exchange shall include:

1. The name ~~of~~ ~~each~~ ~~domestic~~ ~~or~~ ~~foreign~~ ~~corporation~~ ~~or~~ ~~eligible~~ ~~entity~~ ~~whose~~ ~~shares~~ ~~or~~ ~~eligible~~ ~~interests~~ ~~will~~ ~~be~~ ~~acquired~~ ~~and~~ ~~the~~ ~~name~~ ~~of~~ ~~the~~ ~~domestic~~ ~~or~~ ~~foreign~~ ~~corporation~~ ~~or~~ ~~other~~ ~~eligible~~ ~~entity~~ ~~that~~ ~~will~~ ~~acquire~~ ~~those~~ ~~shares~~ ~~or~~ ~~eligible~~ ~~interests~~, *jurisdiction of formation, and type of entity of each acquired entity and the name, jurisdiction of formation, and type of entity of the acquiring entity*;

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~~ *a domestic or foreign* 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~~ *a domestic or foreign* 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~~ *organic law governing any foreign corporation or eligible entity that is a* party to the share exchange ~~is~~ ~~organized~~ or ~~by~~ ~~the~~ *its* articles of incorporation or organic ~~document~~ ~~of~~ ~~any~~ ~~such~~ ~~party~~ *rules*.

E. *In addition to the requirements of subsection D, the plan of share exchange may contain any*

other provision not prohibited by law.

F. 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~~ *G. Unless the* plan of share exchange *provides otherwise, 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 by any provision of this chapter to vote on the plan, the plan may not be amended subsequent to approval of the plan by such shareholders to change any of the following, unless the amendment is approved by the shareholders:

1. The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property or any combination of the foregoing to be issued by the corporation or to be received under the plan by the shareholders, of ~~or owners of eligible interests in any party to the share exchange~~ *the acquired entity*; 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.~~ *H.* This section does not limit the power of a domestic corporation to acquire shares of another domestic or foreign corporation or eligible interests in an eligible entity in a transaction other than a share exchange.

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

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

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

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

B. The board of directors may ~~condition its submission~~ *set conditions for the approval* of the plan of merger or share exchange ~~to~~ *by* the shareholders ~~on any basis~~ *or the effectiveness of the plan of merger or share exchange*.

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

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

E. Separate voting by voting groups is required:

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

a. Is to be converted under the plan of merger into shares, other securities, eligible interests,

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

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

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

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

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

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

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

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

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

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

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

1. ~~The corporation is a public corporation;~~

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

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

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

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

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

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

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

~~6.~~ *2. Another party to the merger, the acquiring entity in the share exchange, or a parent of another party to the merger or the acquiring entity in the share exchange, makes an offer to purchase, on the terms provided in the plan of merger or share exchange, any and all of the outstanding shares of the corporation that, absent this subsection, would be entitled to vote on the plan of merger or share exchange, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror, or by any wholly owned subsidiary of any of the foregoing;*

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

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

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

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

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

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

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

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

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

~~a. To~~ *the offeror is offering to purchase in accordance with the offer, and that is not purchased in accordance with the offer, is to* be converted in ~~such~~ *the* merger into, or into *the right to receive, or is to be exchanged in the share exchange for, or for* the right to receive, the same amount and kind of ~~consideration~~ *securities, eligible interests, obligations, rights, cash, or other property* to be paid ~~for shares of such~~ *or exchanged in accordance with the offer for each share of that* class or series of ~~stock of such constituent corporation irrevocably accepted for payment in the offer; or~~

~~b. Exchanged in such share exchange for, or for the right to receive, the same amount and kind of consideration to be paid for shares of such class or series of stock of such constituent corporation irrevocably accepted for payment in the offer~~ *shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in subdivision G 6 a or c need not be converted into or exchanged for the consideration described in this subdivision.*

9. As used in this subsection:

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

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

"Offeror" means the person making the offer.

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

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

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

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

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

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

holder liability, other than for changes that eliminate or reduce such interest holder liability.

J. Shares tendered in response to an offer shall be deemed, for purposes of this section, to have been purchased in accordance with the offer at the earliest time as of which the offeror has irrevocably accepted those shares for payment and either (i) in the case of shares represented by certificates, the offeror, or the offeror's designated depository or other agent, has physically received the certificates representing those shares or (ii) in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent, or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent.

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

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

"Parent entity" means a domestic ~~parent~~ *or foreign* corporation *or eligible entity* that owns shares of a domestic ~~or foreign subsidiary~~ corporation that possess at least 90 percent of the voting power of each class and series of the outstanding shares of the ~~subsidiary~~ *domestic 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 subsidiary, unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized~~.

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

B. A ~~foreign parent corporation that owns shares of a domestic subsidiary corporation that possess at least 90 percent of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the~~ *parent entity may merge (i) a* subsidiary into itself or ~~into~~ another ~~domestic or foreign~~ subsidiary~~,~~ or ~~merge~~ *(ii)* itself into ~~the~~ *a* subsidiary ~~if permitted by the laws under which any such foreign parent or subsidiary~~ *without the approval of the board of directors or the shareholders of any subsidiary and, if the parent entity is a domestic* corporation ~~is organized or by which it is governed~~, without the approval of the ~~board of directors or~~ shareholders of the ~~subsidiary~~ *parent entity*, unless the articles of incorporation of any ~~of the corporations, or in the case of a foreign corporation, its equivalent governing document,~~ *subsidiary or the articles of incorporation or the organic rules of the parent entity* otherwise provide.

C. A ~~foreign corporation may be a party to a merger pursuant to this subsection~~ *parent entity may be a foreign corporation or eligible entity* only if the merger is permitted ~~by~~ *under* the laws ~~under~~ *by* which the foreign corporation *or eligible entity* is organized.

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

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

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

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

§ 13.1-719.1. Formation of a holding company.

A. As used in this section:

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

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

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

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

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

2. The provisions in the articles of incorporation and bylaws of the constituent corporation and the

holding company ~~at~~ *immediately before* the effective time of the merger are identical as they relate to:

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

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

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

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

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

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

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

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

5. The directors of the constituent corporation become or remain the directors of the holding company upon the effective time of the merger.

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

1. If the indirect subsidiary is the survivor:

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

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

2. If the constituent corporation is the survivor:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. After a plan of merger or share exchange has been adopted and approved as required by this chapter, *the corporation shall deliver to the Commission for filing* articles of merger or share exchange ~~shall be~~ signed on behalf of each party to the merger or share exchange~~.~~ ~~The articles~~, *that* 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 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.~~ The date the plan of merger or share exchange was adopted *or approved* by each domestic corporation that was a party to the merger or share exchange;

~~4.~~ *3.* If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, either:

a. A statement that the plan was 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~~ *was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation*;

~~5.~~ *4.* If the plan of merger or share exchange was adopted by the *board of* directors without approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan of merger or share exchange was duly approved by the *board of* directors including the reason shareholder approval was not required and, in the case of a merger pursuant to § 13.1-719.1, the additional statements required by subsection D of § 13.1-719.1; and

~~6.~~ *5.* As to each foreign corporation or *foreign* eligible entity that was a party to the merger or share exchange, a statement that the participation of the foreign corporation or *foreign* eligible entity was duly authorized as required by ~~the~~ *its* organic law ~~of the corporation or eligible entity~~.

B. Articles of merger or share exchange shall be ~~filed with~~ *delivered to* the Commission *for filing* 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 or ~~§~~ 13.1-719.1:

1. The articles shall recite that the merger is being effected pursuant to § 13.1-719 or ~~§~~ 13.1-719.1, as the case may be; and

2. The articles need only be signed on behalf of the parent corporation or the constituent corporation, as the case may be.

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

A. When a merger becomes effective:

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

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

3. ~~Property~~ *All 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 *transfer,* reversion or impairment;

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

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

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

7. The articles of incorporation ~~or organic document~~ *and bylaws* of a survivor that is *a domestic corporation* created by the merger ~~becomes~~ *become* effective; ~~and~~

8. The shares of each domestic or foreign corporation that is a party to the merger, and the eligible interests in ~~an~~ *a domestic or foreign* eligible entity that is a party to the merger, that are to be converted under the plan of merger into shares, other securities, eligible interests, obligations, rights to acquire ~~securities~~ *shares,* other securities, or eligible interests, cash, other property or any combination of the foregoing, are converted, and the former holders of such shares or eligible interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under Article 15 (§ 13.1-729 et seq.) ~~of this chapter~~ or the organic law ~~of~~ *governing* the *foreign corporation or domestic or foreign* eligible entity*;*

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

10. If the survivor existed before the merger:

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

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

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

B. When a share exchange becomes effective, the shares ~~of each domestic or foreign corporation~~ *or eligible interests in the acquired entity* that are to be exchanged for shares and other securities, eligible interests, obligations, rights to acquire shares, other securities, eligible interests, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under Article 15 (§ 13.1-729 et seq.) ~~of this chapter~~ *or under the organic law governing the acquired entity.*

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

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

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

were amended pursuant to the merger:

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

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

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

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

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

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

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

1. Appoint the clerk of the Commission as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that ~~is~~ *was* a party to the merger who exercise appraisal rights*, which service of process shall be made on the clerk in accordance with § 12.1-19.1*; and

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

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

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

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

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

§ 13.1-721.1. 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~~ *the certificate of merger or share exchange may be cancelled and the merger or share exchange* may be abandoned by a domestic corporation that is a party thereto without action by shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the *plan of* merger or share exchange.

B. If ~~a merger or share exchange is abandoned under subsection A after~~ *the* articles of merger or share exchange have been filed with the Commission but ~~before~~ the certificate of merger or share exchange has *not* become effective, ~~a statement that the~~ *in order for the certificate of* merger or share exchange ~~has been abandoned in accordance with this section, signed on behalf of a party to the~~ *to be cancelled, all parties to the plan of* merger or share exchange~~,~~ shall ~~be delivered to~~ *sign a request for a certificate of cancellation and file it with* the Commission ~~for filing~~ prior to the effective *time and* date of the certificate of merger or share exchange. ~~Upon filing, the statement shall take effect and~~ *When the Commission, by order, cancels the certificate of merger or share exchange,* the merger or share exchange shall be deemed abandoned and shall not become effective.

C. The request for cancellation of a certificate of merger or share exchange shall contain:

1. The name of each party to the merger or the names of the acquiring entity and each acquired entity in a share exchange;

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

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

§ 13.1-722.1:1. Definitions.

As used in this article:

"Domesticated corporation" means the domesticating corporation as it continues in existence after a domestication.

"Domesticating corporation" means the domestic corporation that approves a plan of domestication pursuant to § 13.1-722.3 or the foreign corporation that approves a domestication pursuant to the organic law of the foreign corporation.

"Domestication" means a transaction pursuant to this article, including domestication of a foreign corporation as a domestic corporation or domestication of a domestic corporation in another jurisdiction, where the other jurisdiction authorizes such a transaction even if by another name.

§ 13.1-722.2. Domestication.

A. ~~A~~ *By complying with the provisions of this article applicable to foreign corporations, a* foreign corporation may become a domestic corporation if the ~~laws of the jurisdiction in which the~~ *domestication is permitted by the organic law of the* foreign corporation ~~is incorporated authorize it to domesticate in another jurisdiction. The laws of the Commonwealth shall govern the effect of domesticating in the Commonwealth pursuant to this article~~.

B. ~~A~~ *By complying with the provisions of this article, a* domestic corporation not required by law to be a domestic corporation may become a foreign corporation ~~if the jurisdiction in which the corporation intends to domesticate allows for the domestication. Regardless of whether the laws of the foreign jurisdiction require the adoption of~~ *pursuant to* a plan of domestication~~,~~ *if* the domestication ~~shall be approved in the manner provided in this article. The laws of the jurisdiction in which the corporation domesticates shall govern the effect of domesticating in that jurisdiction~~ *is permitted by the organic law of the foreign corporation resulting from the domestication.*

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

1. ~~A statement of the~~ *The* jurisdiction ~~in which~~ *of formation and name of* the *domesticating* corporation ~~is to be domesticated~~;

2. The ~~terms and conditions of the domestication, provided that such terms and conditions may not alter the designation, rights, preferences or limitations of all or part of the authorized shares except to the extent required to conform to the requirements of this chapter~~ *name and jurisdiction of formation of the domesticated corporation*; ~~and~~

3. ~~For a foreign corporation that is to become a domestic corporation, as a referenced attachment, amended and restated articles of incorporation that comply with~~*The manner and basis of reclassifying the shares of the domesticating corporation into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, if any;*

4. If the domesticated corporation will be a domestic corporation, (i) the proposed amended and restated articles of incorporation of the domesticated corporation that satisfy the requirements of § 13.1-619 ~~as they will be in effect upon consummation of the domestication~~*, provided that provisions not required to be included in restated articles of incorporation may be omitted, and (ii) the proposed bylaws of the domesticated corporation, which shall not be included with the articles of domestication delivered to the Commission for filing; and*

5. The other terms and conditions of the domestication.

D. ~~The~~ *In addition to the requirements of subsection C, a* plan of domestication may ~~include~~ *contain* any other provision ~~relating to the domestication~~ *not prohibited by law*.

E. The *terms of a* plan of domestication may ~~also include a provision that the board of directors may amend the plan at any time prior to issuance of the certificate of domestication or such other document required by the laws of the other jurisdiction to consummate the domestication. An amendment made subsequent to the submission of the plan to the shareholders of the corporation shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the shares of any class or series of the corporation~~ *be made dependent upon facts objectively ascertainable outside the plan in accordance with subsection L of § 13.1-604*.

§ 13.1-722.3. Action on a plan of domestication of a domestic corporation.

In the case of a *domestication of a* domestic corporation *into a foreign jurisdiction, the plan of domestication shall be adopted in the following manner*:

~~A.~~ *1.* The ~~board of directors of the corporation shall adopt the~~ plan of domestication *shall first be adopted by the board of directors*.

~~B.~~ *2.* After adopting the plan of domestication the board of directors shall submit the plan ~~of domestication for approval by~~ *to* the shareholders *for their approval*.

~~C. For the plan of domestication to be approved:~~

~~1.~~ ~~The~~ *In submitting the plan of domestication to the shareholders for approval, the* board of directors shall recommend ~~the~~ ~~plan~~ ~~to~~ *that* the shareholders *approve the plan,* unless the board of directors ~~determines~~ *makes a determination* that because of conflicts of interest or other special circumstances it should *not* make ~~no~~ *such a* recommendation ~~and~~ ~~communicates~~ ~~the~~ ~~basis~~ ~~of~~ ~~its~~ ~~determination~~ ~~to~~ *in which case the board of directors shall inform* the shareholders ~~with~~ ~~the~~ ~~plan;~~ ~~and~~

~~2.~~ ~~The~~ ~~shareholders~~ ~~shall~~ ~~approve~~ ~~the~~ ~~plan~~ ~~as~~ ~~provided~~ ~~in~~ ~~subsection~~ ~~F~~ *of the basis for that determination.*

~~D.~~ *3.* The board of directors may ~~condition~~ ~~its~~ ~~submission~~ *set conditions for approval* of the plan of domestication ~~to~~ *by* the shareholders ~~on~~ ~~any~~ ~~basis~~ *or the effectiveness of the plan of domestication.*

~~E.~~ ~~The~~ *4. If the approval of the shareholders is to be sought at a shareholders meeting, the* corporation shall notify each shareholder, *regardless of* whether ~~or~~ ~~not~~ entitled to vote, of the ~~proposed~~ ~~shareholders'~~ meeting ~~in~~ ~~accordance~~ ~~with~~ ~~§ 13.1-658~~ *of shareholders* at which the plan of domestication is to be submitted for approval. The notice shall state that ~~a~~ *the* purpose*, or one of the purposes,* of the meeting is to consider the plan *of domestication* and shall contain *or be accompanied by a copy or summary of the plan. The notice shall include* or be accompanied by a copy of the ~~plan~~ *articles of incorporation and the bylaws as they will be in effect immediately after the domestication.*

~~F.~~ *5.* Unless ~~this~~ ~~chapter~~ *the articles of incorporation* or the board of directors, acting pursuant to ~~subsection~~ ~~D~~ *subdivision 3,* ~~requires~~ *require* a greater vote, *approval of* the plan of domestication ~~shall~~ ~~be~~ ~~approved~~ ~~by~~ ~~each~~ ~~voting~~ ~~group~~ ~~entitled~~ ~~to~~ ~~vote~~ ~~on~~ ~~the~~ ~~plan~~ ~~by~~ *requires (i) the approval of the shareholders at a meeting at which a quorum exists consisting of* more than two-thirds of ~~all~~ the votes entitled to be cast *on the plan and (ii) except as provided in subdivision 6, the approval of each class or series of shares voting as a separate voting group at the meeting at which a quorum of the voting group exists consisting of more than two-thirds of the votes entitled to be cast on the plan* by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this ~~subsection~~ ~~or~~ ~~a~~ ~~vote~~ ~~by~~ ~~separate~~ ~~voting~~ ~~groups~~ *section* so long as the vote provided for is not less than a majority of all ~~the~~ votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

6. The articles of incorporation may expressly limit or eliminate the separate voting rights provided in clause (ii) of subdivision 5 as to any class or series of shares, except when the articles of incorporation of the foreign corporation resulting from the domestication include what would be in effect an amendment that would entitle the class or series to vote as a separate group under § 13.1-708 if it were a proposed amendment of the articles of incorporation of the domestic domesticating corporation.

7. If as a result of a domestication one or more shareholders of a domestic domesticating corporation would become subject to interest holder liability, approval of the plan of domestication shall require the signing in connection with the domestication, by each such shareholder, of a separate written consent to become subject to such interest holder liability, unless in the case of a shareholder that already has interest holder liability with respect to the domesticating corporation, the terms and conditions of the interest holder liability with respect to the domesticated corporation are substantially identical to those of the existing interest holder liability, other than for changes that eliminate or reduce such interest holder liability.

§ 13.1-722.5. Articles of domestication; effectiveness.

A. ~~Whenever~~ *After (i)* a *plan of domestication of a* domestic corporation has *been* adopted and approved~~,~~ ~~in~~ ~~the~~ ~~manner~~ *as* required by this ~~article,~~ ~~a~~ ~~plan~~ ~~of~~ *chapter or (ii) a foreign corporation that is the domesticating corporation has approved a* domestication ~~providing~~ ~~for~~ ~~the~~ *as required under its organic law, articles of domestication shall be signed in the name of the domesticating* corporation ~~to~~ ~~be~~ ~~domesticated~~ ~~under~~ ~~the~~ ~~laws~~ ~~of~~ ~~another~~ ~~jurisdiction,~~ ~~the~~ ~~corporation~~ ~~shall~~ ~~file~~ ~~with~~ ~~the~~ ~~Commission~~ ~~articles~~ ~~of~~ ~~incorporation~~ ~~surrender~~ ~~setting.~~ *The articles shall set* forth:

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

2. The *original name, date of formation,* jurisdiction ~~in~~ ~~which~~ ~~the~~ ~~corporation~~ ~~is~~ ~~to~~ ~~be~~ ~~domesticated~~ ~~and~~ ~~the~~ ~~name~~ ~~of~~ ~~the~~ *of formation of the domesticating* corporation ~~upon~~ ~~its~~ ~~domestication~~ ~~under~~ ~~the~~ ~~laws~~ ~~of~~ ~~that~~ *and its name,* jurisdiction *of formation, and entity type upon each subsequent domestication or conversion*;

3. The plan of domestication;

4. ~~A~~ ~~statement~~ ~~that~~ ~~the~~ ~~articles~~ ~~of~~ ~~incorporation~~ ~~surrender~~ ~~are~~ ~~being~~ ~~filed~~ ~~in~~ ~~connection~~ ~~with~~ ~~the~~ ~~domestication~~ ~~of~~ ~~the~~ ~~corporation~~ ~~as~~ ~~a~~ ~~foreign~~ ~~corporation~~ ~~to~~ ~~be~~ ~~incorporated~~ ~~under~~ ~~the~~ ~~laws~~ ~~of~~ ~~another~~ ~~jurisdiction~~ ~~and~~ ~~that~~ ~~the~~ ~~corporation~~ ~~is~~ ~~surrendering~~ ~~its~~ ~~charter~~ ~~under~~ ~~the~~ ~~laws~~ ~~of~~ ~~this~~ ~~Commonwealth;~~

~~5.~~ ~~A~~ ~~statement~~ *If the domesticating corporation is a domestic corporation*:

a. ~~That~~ *The date* the plan ~~was~~ ~~adopted~~ ~~by~~ ~~the~~ ~~unanimous~~ ~~consent~~ ~~of~~ ~~the~~ ~~shareholders~~ *of domestication was approved*; ~~or~~ *and*

b. ~~That~~ *A statement that* the plan ~~was~~ ~~submitted~~ ~~to~~ ~~the~~ ~~shareholders~~ ~~by~~ ~~the~~ ~~board~~ ~~of~~ ~~directors~~ *of domestication was approved* 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~~; *and*

5. If the domesticating corporation is a foreign corporation:

a. A statement that the domestication is permitted by and was approved in accordance with the organic law of the foreign corporation; and

b. If the foreign corporation has a certificate of authority to transact business in the Commonwealth that has not been withdrawn or revoked:

~~6.~~ *(1)* A statement that the corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as ~~its~~ *an* agent for service of process in any proceeding based on a cause of action arising during the time it was incorporated in the Commonwealth;

~~7.~~ *(2)* A mailing address to which the clerk may mail a copy of any process served on the clerk under subdivision ~~6~~ *5 b (1)*; and

~~8.~~ *(3)* A commitment by the corporation to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

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

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

~~D. If the former domestic corporation intends to continue to transact business in the Commonwealth, then, within 30 days after the effective date of the certificate of incorporation surrender, it shall deliver to the Commission an application for a certificate of authority to transact business in the Commonwealth pursuant to § 13.1-759 together with a copy of its instrument of domestication and articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws it is incorporated or domesticated.~~

~~E. Service of process on the clerk of the Commission is service of process on a former domestic corporation that has surrendered its charter pursuant to this section. Service on the clerk shall be made in accordance with § 12.1-19.1 and service on the former domestic corporation may be made in any other manner permitted by law.~~

§ 13.1-722.6. Amendment of plan of domestication; abandonment.

A. ~~When a foreign corporation's certificate~~ *A plan* of domestication ~~in this Commonwealth becomes effective, with respect to that~~ *of a domestic* corporation *may be amended*:

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

~~2. The liabilities remain the liabilities of the corporation;~~

~~3. A proceeding pending may be continued by or against the corporation as if the domestication did not occur;~~

~~4. The articles of incorporation attached to the articles of domestication constitute the articles of incorporation of the corporation; and~~

~~5. The corporation is deemed to:~~

~~a. Be incorporated under the laws of this Commonwealth for all purposes;~~

~~b. Be the same corporation as the corporation that existed under the laws of the jurisdiction or jurisdictions in which it was originally incorporated or formerly domiciled; and~~

~~c. Have been incorporated on the date it was originally incorporated or organized.~~

~~B. Any shareholder of a foreign corporation that domesticates into this Commonwealth who, prior to the domestication, was liable for the liabilities or obligations of the corporation is not released from those liabilities or obligations by reason of the domestication~~ *In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or*

2. In the manner provided in the plan, except that a shareholder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change:

a. The amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, to be received by any of the shareholders of the domesticating corporation under the plan;

b. The articles of incorporation or bylaws of the domesticated corporation that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the shareholders of the domesticated corporation under its organic law or its proposed article of incorporation or bylaws as set forth in the plan; or

c. Any of the other terms or conditions of the plan, if the change would adversely affect the shareholder in any material respect.

B. Unless otherwise provided in the plan of domestication, after the plan of domestication has been adopted and approved by a domestic corporation as required by this article, and the certificate of domestication has not become effective, the plan may be abandoned by the corporation without action by its shareholders in accordance with any procedures set forth in the plan or, if no such procedures are set forth in the plan, in the manner determined by the board of directors.

C. If a domestication is abandoned after the articles of domestication have been filed with the Commission but before the certificate of domestication has become effective, the domesticating corporation shall file a request for a certificate of cancellation with the Commission before the certificate of domestication becomes effective. When the Commission, by order, cancels the certificate of domestication, the domestication shall be deemed abandoned and shall not become effective.

D. The request for a certificate of cancellation shall contain:

1. The name of the domesticating corporation;

2. The date on which the articles of domestication were filed with the Commission; and

3. A statement that the domestication is being abandoned in accordance with this section.

§ 13.1-722.7:1. Effect of domestication.

A. When a domestication becomes effective:

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

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

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

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

5. The shares of the domesticating corporation are reclassified into shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property in accordance with the terms of the domestication, and the shareholders of the domesticating corporation are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation; and

6. The domesticated corporation is:

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

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

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

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

1. Appoint the clerk of the Commission as an agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the domestication; and

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

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

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

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

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

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

D. A shareholder who becomes subject to interest holder liability in respect of the domesticated

corporation as a result of the domestication shall have such interest holder liability only in respect of interest holder liabilities that arise after the domestication becomes effective.

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

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

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

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

§ 13.1-722.8. Definitions.

As used in this article~~, unless the context requires a different meaning~~:

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

"Conversion" means a transaction pursuant to this article.

"Converted entity" means the converting entity as it continues in existence after a conversion.

"Converting entity" means the domestic corporation *or eligible entity* that ~~adopts~~ *approves* a plan of ~~entity~~ conversion pursuant to ~~this article~~ *§ 13.1-722.11 or the foreign eligible entity that approves a conversion pursuant to the organic law of the foreign eligible entity*.

~~"Corporation" has the same meaning specified in § 13.1-603.~~

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

~~"Member" has the same meaning specified in § 13.1-1002.~~

~~"Membership interest" or "interest" has the same meaning specified in § 13.1-1002.~~

~~"Resulting entity" means the limited liability company that is in existence upon consummation of an entity conversion pursuant to this article.~~

§ 13.1-722.9. Conversion.

A. ~~A~~ *By complying with this article, a* domestic corporation may become *(i)* a domestic ~~limited liability company pursuant to a plan of entity conversion that is adopted and approved by the corporation in accordance with the provisions of this article~~ *eligible entity or (ii) a foreign eligible entity if the conversion is permitted by the organic law of the foreign entity*.

B. ~~A domestic limited liability company may become~~ *By complying with this article and applicable provisions of its organic law,* a domestic ~~corporation pursuant to a plan of entity conversion that is approved by the limited liability company in accordance with the provisions of Article 15 (§ 13.1-1081 et seq.) of Chapter 12~~ *eligible entity may become a domestic corporation. If procedures for the approval of a conversion are not provided by the organic law or organic rules of a domestic eligible entity, the conversion shall be adopted and approved in the same manner as a merger of that eligible entity. If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of either a conversion or a merger, a plan of conversion may nonetheless be adopted and approved by the unanimous consent of all the interest holders of such eligible entity. In either such case, the conversion thereafter may be effected as provided in the other provisions of this article, and for purposes of applying this article in such a case:*

1. The eligible entity, its members or interest holders, eligible interests, and organic rules taken together, shall be deemed to be a domestic corporation, shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

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

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

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

§ 13.1-722.10. Plan of conversion.

A. ~~To become a domestic limited liability company,~~ a *A* domestic corporation ~~shall adopt~~ *may convert to domestic or foreign eligible entity under this article by approving* a plan of ~~entity~~ conversion

~~setting forth~~. *The plan of conversion shall include*:

1. ~~A statement of the corporation's intention to convert to a limited liability company~~ *The name of the converting corporation*;

2. The ~~terms and conditions of the conversion, including the manner and basis of converting the shares of the corporation into interests of the resulting entity preserving the ownership proportion and relative rights, preferences, and limitations of each such share~~ *name, jurisdiction of formation, and type of entity of the converted entity*;

3. ~~As a separate attachment to the plan, the full text of the articles of organization of the resulting entity as they will be in effect upon consummation of the conversion~~ *The manner and basis of converting the shares of the domestic corporation into eligible interests or other securities, obligations, rights to acquire eligible interests or other securities, cash, other property, or any combination of the foregoing*; ~~and~~

4. ~~Any other provision relating to the conversion that may be desired~~ *If the converted entity will be a domestic corporation, (i) the proposed amended and restated articles of incorporation of the converted entity that satisfy the requirements of § 13.1-619, provided that provisions not required to be included in restated articles of incorporation may be omitted, and (ii) the proposed bylaws of the converted entity, which shall not be included with the articles of conversion delivered to the Commission for filing;*

5. The other terms and conditions of the conversion; and

6. If the converted entity will be a domestic eligible entity and a filing entity, the full text, as it will be in effect immediately after the conversion becomes effective, of the organic rules of the converted entity.

B. ~~The~~ *In addition to the requirements of subsection A, a* plan of ~~entity~~ conversion may ~~also include a provision that the board of directors may amend the plan before the effective time and date of the certificate of entity conversion. An amendment made after the submission of the plan to the shareholders shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the shares of any class or series of the converting entity, unless the amendment has been approved by the shareholders in the manner set forth in § 13.1-722.11~~ *contain any other provision not prohibited by law*.

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

§ 13.1-722.11. Action on plan of conversion.

A. ~~Except as provided in subsection B~~ *In the case of a conversion of a domestic corporation to a domestic or foreign eligible entity,* the plan of ~~entity~~ conversion shall be adopted ~~by the corporation~~ in the following manner:

1. The *plan of conversion shall first be adopted by the* board of directors ~~shall adopt the plan of entity conversion~~.

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

3. The board of directors may ~~condition its submission~~ *set conditions for approval* of the plan of ~~entity~~ conversion ~~to~~ *by* the shareholders ~~on any basis~~ *or the effectiveness of the plan of conversion.*

4. ~~The~~ *If the approval of the shareholders is to be sought at a shareholders meeting, the* corporation shall notify each shareholder, *regardless of* whether ~~or not~~ entitled to vote, of the ~~proposed shareholders'~~ meeting ~~in accordance with § 13.1-658~~ *of shareholders* at which the plan of ~~entity~~ conversion is to be submitted for approval. The notice shall ~~also~~ state that the purpose, or one of the purposes, of the meeting is to consider the plan *of conversion* and shall contain *or be accompanied by a copy or summary of the plan. The notice must include* or be accompanied by a copy of the ~~plan~~ *organic rules of the converted entity, which are to be in writing as they will be in effect immediately after the conversion.*

5. Unless ~~this chapter~~ *the articles of incorporation* or the board of directors~~,~~ acting pursuant to subdivision 3, requires a greater vote, *approval of* the plan of ~~entity~~ conversion ~~shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all~~ *requires (i) the approval of the shareholders at a meeting at which a quorum exists consisting of more than two thirds of* the votes entitled to be cast *on the plan and (ii) the approval of each class or series of shares voting as a separate voting group at a meeting at which a quorum of the voting group exists consisting of more than two thirds of the votes entitled to be cast on the plan* by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided ~~for~~ in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all ~~the~~ votes

cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

B. ~~If a corporation has not yet issued shares, a majority of its initial board of directors or incorporators, in the event that there is no board of directors, may adopt the plan of entity conversion.~~ *If as a result of the conversion one or more shareholders of the converting domestic corporation would become subject to interest holder liability, approval of the plan of conversion shall require the signing in connection with the transaction, by each such shareholder, of a separate written consent to become subject to such interest holder liability.*

§ 13.1-722.12. Articles of conversion; effectiveness.

A. After ~~the~~ *(i) a* plan of ~~entity~~ conversion of a *domestic* corporation ~~into a limited liability company~~ has been adopted and approved as required by this article~~,~~ *or (ii) a domestic or foreign eligible entity that is* the converting entity ~~shall deliver to the Commission for filing~~ *has approved a conversion as required under its organic law,* articles of ~~entity~~ conversion ~~setting~~ *shall be signed in the name of the converting entity. The articles of conversion shall set* forth:

1. The name of the ~~corporation immediately before the filing of the articles of~~ *converting* entity ~~conversion and the name to which the name of the corporation is to be changed, which name shall satisfy the requirements of the laws of this Commonwealth~~*, its jurisdiction of formation, and entity type*;

2. The ~~date on which the corporation was originally incorporated, organized, or formed; its~~ original name*, date of formation, jurisdiction of formation, and* entity type~~, and~~ *of the converted entity and its name,* jurisdiction of ~~incorporation, organization, or~~ formation~~;~~, and~~, for~~ *entity type upon* each subsequent ~~change of entity type or jurisdiction of incorporation, organization, or formation made before the filing of the articles of entity conversion, the effective date of the change and the corporation's name, entity type, and jurisdiction of incorporation, organization, or formation upon consummation of the change~~ *domestication or conversion*;

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

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

a. The date the plan of ~~entity~~ conversion was approved;

~~5. If the plan of entity conversion was adopted by the board of directors or the incorporators without shareholder approval, a statement that the plan was duly approved by the board of directors or by a majority of the incorporators, as the case may be, including the reason shareholder and, if applicable, director approval was not required;~~ and

~~6. If the plan of entity conversion was approved by the shareholders, either:~~

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

b. A statement that the plan *of conversion* was ~~submitted to the shareholders by the board of directors~~ *approved* 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~~.

5. If the converting entity is a foreign eligible entity and the converted entity is a domestic corporation:

a. A statement that the conversion is permitted by and was approved in accordance with the organic law of the foreign eligible entity; and

b. If the foreign eligible entity has a certificate of authority or registration to transact business in the Commonwealth that has not been withdrawn, revoked, or canceled:

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

(2) A mailing address to which the clerk may mail a copy of any process served on the clerk under subdivision 5 b (1); and

(3) A commitment by the foreign eligible entity to notify the clerk of the Commission in the future of any change in the mailing address of the foreign eligible entity.

6. If the converting entity is a domestic nonstock corporation, limited partnership, partnership that is registered for status as a registered limited liability partnership, or business trust and the converted entity is a domestic corporation:

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

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

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

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

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

§ 13.1-722.12:1. Amendment of plan of conversion; abandonment.

A. A plan of conversion of a converting entity that is a domestic corporation may be amended:

1. In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

2. In the manner provided in the plan, except that shareholders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

a. The amount or kind of eligible interests or other securities, obligations, rights to acquire eligible interests or other securities, cash, other property, or any combination of the foregoing, to be received by any of the shareholders of the converting corporation under the plan;

b. The organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the eligible interest holders of the converted entity under its organic law or organic rules; or

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

B. Unless otherwise provided in the plan of conversion, after the plan of conversion has been approved by a converting entity that is a domestic corporation in the manner required by this article and the certificate of conversion has not become effective, the plan may be abandoned by the corporation without action by its shareholders in accordance with any procedures set forth in the plan or, if no such procedures are set forth in the plan, in the manner determined by the board of directors.

C. In order for a certificate of conversion to be cancelled, the converting entity shall file a request for a certificate of cancellation with the Commission before the certificate of conversion becomes effective. When the Commission, by order, cancels the certificate of conversion, the conversion shall be deemed abandoned and shall not become effective.

D. The request for a certificate of cancellation shall contain:

1. The name of the converting entity;

2. The date on which the articles of conversion were filed with the Commission; and

3. A statement that the conversion is being abandoned in accordance with this section.

§ 13.1-722.13. Effect of conversion.

A. When ~~an entity~~ *a* conversion ~~under this article~~ becomes effective~~, with respect to that entity~~:

1. ~~The title to all real estate and other property remains in the resulting~~ *All property owned by, and every contract right possessed by, the converting entity remains the property and contract rights of the converted* entity without reversion or impairment;

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

3. ~~A pending proceeding may be continued by or against the resulting entity as if the conversion did not occur~~ *The name of the converted entity may, but need not, be substituted for the name of the converting entity in any pending action or proceeding*;

4. ~~The articles of organization attached to the articles of entity conversion constitute the articles of organization of the resulting entity~~ *If the converted entity is a filing entity or a domestic corporation or a domestic or foreign nonstock corporation, its public organic record and its private organic rules become effective*;

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

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

7. The shares *or eligible interests* of the converting entity are reclassified into *shares, eligible* interests*, or other securities, obligations, rights to acquire shares, eligible interests or other securities, cash, or other property* in accordance with the ~~plan of entity~~ *terms of the* conversion~~;~~, and the shareholders *or interest holders* of the converting entity are entitled only to the rights provided ~~in the plan of entity conversion or to the~~ *to them by those terms and to any appraisal* rights~~, if any,~~ they may have under ~~subdivision A 5 of § 13.1-730~~ *the organic law of the converting entity*;

~~6.~~ *8.* The ~~resulting~~ *converted* entity is ~~deemed~~ ~~to~~:

a. ~~Be a limited liability company for all purposes~~ *Incorporated or organized under and subject to the organic law of the converted entity*;

b. ~~Be the~~ *The* same entity without interruption as the converting entity ~~that existed before the conversion~~; *and*

c. ~~Have~~ *Deemed to have* been *incorporated or otherwise* organized on the date that the converting entity was originally incorporated~~, *or* organized, or formed; and~~

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

B. ~~Any shareholder of a converting entity who, before the~~ *When a* conversion~~, was liable for the liabilities or obligations of the converting~~ *of a domestic corporation to a foreign eligible* entity ~~is not released from those liabilities or obligations by reason of the conversion~~ *becomes effective, the converted entity is deemed to:*

1. Appoint the clerk of the Commission as an agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the conversion; and

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

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

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

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

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

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

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

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

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

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

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

§ 13.1-723. Disposition of assets not requiring shareholder approval.

Unless the articles of incorporation otherwise provide, no approval of the shareholders of a corporation is required:

1. To sell, lease, exchange, or otherwise dispose of any or all of 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 the corporation's assets, whether or not in the usual and regular course of business;

3. To transfer any or all of 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; or

4. To distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

§ 13.1-724. Shareholder approval of certain dispositions.

A. A 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~~ *The* corporation *will conclusively be deemed to have retained a significant continuing business activity if it* retains a business activity that represented*, for the corporation and its subsidiaries on a consolidated basis, (i)* at least 20 percent of total assets at the end of the most recently completed fiscal year, and *(ii) at least* 20 percent of either ~~(i)~~ *(a)* income from continuing operations before taxes or ~~(ii)~~ *(b)* 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~~ *for the most recently completed fiscal year*.

B. 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 disposition to the shareholders 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 makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall ~~transmit to~~ *inform* the shareholders *of* the basis for that determination.

C. The board of directors may ~~condition its submission of the proposed~~ *set conditions for the approval of a disposition by the shareholders or the effectiveness of the* disposition ~~on any basis~~.

D. If a disposition is required to be approved by *the* shareholders and if the approval is to be ~~given~~ *sought* at a *shareholders'* meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the ~~proposed~~ shareholders' meeting *at which the disposition is to be submitted for approval* 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 disposition and shall contain or be accompanied by a copy or summary of the agreement pursuant to which the 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 *articles of incorporation or* board of directors, acting pursuant to subsection C, requires a greater vote *or a greater quorum*, the *approval of a* disposition ~~to be authorized shall be approved~~ by *the shareholders shall require at a meeting at which a quorum exists the approval of* the holders of more than two-thirds of all the votes entitled to be cast on the 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 disposition by each voting group entitled to vote on the disposition at a meeting at which a quorum of the voting group exists.

F. Unless the parties to the disposition have agreed otherwise, after a disposition has been approved by *the* shareholders, and at any time before the disposition has been consummated, it may be abandoned *without action by the shareholders*, subject to any contractual rights~~, without further shareholder action in accordance with the procedure set forth in the resolution proposing~~ *of the parties to* the disposition ~~or, if none is set forth, by the board of directors~~.

G. A disposition of assets in the course of dissolution under Article 16 (§ 13.1-742 et seq.) is not governed by this section.

H. The assets of a *direct or indirect* consolidated subsidiary shall be deemed *to be* 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 the Commonwealth except to a corporation of 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 *corporation's* 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 *corporation's* 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 market value in excess of five percent of the aggregate market value of all outstanding voting shares of the corporation 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, *domestication, or conversion* 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 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 ~~10 or~~ more *than 10* persons *by way of a solicitation statement filed with the U.S. Securities and Exchange Commission* and in accordance with the *federal* 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 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 *of directors*.

"Fair market value" means:

1. In the case of shares, the highest closing sale price of a share quoted during the 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 *federal* 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 30-day period preceding the date in question on the ~~National Association of Securities Dealers, Inc.,~~ *NASDAQ stock market* 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 10 percent of any class of the outstanding voting shares of the corporation; however, the term "interested shareholder" shall not include the corporation or any of its subsidiaries, any savings, employee stock ownership, or other employee benefit plan of the corporation or any of its subsidiaries, or any fiduciary with respect to any such plan when acting in such capacity. For the purpose of determining whether a person is an interested shareholder, the number of voting shares deemed to be outstanding shall include shares deemed owned by the interested shareholder through application of subdivision 3 under the definition of "beneficial owner" but shall not include any other voting shares that may be issuable pursuant to any contract, arrangement, or understanding, upon the exercise of any conversion right, exchange right, warrant, or option, or otherwise; or

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

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

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

§ 13.1-727. 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 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 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 *federal* 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 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 *becoming a public corporation or* 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 *(i) is not a public corporation and (ii)* does not have more than 300 shareholders

of record, unless ~~the~~ ~~foregoing~~ *its loss of that status* 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 *federal* 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 *and such provision in the articles of incorporation has not subsequently been amended to be eliminated*.

5. The corporation, by action of its shareholders, adopts an amendment ~~to~~ *of* 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~~ *of* 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 *beneficially* owned by an interested shareholder. An amendment adopted pursuant to this subdivision shall not be effective until 18 months after the date such amendment was approved by the shareholders and shall not apply to any affiliated transaction between ~~such~~ *the* 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 public corporation, means any person who has made or proposes to make a control share acquisition of shares of such 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~~ *that* 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 a public corporation that, except for this article, would have voting rights and would, when added to all other shares of such 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 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 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 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 *merger or* share exchange effected in compliance with Article 12 (§ 13.1-715.1 et seq.) ~~of this chapter~~ if the public corporation is a party to the ~~agreement~~ *plan* 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 public corporation is a party;

7. Directly from the public corporation, or from any of its wholly owned subsidiaries, or from any corporation having beneficial ownership of shares of the public corporation having at least a majority, before such transaction, of the votes entitled to be cast in the election of directors of such 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 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 public corporation; or (iii) any employee of such public corporation who is also a director of the corporation.

"Person" includes an associate of any 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 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.

§ 13.1-728.4. 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 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 public corporation, to sell all or substantially all of its *or its subsidiaries'* assets, to merge it or exchange its shares *or the interests in its*

subsidiaries 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 10 days thereafter the directors of the 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 50 days after receipt by the 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 30 days after receipt by the public corporation of the acquiring person's statement.

D. If the acquiring person makes no request under subsection A but delivers, no later than ~~30~~ *60* 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 public corporation, and may not be solicited sooner than 30 days before the meeting unless otherwise agreed to in writing by the acquiring person and the 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, the *board of* directors of the 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 ~~30~~ *60* 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 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 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' 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~~.~~*; and*

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 public corporation may, at any time during the period ending 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.

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 60 days after such meeting, be redeemed by the corporation at the redemption price specified in subsection C.

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 *U.S.* Securities and Exchange Commission by, the acquiring person as to the prices so paid.

§ 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 public corporation. ~~In~~ *Regardless of the applicability of this article, 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.

§ 13.1-729. Definitions.

~~In~~ *As used 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~~ *of such person. For purposes of subdivision B 4 of § 13.1-730, a person is deemed to be an affiliate of its senior executives.*

"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 *domestic corporation that is the* issuer of the shares held by a shareholder demanding appraisal and, for matters covered by §§ 13.1-734 through 13.1-740, includes the ~~surviving entity~~ *survivor* in a merger.

"Fair value" means the value of the corporation's shares determined:

~~a.~~ *1.* Immediately before the ~~effectuation~~ *effectiveness* of the corporate action to which the shareholder objects;

~~b.~~ *2.* Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

~~c.~~ *3.* Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles *of incorporation* pursuant to subdivision A 5 of § 13.1-730.

"Interest" means interest from the ~~effective~~ date ~~of~~ the corporate action *becomes effective* 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.

"Interested transaction" means a corporate action described in subsection A of § 13.1-730, other than a merger pursuant to § 13.1-719 or 13.1-719.1, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. As used in this definition:

1. "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; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the 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 is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group.

2. "Interested person" means a person, or an affiliate of a person, who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action:

a. Was the beneficial owner of ~~20%~~ *20 percent* or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares *of the corporation* having voting power if the offer was made within one year prior to the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action;

b. ~~Had~~ *Excluding the voting power of any shares of the corporation acquired pursuant to an offer for all shares having voting power if the offer was made within the previous one year for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action, had* the power, contractually or otherwise, to cause the appointment or election of ~~25%~~ *25 percent* or more of the directors to the board of directors of the corporation; or

c. Was a senior executive officer or director of the corporation or a senior executive officer of any affiliate ~~thereof~~ *of the corporation*, 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 same 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.

"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 the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.~~

"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 ~~both~~ a record shareholder ~~and~~, a beneficial shareholder, *and a voting trust beneficial owner*.

§ 13.1-730. Right to appraisal.

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

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

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

3. Consummation of a disposition of assets pursuant to § 13.1-724 if ~~shareholder approval is required for the disposition, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series if:~~

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

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

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

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

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

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

6. Consummation of a domestication in which a domestic corporation becomes a foreign corporation if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same

percentage interest in the total voting rights of the outstanding shares of the ~~domestic~~ *foreign* corporation, as the shares held by the shareholder immediately before the domestication*; or*

7. Consummation of a conversion to an unincorporated entity pursuant to Article 12.2 (§ 13.1-722.8 et seq.).

B. Notwithstanding subsection A, the availability of appraisal rights under subdivisions A 1 through A 4*, A 6, and A 7* shall be limited in accordance with the following provisions:

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

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

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

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

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

a. The record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights *or in the case of an offer made pursuant to subsection G of § 13.1-718, the date of such offer*; or

b. The day before the effective date of such corporate action if there is no meeting of shareholders *and no offer made pursuant to subsection G of § 13.1-718.*

3. Subdivision 1 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 at the time the corporate action becomes effective.

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

C. Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment ~~thereto~~ *to the articles of incorporation* may limit or eliminate appraisal rights for any class or series of preferred shares, ~~but~~ *except that (i) no such limitation or elimination shall be effective if the class or series does not have the right to vote separately as a voting group, alone or as a part of a group, on the action, and (ii)* any such limitation or elimination contained in an amendment ~~to~~ *of* the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one year ~~of that~~ *after the effective* date *of such amendment* if such action would otherwise afford appraisal rights.

§ 13.1-731. Assertion of rights by nominees and beneficial owners.

A. A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder *or a voting trust beneficial owner* only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder *or the voting trust beneficial owner* and notifies the corporation in writing of the name and address of each beneficial shareholder *or voting trust beneficial owner* on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

B. A beneficial shareholder *or a voting trust beneficial owner* may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

1. Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in subdivision B 2 b of § 13.1-734; and

2. Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder *or the voting trust beneficial owner*.

§ 13.1-732. Notice of appraisal rights.

A. Where any corporate action specified in subsection A of § 13.1-730 is to be submitted to a vote at a shareholders' meeting and the corporation has concluded that shareholders are or may be entitled to assert appraisal rights under this article, the meeting notice, *or when no approval of such action is required pursuant to subsection G of § 13.1-718, the offer made pursuant to subsection G of § 13.1-718*

shall state the corporation's position as to the availability of appraisal rights.

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

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

C. Where any corporate action specified in subsection A of § 13.1-730 is to be approved by written consent of the shareholders pursuant to § 13.1-657 *and the corporation has concluded that shareholders are or may be entitled to assert appraisal rights under this article*:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. *If a corporate action specified in subsection A of § 13.1-730 does not require shareholder approval pursuant to subsection G of § 13.1-718, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares (i) shall deliver to the secretary of the corporation before the shares are purchased pursuant to the offer written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and (ii) shall not tender, or cause or permit to be tendered, any shares of such class or series in response to such offer.*

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

§ 13.1-734. Appraisal notice and form.

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

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

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

2. State:

a. Where the form must be ~~sent~~ *delivered* and where certificates for certificated shares ~~must~~ *are required to* be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date ~~for~~ ~~receiving~~ *by which the corporation must receive* 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~~ *is delivered*, 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~~ *return* the ~~form~~ *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

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 complete, sign, and return the form ~~sent~~ *delivered* by the corporation 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. ~~If~~ ~~the~~ ~~form~~ ~~requires~~ *In addition, if applicable,* the shareholder ~~to~~ *shall* certify *on the form* 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 subdivision B 1 of § 13.1-734~~,~~ ~~and~~ ~~the~~. *If a* shareholder fails to make ~~the~~ *this* certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under § 13.1-738. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed 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 *secretary of 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 sign 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 30 days after the form required by subsection B 2 b of § 13.1-734 is due, the corporation shall pay in cash to those shareholders who complied with subsection A of § 13.1-735.1 the amount the corporation estimates to be the fair value of their shares plus interest.

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

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

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

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

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

§ 13.1-738. After-acquired shares.

A. A corporation may elect to withhold payment required by § 13.1-737 from any shareholder who was required to, but did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to subdivision B 1 of § 13.1-734.

B. If the corporation elected to withhold payment under subsection A, it shall, within 30 days after 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 of fair value pursuant to subdivision B 2 of § 13.1-737 and its offer to pay 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~~ *corporation's secretary* 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, *plus interest,* 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~~ *delivering* the notice described in subsection B, the corporation shall pay in cash the amount it offered to pay under subdivision B 2, *plus interest,* to each shareholder described in subdivision B 5.

§ 13.1-739. Procedure if shareholder dissatisfied with payment or offer.

A. A shareholder paid pursuant to § 13.1-737 who is dissatisfied with the amount of the payment must notify the ~~corporation~~ *corporation's secretary* in writing of that shareholder's ~~stated~~ estimate of the fair value of the shares and demand payment of that estimate plus interest ~~(~~, less any payment under § 13.1-737~~)~~. A shareholder offered payment under § 13.1-738 who is dissatisfied with that offer must reject the offer and demand payment of the shareholder's *stated* estimate of the fair value of the shares plus interest.

B. A shareholder who fails to notify the ~~corporation~~ *corporation's secretary* 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 the right to demand payment under this section 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 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay in cash to each 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 the corporation's principal office, or, if none in the Commonwealth, where its registered office, is located. If the corporation is a foreign corporation without a registered office in the Commonwealth, it shall commence the proceeding in the circuit court of the city or county in the Commonwealth where the principal office, or, if none in the Commonwealth, where the registered office of the domestic corporation merged with the foreign corporation was located at the time the transaction became effective.

C. The corporation shall make all shareholders, *regardless of* whether ~~or not~~ *they are* residents of 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 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 a shareholder has not complied with the provisions of this article, that shareholder shall be dismissed as a party.

E. The jurisdiction of the court in which the proceeding is commenced under subsection B 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 shareholders demanding appraisal *rights* are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

F. Each 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 the shareholder's shares ~~plus interest~~ exceeds the amount paid by the corporation to the shareholder for such shares, *plus interest* or (ii) for the fair value plus interest of 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 *court* 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 *court* costs against all or some of the shareholders demanding appraisal, in amounts *that* the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article.

B. The court in an appraisal proceeding may also assess the ~~fees and~~ expenses of ~~counsel and experts for~~ the respective parties, in amounts the court finds equitable:

1. Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of § 13.1-732, 13.1-734, 13.1-737 or 13.1-738; or

2. Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the ~~fees and~~ expenses are assessed acted arbitrarily, vexatiously or not 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~~ *expenses incurred by* any shareholder were of substantial benefit to other shareholders similarly situated, and that ~~the fees for those services~~ *such expenses* should not be assessed against the corporation, the court may ~~award to~~ *direct that* such ~~counsel reasonable fees to~~ *expenses* be paid out of the amounts awarded the shareholders who were benefited.

D. 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~~.

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

A. Except for action taken before the Commission pursuant to § 13.1-614 or as provided in subsection B, the legality of a proposed or completed corporate action described in subsection A of § 13.1-730 may not be contested, nor may the corporate action be enjoined, set aside or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

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

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

a. Article 11 (§ 13.1-705 et seq.), Article 12 (§ 13.1-715.1 et seq.), *Article 12.1 (§ 13.1-722.1:1 et seq.), Article 12.2 (§ 13.1-722.8 et seq.),* or Article 13 (§ 13.1-723 et seq.);

b. The articles of incorporation or bylaws; or

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

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

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

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

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

b. The proceeding challenging the corporate action is commenced within 10 days after notice of the

adoption or taking of the corporate action is effective as to the shareholder bringing the proceeding.

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

§ 13.1-742. Dissolution by directors and shareholders.

A. ~~A corporation's~~ *The* board of directors may propose dissolution for submission to the shareholders *by first adopting a resolution authorizing the dissolution*.

B. For a proposal to dissolve to be ~~adopted~~ *approved*:

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~~, *in which case the board of directors shall inform the shareholders of* the basis for ~~its~~ *that* determination ~~to the shareholders~~; and

2. The shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection E.

C. The board of directors may ~~condition its submission~~ *set conditions for the approval* of the proposal for dissolution ~~on any basis~~ *by shareholders or on the effectiveness of the dissolution*.

D. ~~The~~ *If the approval of the shareholders is to be sought at a shareholders' meeting, the* corporation shall notify each shareholder, *regardless of* whether ~~or not~~ entitled to vote, of the ~~proposed shareholders'~~ meeting ~~in accordance with § 13.1-658~~ *of shareholders at which dissolution will be submitted for approval*. 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 articles of incorporation or* the board of directors, acting pursuant to subsection C, requires a greater vote, *a greater quorum, or a vote by voting groups*, dissolution to be authorized must be approved *at a shareholders' meeting at which a quorum exists* 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 by each voting group entitled to vote on the 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 ~~approved by the shareholders~~ *authorized*, the corporation may dissolve by ~~filing with~~ *delivering to* the Commission *for filing* articles of dissolution setting forth:

1. The name of the corporation;

2. The date *that* 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~~ *and was approved by the shareholders in the manner required by* this 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~~ *the articles of incorporation*.

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.

§ 13.1-744. Revocation of dissolution.

A. A corporation may revoke its dissolution at any time prior to the effective date of its certificate of termination of corporate existence.

B. Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action ~~by~~ *of* the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

C. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by ~~filing with~~ *delivering to* the Commission *for filing* articles of revocation of dissolution that set forth:

1. The name of the corporation;

2. The effective date of the dissolution that was revoked;

3. The date that the revocation of dissolution was authorized;

4. If the corporation's board of directors revoked ~~a~~ *the* dissolution, *a statement to that effect and if dissolution was* authorized by the shareholders, a statement that revocation was permitted by action ~~by~~

of the board of directors alone pursuant to that authorization; and

5. If shareholder action was required to revoke the dissolution, the information required by subdivision 3 of subsection A of § 13.1-743.

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

E. When the *certificate of* revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the *certificate of* dissolution and the corporation resumes carrying on its business as if the dissolution had never occurred.

§ 13.1-745. Effect of dissolution.

A. A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

1. Collecting its assets;

2. Disposing of its properties that will not be distributed in kind to its shareholders;

3. Discharging or making provision for discharging its liabilities;

4. ~~Distributing~~ *Making distributions of* its remaining ~~property~~ *assets* among its shareholders according to their interests; and

5. Doing every other act necessary to wind up and liquidate its business and affairs.

B. Dissolution of a corporation does not:

1. Transfer title to the corporation's property;

2. Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

3. Subject its directors to standards of conduct different from those prescribed in Article 9 (§ 13.1-673 et seq.);

4. Change *(i)* quorum or voting requirements for its board of directors or shareholders; ~~change~~ *(ii)* provisions for selection, resignation, or removal of its directors or officers; or ~~change~~ *(iii)* provisions for amending its bylaws;

5. Prevent commencement of a proceeding by or against the corporation in its corporate name;

6. Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

7. Terminate the authority of the registered agent of the corporation.

C. A distribution in liquidation under this section may only be made by a dissolved corporation. For purposes of determining the shareholders entitled to receive a distribution in liquidation, the board of directors may fix a future date as a record date. If the board of directors does not fix a record date for the determination, the record date is the date the board of directors authorizes the distribution.

§ 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~~ *delivered*;

4. State the *claim* deadline, which may not be fewer than 120 days from the effective date of the written notice, by which *written* confirmation of the claim must be delivered to the dissolved corporation, *and if the claimant's claim is not admitted, the proceeding deadline, which may not be fewer than 180 days from the effective date of the written notice, by which the claimant must commence a proceeding to enforce the claim*; 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 *claim deadline, or, if the claim is not admitted, if the claimant does not commence a proceeding to enforce the claim by the proceeding* 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 and the claimant does not deliver written confirmation of the claim to the dissolved corporation by the *claim* deadline; or

2. If the dissolved corporation delivered written notice to the claimant that ~~his~~ *the claimant's* claim is not admitted, in whole or in part, and the claimant does not commence a proceeding to enforce the claim ~~within 90 days from the effective date of such notice~~ *by the proceeding deadline*.

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 60 days after the delivery of written notice to the claimant pursuant to subsection B. Nothing in this section shall prevent acceleration of liability for an unmatured claim or liability by operation of the agreement under which it was created or exercise of any discretionary right of the claimant thereunder.

E. If a liability exists but the full extent of any damages is *not* or may not be ascertainable, and a proceeding to enforce the claim is commenced pursuant to subdivision C 2, 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 (i)~~ deliver notice of its dissolution to any known claimant with a liability or claim that pursuant to subsection D of § 13.1-746 is not treated as a claim for purposes of § 13.1-746 ~~and (ii)~~. *A dissolved corporation may also* publish notice of its dissolution *request that persons with claims against the dissolved corporation present them in accordance with the notice. The notice shall (i) 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 *or (ii) be posted conspicuously for at least 30 days on the dissolved corporation's website*. The notice of dissolution shall request that persons with claims against the dissolved corporation present them in accordance with the notice.

B. The notice shall:

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

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

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

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

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

~~3.~~ A claimant whose claim pursuant to subsection D of § 13.1-746 is not treated as a claim for purposes of § 13.1-746.

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

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

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

§ 13.1-746.3. Director duties.

A. ~~The board of directors~~ *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 *in liquidation* 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 may dissolve a corporation:

1. In a proceeding by a shareholder of a corporation that is not a public corporation 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. In a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and terminate its corporate existence;

5. 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 in their interest that the assets and business be liquidated; or

6. 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 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 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 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.

F. Within 15 days of the commencement of a proceeding to dissolve a corporation under subdivision A 1, the corporation shall deliver to all shareholders, other than the petitioner, a notice stating that the corporation and the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under § 13.1-749.1 and accompanied by a copy of that section.

§ 13.1-748. Receivership or custodianship.

A. Unless an election to purchase has been filed under § 13.1-749.1, 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 *as a receiver or custodian* an individual, a domestic corporation *or eligible entity*, or a foreign corporation *or eligible entity* authorized to transact business in 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~~ *the receiver's* own name as receiver of the corporation in all courts of 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~~ *expenses paid or reimbursed* to the receiver or custodian ~~and the custodian's counsel~~ from the assets of the corporation or proceeds from the sale of the assets.

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

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

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

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

D. If the parties are unable to reach an agreement as provided for in subsection C, the court, upon application of any party, shall stay the proceedings under subdivision A 1 of § 13.1-747 and determine the fair value of the petitioner's shares as of the day before the date on which the petition under subdivision A 1 of § 13.1-747 was filed or as of such other date as the court deems appropriate under the circumstances. The determination of fair value shall include consideration of all relevant facts and circumstances, including, unless the court determines it would be unjust or inequitable to do so, (i) the petitioner's minority status, (ii) the marketability of the petitioner's shares, (iii) the relevant terms of any shareholders' agreement, and (iv) if the court finds that the value of the corporation has been diminished by the wrongful conduct of controlling shareholders, the petitioner's proportionate claim for any compensable corporate injury. In determining the fair value, the court may, in its discretion, select an appraiser to appraise the fair value of the petitioner's shares and shall assess the cost of any such appraisal to the parties, to the corporation, or both, as the equities may appear to the court.

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

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

G. The purchase ordered pursuant to subsection E shall be made within 10 days after the date the order becomes final.

H. Any payment by the corporation pursuant to an order under subsection C or E, other than an

award of ~~fees and~~ expenses pursuant to subsection E, is subject to the provisions of § 13.1-653.

§ 13.1-750. 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~~ *deliver to the Commission for filing* 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~~ *statement*. 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~~ *When the* certificate *is effective*, 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 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.

§ 13.1-751. Termination of corporate existence by incorporators or initial directors.

A majority of the initial directors, or, if initial directors were not named in the articles of incorporation and have not been elected, *a majority of* the incorporators of a corporation that has not issued shares or has not commenced business may dissolve the corporation and terminate its corporate existence by filing with the Commission articles of termination of corporate existence that set forth:

1. The name of the corporation;

2. ~~[Repealed.]~~ *The date of its incorporation;*

3. Either (i) that none of the corporation's shares have been issued or (ii) that the corporation has not commenced business;

4. That no debt of the corporation remains unpaid;

5. That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

6. That a majority of the initial directors authorized the dissolution or that initial directors were not named in the articles of incorporation and have not been elected and a majority of the incorporators authorized the dissolution.

§ 13.1-755. Survival of remedy after termination of corporate existence.

The termination of corporate existence shall not take away or impair any remedy available to or against the corporation~~,~~ *or* its directors, officers, or shareholders~~,~~ for any right or claim existing or any liability incurred~~,~~ prior to such termination. Any such action or proceeding by or against the corporation may be prosecuted or defended by the 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.

§ 13.1-757. Authority to transact business required.

A. A foreign corporation may not transact business in 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:

1. Maintaining, defending, *mediating, arbitrating,* 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 *in financial institutions*;

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~~ *by any means*, if the orders require acceptance outside ~~this~~ *the* Commonwealth before they become

contracts;

7. Creating or acquiring indebtedness, deeds of trust, ~~and~~ *or* security interests in ~~real or personal~~ property;

8. Securing or collecting debts or enforcing deeds of trust ~~and~~ *or* security interests in property securing the debts, *and holding, protecting, or maintaining property so acquired*;

9. Owning, ~~without more, real or personal~~ *protecting, and maintaining* property;

10. Conducting an isolated transaction that is completed within 30 *consecutive* days and that is not one in the course of ~~repeated~~ *similar* transactions ~~of a like nature~~;

11. For a period of less than 90 consecutive days, producing, directing, filming, crewing, or acting in motion picture feature films, television series, or commercials, or promotional films ~~which~~ *that* 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 that does not otherwise transact business in the Commonwealth*; or*

13. Transacting business in interstate commerce.

C. The list of activities in subsection B is not exhaustive.

D. This section does not apply in determining the contacts or activities that may subject a foreign corporation to service of process, taxation, or regulation under the laws of the Commonwealth other than this chapter.

E. The term "transacting business" as used in this section shall have no effect on personal jurisdiction under § 8.01-328.1.

§ 13.1-758. Consequences of transacting business without authority.

A. A foreign corporation transacting business in the Commonwealth without a certificate of authority may not maintain a proceeding in any court in the Commonwealth until it obtains a certificate of authority.

B. The successor to a foreign corporation that transacted business in 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 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 the Commonwealth without a certificate of authority, each officer, director, and employee who does any of such business in 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, 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 the Commonwealth.

F. Suits, actions, and proceedings may be begun against a foreign corporation that transacts business in 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 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~~ *as an agent* for service of process *upon the foreign corporation*. Service upon the clerk shall be made in accordance with § 12.1-19.1.

§ 13.1-759. Application for certificate of authority.

A. ~~A foreign corporation may apply to the Commission for~~ *To obtain* a certificate of authority to transact business in the Commonwealth, *a foreign corporation shall deliver an application to the Commission*. The application shall be made on ~~forms~~ *a form* prescribed and furnished by the Commission. The application shall *be signed in the name of the foreign corporation and* set forth:

1. The name of the *foreign* corporation, and if the *foreign* corporation is prevented by § 13.1-762 from using its name in the Commonwealth, a designated name that satisfies the requirements of subsection B of § 13.1-762;

2. The ~~name of the state or other~~ *foreign corporation's* jurisdiction ~~under whose law it is incorporated~~ *of formation*, and if the *foreign* corporation was previously authorized or registered to transact business in the Commonwealth as a foreign corporation, limited liability company, business

trust, limited partnership, or registered limited liability partnership, with respect to every such prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization, or formation; and (iv) the entity identification number issued to it by the Commission;

3. The date of incorporation and period of duration *of the foreign corporation*;

4. The street ~~address~~ *and mailing addresses* of the foreign corporation's principal office;

5. The address of the proposed registered office of the foreign corporation in 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 proposed registered agent in the Commonwealth at such address and that the registered agent is either (a) an individual who is a resident of Virginia and either an officer or director of the corporation or a member of the Virginia State Bar or (b) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office;

6. The names and ~~usual~~ business addresses of the ~~current~~ *foreign corporation's* directors and principal officers ~~of the foreign corporation~~; and

7. The number of shares the *foreign* corporation is authorized to issue, itemized by class.

B. The foreign corporation shall deliver with the completed application a copy of its articles of incorporation and all amendments thereto duly authenticated by the Secretary of State or other official having custody of corporate records in ~~the state or other~~ *its* jurisdiction ~~under whose law it is incorporated~~ *of formation*.

C. *A foreign corporation is not precluded from receiving a certificate of authority to transact business in the Commonwealth because of any difference between the law of the foreign corporation's jurisdiction of formation and the law of the Commonwealth.*

D. 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 authority to transact business in the Commonwealth.

§ 13.1-760. Amended certificate of authority.

A. A foreign corporation authorized to transact business in ~~this~~ *the* Commonwealth shall obtain an amended certificate of authority from the Commission *if it*:

1. ~~If it changes~~ *Changes* its corporate name ~~or~~ *in* the ~~state or other~~ jurisdiction of its ~~incorporation~~ *formation*; ~~or~~

2. ~~To abandon or change~~ *Changes its jurisdiction of formation; or*

3. Abandons or changes the designated name adopted by the *foreign* corporation for use in the Commonwealth pursuant to subsection B of § 13.1-762.

B. The requirements of § 13.1-759 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

C. Whenever the articles of incorporation of a foreign corporation that is authorized to transact business in the Commonwealth are amended, within 30 days after the amendment becomes effective, the foreign corporation shall file with the Commission a copy of such amendment duly authenticated by the Secretary of State or other official having custody of corporate records in ~~the state or other~~ *its* jurisdiction ~~under whose law it is incorporated~~ *of formation*.

§ 13.1-761. Effect of certificate of authority.

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

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

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

§ 13.1-763. Registered office and registered agent of foreign corporation.

A. Each foreign corporation authorized to transact business in ~~this~~ *the* Commonwealth shall continuously maintain in ~~this~~ *the* Commonwealth:

1. A registered office ~~that~~, *which* may be the same as any of its places of business; and

2. A registered agent, who shall be:

a. An individual who is a resident of Virginia and either an officer or director of the corporation or a member of the Virginia State Bar, and whose business office is identical with the registered office; or

b. A domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in ~~this~~ *the* Commonwealth, the business office

of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return.

B. The sole duty of the registered agent is to forward to the *foreign* corporation at its last known address any process, notice, or demand that is served on the registered agent.

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

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

1. The name of the foreign corporation;

2. The address of its current registered office;

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

4. The name of its current registered agent;

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

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

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

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

§ 13.1-765. Resignation of registered agent of foreign corporation.

A. The registered agent of a foreign corporation may resign the agency appointment by signing and filing with the Commission a statement of resignation accompanied by a certification that the registered agent shall mail a copy thereof to the principal office of the *foreign* corporation by certified mail on or before the business day following the day on which the statement is filed. 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.

§ 13.1-766. Service of process on foreign corporation.

A. The registered agent of a foreign corporation authorized to transact business in ~~this~~ *the* Commonwealth shall be an agent of ~~such~~ *the foreign* corporation upon whom any process, notice, order, or demand required or permitted by law to be served upon the corporation may be served. The registered agent may by instrument in writing, acknowledged before a notary public, designate a natural person or persons in the office of the registered agent upon whom any such process, notice, order, or demand may be served. Whenever any such person accepts service of process, a photographic copy of such instrument shall be attached to the return.

B. Whenever a foreign corporation authorized to transact business in ~~this~~ *the* Commonwealth fails to appoint or maintain a registered agent in ~~this~~ *the* Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the Commission shall be an agent of the *foreign* corporation upon whom service may be made in accordance with § 12.1-19.1.

C. Nothing in this section shall limit or affect the right to serve any process, notice, order, or demand, required or permitted by law to be served upon a *foreign* corporation in any other manner now or hereafter permitted by law.

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

A. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of ~~the state or other~~ *its* jurisdiction ~~under whose laws it is incorporated~~ *of formation*, and such *foreign* corporation is the surviving entity of the merger, it shall, within 30 days after such merger becomes effective, file with the Commission a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of corporate records in ~~the state~~

~~or other~~ *its* jurisdiction ~~under whose law it is incorporated~~ *of formation*; however, the filing shall not be required when a foreign corporation merges with a domestic corporation or eligible entity, the foreign corporation's articles of incorporation are not amended by said merger, and the articles or statement of merger filed on behalf of the domestic corporation or eligible entity pursuant to § 13.1-720, 13.1-1072, 13.1-1261, 50-73.48:3, or 50-73.131 contains a statement that the ~~merger is permitted under the laws of the state or other jurisdiction in which the foreign corporation is incorporated and that~~ *participation of* the foreign corporation ~~has complied with that law in effecting the merger~~ *or eligible entity was duly authorized as required by its organic law*.

B. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of ~~the state or other~~ jurisdiction ~~under the laws of which it is incorporated~~ *of formation,* and such corporation is not the surviving entity of the merger or, whenever such a foreign corporation is a party to a consolidation so permitted, the surviving or resulting ~~domestic or~~ foreign corporation~~, limited liability company, business trust, partnership or limited partnership~~ *or eligible entity, if there is one,* shall, if not continuing to transact business in the Commonwealth, within 30 days after such merger or consolidation becomes effective, deliver to the Commission a copy of the instrument of merger or consolidation duly authenticated by the Secretary of State or other official having custody of corporate records in the ~~state or other~~ *foreign corporation's* jurisdiction ~~under whose law it was incorporated~~ *of formation*, and comply in behalf of the predecessor corporation with the provisions of § 13.1-767. ~~If a~~ *However, if the* surviving or resulting *foreign* corporation or ~~limited liability company, business trust, registered limited liability partnership or limited partnership~~ *eligible entity* is to continue to transact business in the Commonwealth and has not ~~received~~ *obtained* a certificate of authority *or a certificate of registration* to transact business in the Commonwealth ~~or registered as a foreign limited liability company under § 13.1-1052, as a foreign business trust under § 13.1-1242, as a foreign registered limited liability partnership under § 50-73.138, or as a foreign limited partnership under § 50-73.54,~~ then, within such 30 days, it shall deliver to the Commission an application~~, if a foreign corporation,~~ for a certificate of authority *or a certificate of registration* to transact business in the Commonwealth, ~~if a foreign limited liability company, for registration as a foreign limited liability company, if a foreign business trust, for registration as a foreign business trust, if a foreign registered limited liability partnership, for registration as a foreign registered limited liability partnership, or, if a foreign limited partnership, for registration as a foreign limited partnership~~ *pursuant to § 13.1-759, 13.1-921, 13.1-1052, 13.1-1242, 50-73.54 or 50-73.138, as applicable*, together with a ~~duly authenticated~~ copy of the instrument of merger or consolidation and also, in case of a merger, a copy of its articles of incorporation, certificate of limited partnership, partnership certificate, statement of registered limited liability partnership, articles of trust, or articles of organization and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate~~, limited partnership, registered limited liability partnership, business trust, or limited liability company~~ records in ~~the state or other~~ *its* jurisdiction ~~under whose laws it is incorporated, formed, registered, or organized~~ *of formation*.

C. Upon the merger or consolidation of a foreign corporation with one or more foreign corporations~~, partnerships, limited partnerships, business trusts, or limited liability companies~~ *or eligible entities,* all property in the Commonwealth owned by any of the foreign corporations~~, partnerships, limited partnerships, business trusts, or limited liability companies~~ *or eligible entities* shall pass to the surviving or resulting foreign corporation~~, limited liability company, business trust, or limited partnership~~ *or eligible entity* except as otherwise provided by the laws of ~~the state or other~~ *its* jurisdiction ~~by which it is governed~~ *of formation,* but only from and after the time when a duly authenticated copy of the instrument of merger or consolidation is filed with the Commission.

§ 13.1-766.2. Conversion of foreign corporation authorized to transact business in Commonwealth.

A. Whenever a foreign corporation that is authorized to transact business in the Commonwealth converts to another type of entity, the surviving or resulting entity shall, within 30 days after such ~~entity~~ conversion becomes effective, file with the Commission a copy of the instrument of ~~entity~~ conversion duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose laws such ~~entity~~ conversion was effected; and

1. If the surviving or resulting entity is not continuing to transact business in the Commonwealth or is not a foreign limited liability company, business trust, limited partnership, or registered limited liability partnership, then, within 30 days after such entity conversion, it shall comply on behalf of the predecessor corporation with the provisions of § 13.1-767; or

2. If the surviving or resulting entity is a foreign limited liability company, business trust, limited partnership, or registered limited liability partnership and is to continue to transact business in the Commonwealth, then, within such 30 days, it shall deliver to the Commission an application for a certificate of registration to transact business in the Commonwealth or, in the case of a foreign

registered limited liability partnership, a statement of registration.

B. Upon the ~~entity~~ conversion of a foreign corporation that is authorized to transact business in the Commonwealth, all property in the Commonwealth owned by the foreign corporation shall pass to the surviving or resulting entity except as otherwise provided by the laws of ~~the state or other~~ *its* jurisdiction ~~by which it is governed~~ *of formation*, but only from and after the time when a duly authenticated copy of the instrument of ~~entity~~ conversion is filed with the Commission.

§ 13.1-767. Withdrawal of foreign corporation.

A. A foreign corporation authorized to transact business in the Commonwealth may ~~not~~ withdraw ~~from the Commonwealth until it obtains a~~ *its* certificate of ~~withdrawal from the Commission.~~

~~B. A foreign corporation authorized to transact business in the Commonwealth may apply~~ *authority by applying* to the Commission for a certificate of withdrawal. The application shall be on a form prescribed and furnished by the Commission, which shall set forth:

1. The name of the foreign corporation and ~~the name of the state or other~~ *its* jurisdiction ~~under whose law it is incorporated~~ *of formation*;

2. If applicable, a statement that the foreign corporation was a party to a merger permitted by the laws of ~~the state or other~~ *its* jurisdiction ~~under whose law it was incorporated~~ *of formation* and that it was not the surviving entity of the merger, has consolidated with another entity, or has converted to another type of entity under the laws of ~~the state or other~~ *its* jurisdiction ~~under whose law it was incorporated~~ *of formation*;

3. That the foreign corporation is not transacting business in the Commonwealth and that it surrenders its authority to transact business in the Commonwealth;

4. 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~~ *an* agent for service of process *upon the foreign corporation* in any proceeding based on a cause of action arising during the time it was authorized to transact business in the Commonwealth;

5. A mailing address to which the clerk of the Commission may mail a copy of any process served on the clerk under subdivision 4; and

6. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

~~C.~~ *B.* The Commission shall not allow any foreign corporation to withdraw ~~from the Commonwealth~~ *its certificate of authority* 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~~ *statement* or a statement that no such returns are required to be filed or taxes are required to be paid. 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.~~ *C.* Before any foreign corporation authorized to transact business in 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 the Commonwealth shall be governed by the ~~law~~ *laws* of the ~~state~~ *jurisdiction* of its ~~incorporation~~ *formation*.

~~E.~~ *D.* Service of process on the clerk of the Commission is service of process on a foreign corporation that has withdrawn *its certificate of authority* pursuant to this section. Service upon the clerk shall be made 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 its annual report or pay its annual registration fee in a timely manner as required by this chapter, the Commission shall mail to each such corporation a notice of the impending revocation of its certificate of authority to transact business in the Commonwealth. Whether or not such notice is mailed, if any foreign corporation fails to file its annual report or pay its annual registration fee on or before the last day of the fourth month immediately following its annual report or annual registration fee due date each year, such foreign corporation shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of authority shall be automatically revoked as of that day.

B. Every foreign corporation authorized to transact business in the Commonwealth shall pay the annual registration fee required by law on or before the foreign corporation's annual registration fee due

date determined in accordance with subsection A of § 13.1-775.1 of each year.

C. If any foreign corporation whose registered agent has filed with the Commission a statement of resignation pursuant to § 13.1-765 fails to file a statement of change pursuant to § 13.1-764 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the foreign corporation of the impending revocation of its certificate of authority. If the foreign 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 the Commonwealth and its certificate of authority shall be automatically revoked as of that day.

D. The automatic revocation of a foreign corporation's certificate of authority pursuant to this section constitutes the appointment of the clerk of the Commission as ~~the foreign corporation's~~ *an* agent for service of process *upon the foreign corporation* in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in 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 pursuant to this section does not terminate the authority of the registered agent of the corporation.

§ 13.1-768.1. Deemed withdrawal upon domestication or conversion to certain domestic entities.

A foreign corporation authorized to transact business in the Commonwealth that domesticates to a domestic corporation or converts to a domestic entity is deemed to have withdrawn its certificate of authority on the effectiveness of such event.

§ 13.1-769. Involuntary revocation of certificate of authority.

A. The certificate of authority to ~~do~~ *transact* business in the Commonwealth of any foreign corporation may be revoked by order of the Commission when it finds that ~~the~~ *such foreign* 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 the Commonwealth as required by law;

3. Has failed to file any document required by this chapter to be filed with the Commission;

4. No longer exists under the laws of the ~~state or country~~ *jurisdiction* of its ~~incorporation~~ *formation*; or

5. Has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.

A certificate *of authority* revoked pursuant to subdivision A 5 shall not be eligible for reinstatement for a period of not less than one year.

B. ~~Any~~ *A* foreign corporation convicted of the offense listed in subdivision A 5 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

C. Before entering ~~any such~~ *an* order *revoking the certificate of authority of a foreign corporation under subsection A,* the Commission shall issue a rule against the *foreign* 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.

D. The authority of a foreign corporation to transact business in the Commonwealth ceases on the date shown on the order revoking its certificate of authority.

E. The Commission's revocation of a foreign corporation's certificate of authority appoints the clerk of the Commission *as an agent of* the foreign ~~corporation's agent~~ *corporation* 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 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.

F. 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. Reinstatement of a foreign corporation's certificate of authority that has been withdrawn or revoked.

A. A foreign corporation whose certificate of authority to transact business in the Commonwealth has been withdrawn or revoked may be relieved of the withdrawal or revocation and have its certificate of authority reinstated by the Commission within five years after the date of withdrawal or revocation unless the certificate of authority was revoked by order of the Commission pursuant to subdivision A 1 of § 13.1-769.

B. To have its certificate of authority reinstated, a foreign corporation shall provide the Commission with the following:

1. An application for reinstatement, which shall include the identification number issued by the

Commission to the corporation, and which may be in the form of a letter signed by an officer or director of the corporation, or which may be by affidavit signed by an agent of any shareholder's interests stating that after diligent search by such agent, no officer or director can be found;

2. A reinstatement fee of $100;

3. All annual registration fees and penalties that were due before the certificate of withdrawal was issued or the certificate of authority was revoked and that would have been assessed or imposed to the date of reinstatement if the corporation had not withdrawn or had its certificate of authority revoked;

4. An annual report for the calendar year that corresponds to the calendar year of the latest annual registration fee that was assessed or that would have been assessed to the date of reinstatement;

5. A duly authenticated copy of any amendments or corrections made to the articles of incorporation or other constituent documents of the foreign corporation and any ~~mergers~~ *merger, conversion, or domestication transaction* entered into by the foreign corporation from the date of withdrawal or revocation of its certificate of authority to the date of its application for reinstatement, along with an application for an amended certificate of authority if required as a result of ~~an~~ *any such* amendment ~~or a~~, correction, *or transaction* and all fees required by this chapter for the filing of such instruments;

6. If the name of the foreign corporation does not comply with the provisions of § 13.1-762 at the time of reinstatement, an application for an amended certificate of authority to adopt a designated name for use in the Commonwealth that satisfies the requirements of § 13.1-762, with the fee required by this chapter for the filing of an application for an amended certificate of authority; and

7. If the foreign corporation's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 13.1-764.

C. If the foreign corporation complies with the provisions of this section, the Commission shall enter an order of reinstatement, reinstating the foreign corporation's certificate of authority to transact 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 *in a form that permits preparation of its financial statements.*

C. A corporation ~~or its agent~~ shall maintain a record of its *current* 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 *address of, and the* number and class and series, if any, of shares held by each *shareholder*. ~~However, the~~ *The* foregoing shall not require the corporation ~~or its agent~~ to maintain, as part of such record of shareholders, beneficial owners whose shares are held by a nominee on the shareholder's behalf except to the extent that the corporation has established and maintains a procedure for registration of such rights under § 13.1-664. *Nothing contained in this subsection shall require the corporation to include in such record the electronic mail address or other electronic contact information of a shareholder.*

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

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

1. ~~Its~~ *A copy of its* articles ~~or restated articles~~ of incorporation~~, all amendments to them~~ *as* currently in effect, and any notices to shareholders referred to in subdivision L 5 of § 13.1-604 ~~regarding~~ *specifying* facts on which a filed document is dependent *if those facts are not included in the articles of incorporation or otherwise available as specified in subdivision L 5 of § 13.1-604*;

2. Its bylaws ~~or restated bylaws and all amendments to them~~ *as* 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 *to shareholders generally*, 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~~ *A copy of its* most recent annual report ~~delivered to~~ *filed with* the Commission under § 13.1-775.

§ 13.1-771. Inspection of records by shareholders.

A. Subject to subsection ~~C~~ *D* of § 13.1-772, a shareholder ~~of a corporation~~ is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection E of § 13.1-770 if the shareholder ~~gives the corporation~~ *delivers* a

signed written notice *to the corporation's secretary* of the shareholder's demand at least ~~five~~ *10* business days before the date on which the shareholder wishes to inspect and copy.

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

C. A shareholder ~~of a corporation~~ is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection D and ~~gives the corporation~~ *delivers a signed* written notice *to the corporation's secretary* of the shareholder's demand at least ~~five~~ *10* business days before the date on which the shareholder wishes to inspect and copy:

1. Excerpts from minutes of any meeting of, *or records of any actions taken without a meeting by,* the board of directors or a committee of the board of director 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, board of directors, or a committee of the board without a meeting, to the extent not subject to inspection under subsection A~~;

2. Accounting ~~records of the corporation~~ *ledgers and related work papers used in the preparation of the corporation's most recent annual financial statements*; and

3. The record of shareholders of record *maintained in accordance with subsection C of § 13.1-770.*

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

1. The shareholder *(i)* has been a shareholder for at least six months immediately preceding *delivery of* the shareholder's demand or *(ii)* is the holder of record or beneficial owner of at least five percent of ~~all of~~ the outstanding shares *entitled to vote generally in the election of directors*;

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

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

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

E. *The corporation may enforce reasonable restrictions on the confidentiality, use, or distribution of records described in subsection C.*

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

~~F.~~ *G.* This section does not affect~~:~~

~~1. The~~ *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~~.

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

§ 13.1-772. Scope of inspection right.

A. A ~~shareholder's~~ *shareholder may appoint an* agent or attorney ~~has the same~~ *to exercise the shareholder's* inspection and copying rights ~~as the shareholder the agent or attorney represents~~ *under § 13.1-771*.

B. The ~~right to copy records under § 13.1-771 includes~~ *corporation may,* if reasonable, *satisfy* the right ~~to receive~~ *of a shareholder to copy records by furnishing the shareholder* copies by ~~xerographic~~ *photocopy* or other means *chosen by the corporation,* including *furnishing* 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, reproduction, and transmission of the records.~~

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

D. The corporation may impose a reasonable charge to cover the costs of providing copies of documents to the shareholder, which may be based on an estimate of such costs.

§ 13.1-773. Court-ordered inspection.

A. If a corporation does not allow a shareholder who complies with subsection A of § 13.1-771 to inspect and copy any records required by that subsection to be available for inspection, 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 summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

B. If a corporation does not within a reasonable time allow a shareholder to ~~inspect and copy any other record, the shareholder~~ who complies with subsections C and D of § 13.1-771 *to inspect and copy the records required by subsection C, the shareholder* may apply to 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, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

C. *If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on their confidentiality, use, or distribution by the demanding shareholder.* If the court orders inspection and copying of the records demanded, it may also order the corporation to pay the shareholder's ~~costs, including reasonable counsel fees,~~ *expenses* incurred to obtain the order if the shareholder proves that the corporation *(i)* refused inspection without a reasonable basis for doubt about the right of the shareholder to inspect the records demanded *or (ii) imposed unreasonable restrictions on the confidentiality, use, or distribution of the records demanded.*

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

§ 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 *of the board of directors*, 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 *at the corporation's expense* 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,~~ *expenses* 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 *books,* records, *and documents* demanded.

§ 13.1-774. Financial statements for shareholders.

A. ~~If requested in writing by any~~ *Upon the written request of a* shareholder, a corporation shall ~~furnish the~~ *deliver or make available to the requesting* shareholder ~~with the~~ *by posting on its website or by other generally recognized means* financial statements for the most recent fiscal year~~,~~ *for* which *annual financial statements have been prepared for the corporation. The financial statements* 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 *corporation's* 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~~ *for the specified period have been* prepared for the corporation on the basis of generally accepted accounting principles, the ~~annual~~ *corporation shall deliver or make available such* financial statements ~~must also be prepared on that basis~~ *to the requesting shareholder.*

B. If the annual financial statements are *audited or otherwise* reported upon by a ~~certified~~ public accountant, the accountant's report must accompany them. If the annual financial statements are not reported upon by a ~~certified~~ 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. *A public corporation may fulfill its responsibilities under this section by delivering the specified financial statements, or otherwise making them available, in any manner permitted by the applicable rules and regulations of the U.S. Securities and Exchange Commission.*

D. Notwithstanding the provisions of subsections A and B:

1. As a condition to delivering or making available financial statements to a requesting shareholder, the corporation may require the requesting shareholder to agree to reasonable restrictions on the confidentiality, use, and distribution of such financial statements; and

2. The corporation may, if it reasonably determines that the shareholder's request is not made in

good faith or for a proper purpose, decline to deliver or make available such financial statements to that shareholder.

E. If a corporation does not ~~comply with~~ *respond to* a shareholder's request for financial statements *pursuant to subsection A* within 30 days of delivery of such request to ~~the corporation,~~ the *corporation's secretary:*

1. The requesting shareholder may apply to circuit court in the cit y or county where the corporation's principal office is located, or, if none in the Commonwealth, where its registered office is located ~~may, upon application of the shareholder, summarily order the corporation to furnish such~~ *for an order requiring delivery of or access to the requested* financial statements. *The court shall dispose of an application under this subsection on an expedited basis.*

2. If the court orders delivery or access to the requested financial statements, it may impose reasonable restrictions on their confidentiality, use, or distribution.

3. In such proceeding, if the corporation has declined to deliver or make available such financial statements because the requesting shareholder had been unwilling to agree to restrictions proposed by the corporation on the confidentiality, use, or distribution of such financial statements, the corporation shall have the burden of demonstrating that the restrictions proposed by the corporation were reasonable.

4. In such proceeding, if the corporation has declined to deliver or make available such financial statements pursuant to subdivision D 2 of § 13.1-774, the corporation shall have the burden of demonstrating that it had reasonably determined that the shareholder's request was not made in good faith or for a proper purpose.

5. If the court orders delivery or access to the requested financial statements, it may order the corporation to pay the shareholder's expenses incurred to obtain such order unless the corporation establishes that it had refused delivery or access to the requested financial statements because the shareholder had refused to agree to reasonable restrictions on the confidentiality, use, or distribution of the financial statements or that the corporation had reasonably determined that the shareholder's request was not made in good faith or for a proper purpose.

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

§ 1.1-775. Annual report of domestic and foreign corporations.

A. Each domestic corporation, and each foreign corporation authorized to transact business in the Commonwealth, shall file, within the time prescribed by this 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~~ *jurisdiction of its formation*;

2. The address of the registered office of the corporation in 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 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 that the corporation has authority to issue.

B. The report shall be made on ~~forms~~ *a form* prescribed and 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 on or before the last day of the twelfth month next succeeding the month in which it was incorporated or authorized to transact business in the Commonwealth, and on or before 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 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.

2. That §§ 13.1-722.4, 13.1-722.7, and 13.1-722.14 of the Code of Virginia are repealed.

3. That the provisions of this act (i) amending and reenacting §§ 13.1-616, 13.1-632, 13.1-710, 13.1-722.5, 13.1-722.8 through 13.1-722.13, and 13.1-743 of the Code of Virginia; (ii) amending the Code of Virginia by adding in Chapter 9 of Title 13.1 an article numbered 1.1, consisting of sections numbered 13.1-614.1 through 13.1-614.8, and by adding a section numbered 13.1-722.12:1; and (iii) repealing § 13.1-722.14 of the Code of Virginia shall become effective on July 1, 2020.