

SPONSOR: [INSERT SPONSORS]

DELAWARE [HOUSE OF REPRESENTATIVES][STATE SENATE]
[152nd GENERAL ASSEMBLY]

[HOUSE][SENATE] BILL NO. [●]

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO THE
GENERAL CORPORATION LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-
thirds of all members elected to each house thereof concurring therein):

1 Section 1. Amend § 152, Title 8 of the Delaware Code by making deletions as shown by
2 strike through and insertions as shown by underline as follows:

3 § 152. Issuance of stock; lawful consideration; fully paid stock.

4 (a) The consideration, ~~as determined pursuant to § 153(a) and (b) of this title,~~ for
5 subscriptions to, or the purchase of, the capital stock to be issued by a corporation shall be paid in
6 the form and in the manner that the board of directors shall determine. The board of directors may
7 authorize capital stock to be issued for consideration consisting of cash, any tangible or intangible
8 property or any benefit to the corporation, or any combination thereof. Stock may be issued in 1
9 or more transactions, in the numbers, at the times and for the consideration as set forth in a
10 resolution of the board of directors.

11 (b) A resolution of the board of directors may delegate to a person or body, in addition to
12 the board of directors, the authority to enter into 1 or more transactions to issue stock, and with
13 respect to such transactions, shares of stock may be issued in the numbers, at the times and for the
14 consideration as such person or body may determine; provided the resolution fixes (i) a maximum
15 number of shares that may be issued pursuant to such resolution, (ii) a time period during which
16 such shares may be issued and (iii) a the minimum amount of consideration for which such shares

17 may be issued. No such resolution shall permit a person or body to issue stock to such person or
18 body.

19 (d) In the absence of actual fraud in the transaction, the judgment of the directors as to the
20 value of the consideration (or minimum ~~amount of~~ consideration) received by the corporation for
21 the issuance of stock shall be conclusive. The capital stock issued in accordance with this section
22 shall be deemed to be fully paid and nonassessable stock upon receipt by the corporation of such
23 consideration; provided, however, nothing contained ~~herein~~ in this subsection shall prevent the
24 board of directors from issuing partly paid shares under § 156 of this title.

25 (e) The minimum consideration for which shares of stock may be issued by the corporation
26 may not be less than the consideration (if any) required under § 153 of this title.

27 Section 2. Amend § 153, Title 8 of the Delaware Code by making deletions as shown by
28 strike through and insertions as shown by underline as follows:

29 § 153. Consideration for stock.

30 (c) Treasury shares may be disposed of by the corporation in the same manner that shares
31 of stock are issued pursuant to § 152(a) through (d) of this title, or may be disposed of for such
32 consideration as determined by the stockholders if the certificate of incorporation so provides. The
33 consideration received for treasury shares may have a value greater or less than, or equal to, the
34 par value (if any) of such shares and may consist of cash, any tangible or intangible property or
35 any benefit to the corporation, or any combination thereof.

36 Section 3. Amend § 157, Title 8 of the Delaware Code by making deletions as shown by
37 strike through and insertions as shown by underline as follows:

38 § 157. Rights and options respecting stock.

39 (b) Rights and options may be issued in 1 or more transactions, in the numbers, at the times
40 and for the consideration as set forth in a resolution of the board of directors. The terms upon
41 which, including the time or times which may be limited or unlimited in duration, at or within
42 which, and the consideration, ~~including a formula by which such consideration may be determined,~~
43 for which any such shares may be acquired from the corporation upon the exercise of any such
44 right or option, shall be ~~such as shall be~~ stated in the certificate of incorporation, or in a resolution
45 ~~adopted by~~ of the board of directors ~~or by another person or body authorized pursuant to this~~
46 ~~section.~~

47 (c) The board of directors may adopt a resolution to delegate to a person or body, in addition
48 to the board of directors, the authority to enter into 1 or more transactions to issue rights or options,
49 and with respect to such transactions, the rights or options may be issued in such numbers, at such
50 times and for such consideration, and the terms upon which shares may be acquired from the
51 corporation upon the exercise of any such rights or options may be, as such person or body may
52 determine; provided that the resolution fixes (i) the maximum number of ~~rights or options, and the~~
53 ~~maximum number of~~ shares issuable upon exercise ~~thereof,~~ of the rights or options that may be
54 issued pursuant to such resolution, (ii) a time period during which such rights or options, and a
55 time period during which the shares issuable upon exercise thereof, may be issued, and (iii) a the
56 minimum ~~amount of~~ consideration (if any) for which such rights or options may be issued and a
57 the minimum ~~amount of~~ consideration for the shares issuable upon exercise thereof. No such
58 resolution shall permit a person or body to issue rights or options to such person or body.

59 (e) The minimum consideration ~~to be received for the~~ which shares of stock of the
60 corporation ~~to~~ may be issued upon exercise of such rights or options shall be no less than the
61 ~~amount set forth in~~ consideration (if any) required by § 153 of this title.

62 Section 4. Amend § 160, Title 8 of the Delaware Code by making deletions as shown by
63 strike through and insertions as shown by underline as follows:

64 § 160. Corporation’s powers respecting ownership, voting, etc., of its own stock; rights of
65 stock called for redemption.

66 (b) Nothing in this section limits or affects a corporation’s right to resell, under § 153(c) of
67 this title, any of its shares theretofore purchased or redeemed out of surplus and which have not
68 been, ~~retired, for such consideration as shall be fixed by the board of directors~~ or are not required
69 by the certificate of incorporation to be, retired.

70 Section 5. Amend § 204, Title 8 of the Delaware Code by making deletions as shown by
71 strike through and insertions as shown by underline as follows:

72 § 204. Ratification of defective corporate acts and stock.

73 (c) Each defective corporate act ratified pursuant to paragraph (b)(1) of this section shall
74 be submitted to stockholders for approval as provided in subsection (d) of this section, unless:

75 (1) (A) No other provision of this title, and no provision of the certificate of
76 incorporation or bylaws of the corporation, or of any plan or agreement to which the
77 corporation is a party, would have required stockholder approval of such defective corporate
78 act to be ratified, either at the time of such defective corporate act or at the time the board of
79 directors adopts the resolutions ratifying such defective corporate act pursuant to paragraph
80 (b)(1) of this section; and

81 (B) Such defective corporate act did not result from a failure to comply with § 203
82 of this title; or

83 (2) As of the ~~record date for determining the stockholders entitled to vote on the~~
84 ~~ratification of such defective corporate act~~ adoption of the resolutions of the board of directors

85 adopted pursuant to paragraph (b)(1) of this section, there are no shares of valid stock
86 outstanding and entitled to vote thereon, regardless of whether there then exist any shares of
87 putative stock.

88 (d)(1) If the ratification of a defective corporate act is required to be submitted to
89 stockholders for approval pursuant to subsection (c) of this section, due notice of the time, place,
90 if any, and purpose of the meeting shall be given at least 20 days before the date of the meeting to
91 each holder of valid stock and putative stock, whether voting or nonvoting, at the address of such
92 holder as it appears or most recently appeared, as appropriate, on the records of the corporation.

93 (2) The notice shall also be given to the holders of record of valid stock and putative
94 stock, whether voting or nonvoting, as of the time of the defective corporate act (or, in the case
95 of any defective corporate act that involved the establishment of a record date for notice of or
96 voting at any meeting of stockholders, for action by written consent of stockholders in lieu of
97 a meeting, or for any other purpose, the record date for notice of or voting at such meeting, the
98 record date for action by written consent, or the record date for such other action, as the case
99 may be), other than holders whose identities or addresses cannot be determined from the
100 records of the corporation.

101 (3) The notice shall contain a copy of the resolutions adopted by the board of directors
102 pursuant to paragraph (b)(1) of this section or the information required by paragraphs (b)(1)(A)
103 through (E) of this section and a statement that any claim that the defective corporate act or
104 putative stock ratified hereunder is void or voidable due to the failure of authorization, or that
105 the Court of Chancery should declare in its discretion that a ratification in accordance with this
106 section not be effective or be effective only on certain conditions must be brought within 120
107 days from the applicable validation effective time.

108 (4) At such meeting, the quorum and voting requirements applicable to ratification of
109 such defective corporate act shall be the quorum and voting requirements applicable to the type
110 of defective corporate act proposed to be ratified at the time of the approval of the ratification,
111 except that:

112 ~~(4)~~ a. If the certificate of incorporation or bylaws of the corporation, any plan or
113 agreement to which the corporation was a party or any provision of this title in effect as of
114 the time of the defective corporate act would have required a larger number or portion of
115 stock or of any class or series thereof or of specified stockholders for a quorum to be present
116 or to approve the defective corporate act, the presence or approval of such larger number
117 or portion of stock or of such class or series thereof or of such specified stockholders shall
118 be required for a quorum to be present or to approve the ratification of the defective
119 corporate act, as applicable, except that the presence or approval of shares of any class or
120 series of which no shares are then outstanding, or of any person that is no longer a
121 stockholder, shall not be required;

122 ~~(2)~~ b. The approval by stockholders of the ratification of the election of a director
123 shall require the affirmative vote of the majority of shares present at the meeting and
124 entitled to vote on the election of such director, except that if the certificate of incorporation
125 or bylaws of the corporation then in effect or in effect at the time of the defective election
126 require or required a larger number or portion of stock or of any class or series thereof or
127 of specified stockholders to elect such director, the affirmative vote of such larger number
128 or portion of stock or of any class or series thereof or of such specified stockholders shall
129 be required to ratify the election of such director, except that the presence or approval of

130 shares of any class or series of which no shares are then outstanding, or of any person that
131 is no longer a stockholder, shall not be required; and

132 ~~(3)~~ c. In the event of a failure of authorization resulting from failure to comply with
133 the provisions of § 203 of this title, the ratification of the defective corporate act shall
134 require the vote set forth in § 203(a)(3) of this title, regardless of whether such vote would
135 have otherwise been required.

136 (5) Shares of putative stock ~~on as of the record date for determining stockholders~~
137 ~~entitled to vote on any matter submitted to stockholders~~ adoption by the board of directors of
138 resolutions pursuant to subsection paragraph (e-b)(1) of this section (and without giving effect
139 to any ratification that becomes effective after such record date adoption) shall neither be
140 entitled to vote nor counted for quorum purposes in any vote to ratify any defective corporate
141 act.

142 (e)(1) If a defective corporate act ratified pursuant to this section would have required under
143 any other section of this title the filing of a certificate in accordance with § 103 of this title, ~~then,~~
144 ~~whether~~ and either (x) such certificate requires any change to give effect to the defective corporate
145 act in accordance with this section (including a change to the date and time of the effectiveness of
146 such certificate) or (y) not a certificate was not previously filed under § 103 of this title in respect
147 of such the defective corporate act and, then, in lieu of filing the certificate otherwise required by
148 this title, the corporation shall file a certificate of validation with respect to such defective
149 corporate act in accordance with § 103 of this title.

150 (2) A separate certificate of validation shall be required for each defective corporate
151 act requiring the filing of a certificate of validation under this section, except that (i) 2 or more
152 defective corporate acts may be included in a single certificate of validation if the corporation

153 filed, or to comply with this title would have filed, a single certificate under another provision
154 of this title to effect such acts, and (ii) 2 or more overissues of shares of any class, classes or
155 series of stock may be included in a single certificate of validation, provided that the increase
156 in the number of authorized shares of each such class or series set forth in the certificate of
157 validation shall be effective as of the date of the first such overissue.

158 (3) The certificate of validation shall set forth:

159 a. ~~Each~~ that the corporation has ratified one or more defective corporate acts that is
160 would have required the subject of the filing of a certificate of validation (including, in the
161 case of any defective corporate act involving the issuance of shares of putative stock, the
162 number and type of shares of putative stock issued and the date or dates upon which such
163 putative shares were purported to have been issued), the date of such defective corporate
164 act, and the nature of the failure of authorization in respect of such defective corporate act
165 under § 103 of this title,

166 b. that each such defective corporate act ~~was~~ has been ratified in accordance with
167 this section, ~~including the date on which the board of directors ratified such defective~~
168 ~~corporate act and the date, if any, on which the stockholders approved the ratification of~~
169 ~~such defective corporate act;~~ and

170 c. the ~~I~~ information required by 1 of the following paragraphs:

171 a.1. ~~If a certificate was previously filed under § 103 of this title in respect of~~
172 ~~such defective corporate act and no changes to such certificate are required to give~~
173 ~~effect to such defective corporate act in accordance with this section, the certificate of~~
174 ~~validation shall set forth (x) the name, title and filing date of the certificate previously~~
175 ~~filed and of any certificate of correction thereto and (y) a statement that a copy of the~~

176 ~~certificate previously filed, together with any certificate of correction thereto, is~~
177 ~~attached as an exhibit to the certificate of validation;~~

178 ~~b.~~ If a certificate was previously filed under § 103 of this title in respect of the
179 defective corporate act and such certificate requires any change to give effect to the
180 defective corporate act in accordance with this section (including a change to the date
181 and time of the effectiveness of such certificate), the certificate of validation shall set
182 forth:

183 ~~(x)~~A. the name, title and filing date of the certificate so previously filed and
184 of any certificate of correction thereto,

185 ~~(y)~~B. a statement that a certificate containing all of the information required
186 to be included under the applicable section or sections of this title to give effect to
187 the defective corporate act is attached as an exhibit to the certificate of validation,
188 and

189 ~~(z)~~C. the date and time that such certificate shall be deemed to have become
190 effective pursuant to this section; or

191 ~~e.~~ 2. If a certificate was not previously filed under § 103 of this title in
192 respect of the defective corporate act and the defective corporate act ratified
193 pursuant to this section would have required under any other section of this title the
194 filing of a certificate in accordance with § 103 of this title, the certificate of
195 validation shall set forth:

196 ~~(x)~~A. a statement that a certificate containing all of the information required
197 to be included under the applicable section or sections of this title to give effect to

198 the defective corporate act is attached as an exhibit to the certificate of validation,
199 and

200 ~~(y)~~B. the date and time that such certificate shall be deemed to have become
201 effective pursuant to this section.

202 (4) A certificate attached to a certificate of validation ~~pursuant to paragraph (e)(3)b. or~~
203 ~~e. of this section~~ need not be separately executed and acknowledged and need not include any
204 statement required by any other section of this title that such instrument has been approved and
205 adopted in accordance with the provisions of such other section.

206 (g) In respect of each defective corporate act ratified by the board of directors pursuant to
207 subsection (b) of this section, prompt notice of the ratification shall be given to all holders of valid
208 stock and putative stock, whether voting or nonvoting, as of the date the board of directors adopts
209 the resolutions approving such defective corporate act, or as of a date within 60 days after such
210 date of adoption, as established by the board of directors, at the address of such holder as it appears
211 or most recently appeared, as appropriate, on the records of the corporation. The notice shall also
212 be given to the holders of record of valid stock and putative stock, whether voting or nonvoting,
213 as of the time of the defective corporate act, other than holders whose identities or addresses cannot
214 be determined from the records of the corporation. The notice shall contain a copy of the
215 resolutions adopted pursuant to subsection (b) of this section or the information specified in
216 paragraphs (b)(1)(A) through (E) or paragraphs (b)(2)(A) through (C) of this section, as applicable,
217 and a statement that any claim that the defective corporate act or putative stock ratified hereunder
218 is void or voidable due to the failure of authorization, or that the Court of Chancery should declare
219 in its discretion that a ratification in accordance with this section not be effective or be effective
220 only on certain conditions must be brought within 120 days from the later of the validation

221 effective time or the time at which the notice required by this subsection is given. Notwithstanding
222 the foregoing, (i) no such notice shall be required if notice of the ratification of the defective
223 corporate act is to be given in accordance with subsection (d) of this section, and (ii) in the case of
224 a corporation that has a class of stock listed on a national securities exchange, the notice required
225 by this subsection and ~~the second sentence of~~ subsection (d) of this section may be deemed given
226 if disclosed in a document publicly filed by the corporation with the Securities and Exchange
227 Commission pursuant to § 13, § 14 or § 15(d) (15 U.S.C. § 78m, § 77n or § 78o(d)) of the
228 Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated
229 thereunder, or the corresponding provisions of any subsequent United States federal securities
230 laws, rules or regulations. If any defective corporate act has been approved by stockholders acting
231 pursuant to § 228 of this title, the notice required by this subsection may be included in any notice
232 required to be given pursuant to § 228(e) of this title and, if so given, shall be sent to the
233 stockholders entitled thereto under § 228(e) and to all holders of valid and putative stock to whom
234 notice would be required under this subsection if the defective corporate act had been approved at
235 a meeting and the record date for determining the stockholders entitled to notice of such meeting
236 had been the date for determining the stockholders entitled to notice under the first sentence of this
237 subsection other than any stockholder who approved the action by consent in lieu of a meeting
238 pursuant to § 228 of this title or any holder of putative stock who otherwise consented thereto in
239 writing. Solely for purposes of subsection (d) of this section and this subsection, notice to holders
240 of putative stock, and notice to holders of valid stock and putative stock as of the time of the
241 defective corporate act, shall be treated as notice to holders of valid stock for purposes of §§ 222
242 and 228, 229, 230, 232 and 233 of this title.

243 (h) As used in this section and in § 205 of this title only, the term:

244 (6) “Validation effective time,” with respect to any defective corporate act ratified
245 pursuant to this section, means the latest of:

246 a. The time at which the defective corporate act submitted to the stockholders for
247 approval pursuant to subsection (c) of this section is approved by such stockholders or if
248 no such vote of stockholders is required to approve the ratification of the defective
249 corporate act, immediately following the time at which the board of directors adopts the
250 resolutions required by paragraph (b)(1) or (b)(2) of this section;

251 b. Where no certificate of validation is required to be filed pursuant to subsection
252 (e) of this section, the time, if any, specified by the board of directors in the resolutions
253 adopted pursuant to paragraph (b)(1) or (b)(2) of this section, which time shall not precede
254 the time at which such resolutions are adopted; and

255 c. The time at which any certificate of validation filed pursuant to subsection (e) of
256 this section shall become effective in accordance with § 103 of this title.

257 Section 6. Amend § 228, Title 8 of the Delaware Code by making deletions as shown by
258 strike through and insertions as shown by underline as follows:

259 § 228. Consent of stockholders or members in lieu of meeting.

260 (e) ~~Prompt~~ If an action by consent under subsections (a) or (b) of this section has been
261 taken by stockholders or members by less than unanimous consent, prompt notice of the taking of
262 ~~the corporate action without a meeting by less than unanimous consent~~ the action by consent shall
263 be given to those stockholders or members as of the record date for the action by consent who have
264 not consented and who, ~~if the action had been taken at a meeting,~~ would have been entitled to
265 notice of the meeting if the action had been taken at a meeting and the record date for the notice
266 of such the meeting ~~had been the date that consents signed by a sufficient number of holders or~~

267 ~~members to take the action were delivered to the corporation as provided in this section~~ were the
268 record date for the action by consent. The notice required by this subsection may be provided by
269 a notice which constitutes a notice of internet availability of proxy materials under rules
270 promulgated under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq. In the event that
271 the action which is consented to is such as would have required the filing of a certificate under any
272 other section of this title, if such action had been voted on by stockholders or by members at a
273 meeting thereof, the certificate filed under such other section shall state, in lieu of any statement
274 required by such section concerning any vote of stockholders or members, that consent has been
275 given in accordance with this section.

276 Section 7. Amend § 242, Title 8 of the Delaware Code by making deletions as shown by
277 strike through and insertions as shown by underline as follows:

278 § 242. Amendment of certificate of incorporation after receipt of payment for stock;
279 nonstock corporations.

280 (a) After a corporation has received payment for any of its capital stock, or after a nonstock
281 corporation has members, it may amend its certificate of incorporation, from time to time, in any
282 and as many respects as may be desired, so long as its certificate of incorporation as amended
283 would contain only such provisions as it would be lawful and proper to insert in an original
284 certificate of incorporation filed at the time of the filing of the amendment; and, if a change in
285 stock or the rights of stockholders, or an exchange, reclassification, subdivision, combination or
286 cancellation of stock or rights of stockholders is to be made, such provisions as may be necessary
287 to effect such change, exchange, reclassification, subdivision, combination or cancellation. In
288 particular, and without limitation upon such general power of amendment, a corporation may
289 amend its certificate of incorporation, from time to time, so as:

290 (1) To change its corporate name; or

291 (2) To change, substitute, enlarge or diminish the nature of its business or its corporate
292 powers and purposes; or

293 (3) To increase or decrease its authorized capital stock or to reclassify the same, by
294 changing the number, par value, designations, preferences, or relative, participating, optional, or
295 other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or
296 by changing shares with par value into shares without par value, or shares without par value into
297 shares with par value either with or without increasing or decreasing the number of shares, or by
298 subdividing or combining the ~~outstanding~~ issued shares of any class or series of a class of shares
299 into a greater or lesser number of ~~outstanding~~ issued shares; or

300 (4) To cancel or otherwise affect the right of the holders of the shares of any class to receive
301 dividends which have accrued but have not been declared; or

302 (5) To create new classes of stock having rights and preferences either prior and superior
303 or subordinate and inferior to the stock of any class then authorized, whether issued or unissued;
304 or

305 (6) To change the period of its duration; or

306 (7) To delete:

307 a. Such provisions of the original certificate of incorporation which named the incorporator
308 or incorporators, the initial board of directors and the original subscribers for shares; and

309 b. Such provisions contained in any amendment to the certificate of incorporation as were
310 necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation
311 of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has
312 become effective.

313 Any or all such changes or alterations may be effected by 1 certificate of amendment.

314 (b) Every amendment authorized by subsection (a) of this section shall be made and
315 effected in the following manner:

316 (1) If the corporation has capital stock, its board of directors shall adopt a resolution setting
317 forth the amendment proposed, declaring its advisability, and either calling a special meeting of
318 the stockholders entitled to vote in respect thereof for the consideration of such amendment or
319 directing that the amendment proposed be considered at the next annual meeting of the
320 stockholders; ~~provided, however, that unless otherwise expressly required by the certificate of~~
321 ~~incorporation, no meeting or vote of stockholders shall be required to adopt an amendment that~~
322 ~~effects only changes described in paragraph (a)(1) or (7) of this section.~~ Such special or annual
323 meeting shall be called and held upon notice in accordance with § 222 of this title. The notice
324 shall set forth such amendment in full or a brief summary of the changes to be effected thereby
325 unless such notice constitutes a notice of internet availability of proxy materials under the rules
326 promulgated under the Securities Exchange Act of 1934 [15 U.S.C. § 78a et seq.]. At the meeting
327 a vote of the stockholders entitled to vote thereon shall be taken for and against any proposed
328 amendment that requires adoption by stockholders. If no vote of stockholders is required to effect
329 such amendment, or if a majority of the outstanding stock entitled to vote thereon, and a majority
330 of the outstanding stock of each class entitled to vote thereon as a class has been voted in favor of
331 the amendment, a certificate setting forth the amendment and certifying that such amendment has
332 been duly adopted in accordance with this section shall be executed, acknowledged and filed and
333 shall become effective in accordance with § 103 of this title.

334 (d) Notwithstanding the provisions of subsection (b) of this section, unless otherwise
335 expressly required by the certificate of incorporation:

336 (1) No meeting or vote of stockholders shall be required to adopt an amendment that (A)
337 effects only changes described in paragraph (a)(1) or (7) of this section; or (B) reclassifies by
338 subdividing the issued shares of a class of stock into a greater number of issued shares of the same
339 class of stock (and, in connection therewith, such amendment may increase the number of
340 authorized shares of such class of stock up to an amount proportionate to the subdivision), provided
341 the corporation has only one class of stock outstanding and such class is not divided into series;
342 and

343 (2) An amendment to increase or decrease the authorized number of shares of a class of
344 capital stock or an amendment to reclassify by combining the issued shares of a class of capital
345 stock into a lesser number of issued shares of the same class of stock may be made and effected,
346 without obtaining the vote or votes of stockholders otherwise required by subsection (b) of this
347 section if: (A) the shares of such class are listed on a national securities exchange immediately
348 before such amendment becomes effective and meet the listing requirement of such national
349 securities exchange relating to the minimum number of holders immediately after such amendment
350 becomes effective, (B) at a meeting called in accordance with paragraph (b)(1) of this section, a
351 vote of the stockholders entitled to vote thereon, voting as a single class, is taken for and against
352 the proposed amendment, and the votes cast for the amendment exceed the votes cast against the
353 amendment, and (C) if the amendment increases or decreases the authorized number of shares of
354 a class of capital stock for which no provision has been made pursuant to the last sentence of
355 paragraph (b)(2) of this section, the votes cast for the amendment by the holders of such class
356 exceed the votes cast against the amendment by the holders of such class.

357 Section 8. Amend § 260, Title 8 of the Delaware Code by making deletions as shown by
358 strike through and insertions as shown by underline as follows:

359 § 260. Powers of corporation surviving or resulting from merger or consolidation or upon
360 conversion or domestication; issuance of stock, bonds or other indebtedness.

361 (a) When 2 or more corporations are merged or consolidated, or an other entity is converted
362 to, or a non-United States entity becomes domesticated as, a corporation of this State, the
363 corporation surviving or resulting from the merger or consolidation or upon conversion or
364 domestication may issue bonds or other obligations, negotiable or otherwise, and with or without
365 coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to
366 provide for all the payments it will be required to make, or obligations it will be required to assume,
367 in order to effect the merger ~~or~~, consolidation, conversion or domestication.

368 (b) For the purpose of securing the payment of any ~~such~~ bonds and obligations ~~it shall be~~
369 ~~lawful for~~ issued under subsection (a) of this section, the surviving or, resulting, converted or
370 domesticated corporation ~~to~~ may mortgage its corporate franchise, rights, privileges and property,
371 real, personal or mixed.

372 (c) The surviving or, resulting, converted or domesticated corporation may ~~issue~~
373 ~~certificates~~ take any of the following actions in order to effect the merger or consolidation in the
374 manner and on the terms specified in the agreement or in order to effect the conversion or
375 domestication in the manner and on the terms, or pursuant to a plan of conversion or plan of
376 domestication, approved by the other entity or the non-United States entity, as applicable:

377 (1) Issue shares of its capital stock ~~or uncertificated stock if authorized to do so and~~
378 ~~other securities to the stockholders of the constituent corporations upon conversion of or in~~
379 ~~exchange or payment for the original~~ shares, rights, or securities of or interests in any
380 constituent corporation, converting other entity or domesticating non-United States entity.

381 ~~(2) Cancel any shares, rights, securities, or interests in such amount as shall be necessary~~
382 ~~in accordance with the terms of the agreement of merger or consolidation in order to effect~~
383 ~~such merger or consolidation in the manner and on the terms specified in the agreement.~~

384 Section 9. Amend § 262, Title 8 of the Delaware Code by making deletions as shown by
385 strike through and insertions as shown by underline as follows:

386 § 262. Appraisal rights.

387 (a) Any stockholder of a corporation of this State who holds shares of stock on the date of
388 the making of a demand pursuant to subsection (d) of this section with respect to such shares, who
389 continuously holds such shares through the effective date of the merger, consolidation, ~~or~~
390 conversion, transfer, domestication or continuance, who has otherwise complied with subsection
391 (d) of this section and who has neither voted in favor of the merger, consolidation ~~or~~, conversion,
392 transfer, domestication or continuance nor consented thereto in writing pursuant to § 228 of this
393 title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder's
394 shares of stock under the circumstances described in subsections (b) and (c) of this section. As
395 used in this section, the word "stockholder" means a holder of record of stock in a corporation; the
396 words "stock" and "share" mean and include what is ordinarily meant by those words; the words
397 "depository receipt" mean a receipt or other instrument issued by a depository representing an
398 interest in 1 or more shares, or fractions thereof, solely of stock of a corporation, which stock is
399 deposited with the depository; the words "beneficial owner" mean a person who is the beneficial
400 owner of shares of stock held either in voting trust or by a nominee on behalf of such person; and
401 the word "person" means any individual, corporation, partnership, unincorporated association or
402 other entity.

403 (b) Appraisal rights shall be available for the shares of any class or series of stock of a
404 constituent~~or~~, converting, transferring, domesticating or continuing corporation in a merger,
405 consolidation~~or~~, conversion, transfer, domestication or continuance to be effected pursuant to §
406 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 255, § 256, §
407 257, § 258, § 263, § 264~~or~~, § 266 or § 390 of this title (other than, in each case and solely with
408 respect to a converted or domesticated corporation, a merger, consolidation~~or~~, conversion,
409 transfer, domestication or continuance authorized pursuant to and in accordance with the
410 provisions of § 265 or § 388 of this title):

411 (1) Provided, however, that no appraisal rights under this section shall be available for the
412 shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the
413 record date fixed to determine the stockholders entitled to receive notice of the meeting of
414 stockholders, or at the record date fixed to determine the stockholders entitled to consent pursuant
415 to § 228 of this title, to act upon the agreement of merger or consolidation or the resolution
416 providing for the conversion, transfer, domestication or continuance (or, in the case of a merger
417 pursuant to § 251(h) of this title, as of immediately prior to the execution of the agreement of
418 merger), were either: (i) listed on a national securities exchange or (ii) held of record by more than
419 2,000 holders; and further provided that no appraisal rights shall be available for any shares of
420 stock of the constituent corporation surviving a merger if the merger did not require for its approval
421 the vote of the stockholders of the surviving corporation as provided in § 251(f) of this title.

422 (2) Notwithstanding paragraph (b)(1) of this section, appraisal rights under this section
423 shall be available for the shares of any class or series of stock of a constituent~~or~~, converting,
424 transferring, domesticating or continuing corporation if the holders thereof are required by the
425 terms of an agreement of merger or consolidation, or by the terms of a resolution providing for

426 conversion, transfer, domestication or continuance, pursuant to § 251, § 252, § 254, § 255, § 256,
427 § 257, § 258, § 263, § 264 ~~or~~, § 266 or § 390 of this title to accept for such stock anything except:

428 a. Shares of stock of the corporation surviving or resulting from such merger or
429 consolidation, or of the converted entity or the entity resulting from a transfer, domestication or
430 continuance if such entity is a corporation as a result of the conversion, transfer, domestication or
431 continuance, or depository receipts in respect thereof;

432 b. Shares of stock of any other corporation, or depository receipts in respect thereof, which
433 shares of stock (or depository receipts in respect thereof) or depository receipts at the effective
434 date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance will be
435 either listed on a national securities exchange or held of record by more than 2,000 holders;

436 (c) Any corporation may provide in its certificate of incorporation that appraisal rights
437 under this section shall be available for the shares of any class or series of its stock as a result of
438 an amendment to its certificate of incorporation, any merger or consolidation in which the
439 corporation is a constituent corporation, the sale of all or substantially all of the assets of the
440 corporation ~~or~~, a conversion effected pursuant to § 266 of this title or a transfer, domestication or
441 continuance effected pursuant to § 390 of this title. If the certificate of incorporation contains such
442 a provision, the provisions of this section, including those set forth in subsections (d), (e), and (g)
443 of this section, shall apply as nearly as is practicable.

444 (d) Appraisal rights shall be perfected as follows:

445 (1) If a proposed merger, consolidation ~~or~~, conversion, transfer, domestication or
446 continuance for which appraisal rights are provided under this section is to be submitted for
447 approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting,
448 shall notify each of its stockholders who was such on the record date for notice of such meeting

449 (or such members who received notice in accordance with § 255(c) of this title) with respect to
450 shares for which appraisal rights are available pursuant to subsection (b) or (c) of this section that
451 appraisal rights are available for any or all of the shares of the constituent corporations or the
452 converting, transferring, domesticating or continuing corporation, and shall include in such notice
453 either a copy of this section (and, if 1 of the constituent corporations or the converting corporation
454 is a nonstock corporation, a copy of § 114 of this title) or information directing the stockholders
455 to a publicly available electronic resource at which this section (and, § 114 of this title, if
456 applicable) may be accessed without subscription or cost. Each stockholder electing to demand the
457 appraisal of such stockholder's shares shall deliver to the corporation, before the taking of the vote
458 on the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, a written
459 demand for appraisal of such stockholder's shares; provided that a demand may be delivered to
460 the corporation by electronic transmission if directed to an information processing system (if any)
461 expressly designated for that purpose in such notice. Such demand will be sufficient if it reasonably
462 informs the corporation of the identity of the stockholder and that the stockholder intends thereby
463 to demand the appraisal of such stockholder's shares. A proxy or vote against the merger,
464 consolidation ~~or~~, conversion, transfer, domestication or continuance shall not constitute such a
465 demand. A stockholder electing to take such action must do so by a separate written demand as
466 herein provided. Within 10 days after the effective date of such merger, consolidation ~~or~~,
467 conversion, transfer, domestication or continuance, the surviving, resulting or converted entity
468 shall notify each stockholder of each constituent or converting, transferring, domesticating or
469 continuing corporation who has complied with this subsection and has not voted in favor of or
470 consented to the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, and
471 any beneficial owner who has demanded appraisal under paragraph (d)(3) of this section, of the

472 date that the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance has
473 become effective; or

474 (2) If the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance was
475 approved pursuant to § 228, § 251(h), § 253, or § 267 of this title, then either a constituent ~~or~~,
476 converting, transferring, domesticating or continuing corporation before the effective date of the
477 merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, or the surviving,
478 resulting or converted entity within 10 days after such effective date, shall notify each stockholder
479 of any class or series of stock of such constituent ~~or~~, converting, transferring, domesticating or
480 continuing corporation who is entitled to appraisal rights of the approval of the merger,
481 consolidation ~~or~~, conversion, transfer, domestication or continuance and that appraisal rights are
482 available for any or all shares of such class or series of stock of such constituent ~~or~~, converting,
483 transferring, domesticating or continuing corporation, and shall include in such notice either a copy
484 of this section (and, if 1 of the constituent corporations or the converting, transferring,
485 domesticating or continuing corporation is a nonstock corporation, a copy of § 114 of this title) or
486 information directing the stockholders to a publicly available electronic resource at which this
487 section (and § 114 of this title, if applicable) may be accessed without subscription or cost. Such
488 notice may, and, if given on or after the effective date of the merger, consolidation ~~or~~, conversion,
489 transfer, domestication or continuance, shall, also notify such stockholders of the effective date of
490 the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance. Any stockholder
491 entitled to appraisal rights may, within 20 days after the date of giving such notice or, in the case
492 of a merger approved pursuant to § 251(h) of this title, within the later of the consummation of the
493 offer contemplated by § 251(h) of this title and 20 days after the date of giving such notice, demand
494 in writing from the surviving ~~or~~, resulting or converted entity the appraisal of such holder's shares;

495 provided that a demand may be delivered to such entity by electronic transmission if directed to
496 an information processing system (if any) expressly designated for that purpose in such notice.
497 Such demand will be sufficient if it reasonably informs such entity of the identity of the stockholder
498 and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such
499 notice did not notify stockholders of the effective date of the merger, consolidation ~~or~~, conversion,
500 transfer, domestication or continuance, either (i) each such constituent corporation or the
501 converting, transferring, domesticating or continuing corporation shall send a second notice before
502 the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or
503 continuance notifying each of the holders of any class or series of stock of such constituent ~~or~~,
504 converting, transferring, domesticating or continuing corporation that are entitled to appraisal
505 rights of the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or
506 continuance or (ii) the surviving, resulting or converted entity shall send such a second notice to
507 all such holders on or within 10 days after such effective date; provided, however, that if such
508 second notice is sent more than 20 days following the sending of the first notice or, in the case of
509 a merger approved pursuant to § 251(h) of this title, later than the later of the consummation of the
510 offer contemplated by § 251(h) of this title and 20 days following the sending of the first notice,
511 such second notice need only be sent to each stockholder who is entitled to appraisal rights and
512 who has demanded appraisal of such holder's shares in accordance with this subsection and any
513 beneficial owner who has demanded appraisal under paragraph (d)(3) of this section. An affidavit
514 of the secretary or assistant secretary or of the transfer agent of the corporation or entity that is
515 required to give either notice that such notice has been given shall, in the absence of fraud, be
516 prima facie evidence of the facts stated therein. For purposes of determining the stockholders
517 entitled to receive either notice, each constituent corporation or the converting, transferring,

518 domesticating or continuing corporation may fix, in advance, a record date that shall be not more
519 than 10 days prior to the date the notice is given, provided, that if the notice is given on or after
520 the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or
521 continuance, the record date shall be such effective date. If no record date is fixed and the notice
522 is given prior to the effective date, the record date shall be the close of business on the day next
523 preceding the day on which the notice is given.

524 (3) Notwithstanding subsection (a) of this section (but subject to this paragraph (d)(3)), a
525 beneficial owner may, in such person's name, demand in writing an appraisal of such beneficial
526 owner's shares in accordance with either paragraph (d)(1) or (2) of this section, as applicable;
527 provided that (i) such beneficial owner continuously owns such shares through the effective date
528 of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance and otherwise
529 satisfies the requirements applicable to a stockholder under the first sentence of subsection (a) of
530 this section and (ii) the demand made by such beneficial owner reasonably identifies the holder of
531 record of the shares for which the demand is made, is accompanied by documentary evidence of
532 such beneficial owner's beneficial ownership of stock and a statement that such documentary
533 evidence is a true and correct copy of what it purports to be, and provides an address at which such
534 beneficial owner consents to receive notices given by the surviving, resulting or converted entity
535 hereunder and to be set forth on the verified list required by subsection (f) of this section.

536 (e) Within 120 days after the effective date of the merger, consolidation ~~or~~, conversion,
537 transfer, domestication or continuance, the surviving, resulting or converted entity, or any person
538 who has complied with subsections (a) and (d) of this section ~~hereof~~ and who is otherwise entitled
539 to appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of
540 Chancery demanding a determination of the value of the stock of all such stockholders.

541 Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger,
542 consolidation~~—of~~, conversion, transfer, domestication or continuance, any person entitled to
543 appraisal rights who has not commenced an appraisal proceeding or joined that proceeding as a
544 named party shall have the right to withdraw such person’s demand for appraisal and to accept the
545 terms offered upon the merger, consolidation~~—of~~, conversion, transfer, domestication or
546 continuance. Within 120 days after the effective date of the merger, consolidation~~—of~~, conversion,
547 transfer, domestication or continuance, any person who has complied with the requirements of
548 subsections (a) and (d) of this section~~—hereof~~, upon request given in writing (or by electronic
549 transmission directed to an information processing system (if any) expressly designated for that
550 purpose in the notice of appraisal), shall be entitled to receive from the surviving, resulting or
551 converted entity a statement setting forth the aggregate number of shares not voted in favor of the
552 merger, consolidation~~—of~~, conversion, transfer, domestication or continuance (or, in the case of a
553 merger approved pursuant to § 251(h) of this title, the aggregate number of shares (other than any
554 excluded stock (as defined in § 251(h)(6)d. of this title)) that were the subject of, and were not
555 tendered into, and accepted for purchase or exchange in, the offer referred to in § 251(h)(2) of this
556 title)), and, in either case, with respect to which demands for appraisal have been received and the
557 aggregate number of stockholders or beneficial owners holding or owning such shares (provided
558 that, where a beneficial owner makes a demand pursuant to paragraph (d)(3) of this section, the
559 record holder of such shares shall not be considered a separate stockholder holding such shares for
560 purposes of such aggregate number). Such statement shall be given to the person within 10 days
561 after such person’s request for such a statement is received by the surviving, resulting or converted
562 entity or within 10 days after expiration of the period for delivery of demands for appraisal under
563 subsection (d) of this section~~—hereof~~, whichever is later.

564 (g) At the hearing on such petition, the Court shall determine the persons who have
565 complied with this section and who have become entitled to appraisal rights. The Court may
566 require the persons who have demanded an appraisal for their shares and who hold stock
567 represented by certificates to submit their certificates of stock to the Register in Chancery for
568 notation thereon of the pendency of the appraisal proceedings; and if any person fails to comply
569 with such direction, the Court may dismiss the proceedings as to such person. If immediately
570 before the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance the shares
571 of the class or series of stock of the constituent ~~or~~, converting, transferring, domesticating or
572 continuing corporation as to which appraisal rights are available were listed on a national securities
573 exchange, the Court shall dismiss the proceedings as to all holders of such shares who are
574 otherwise entitled to appraisal rights unless (1) the total number of shares entitled to appraisal
575 exceeds 1% of the outstanding shares of the class or series eligible for appraisal, (2) the value of
576 the consideration provided in the merger, consolidation ~~or~~, conversion, transfer, domestication or
577 continuance for such total number of shares exceeds \$1 million, or (3) the merger was approved
578 pursuant to § 253 or § 267 of this title.

579 (h) After the Court determines the persons entitled to an appraisal, the appraisal proceeding
580 shall be conducted in accordance with the rules of the Court of Chancery, including any rules
581 specifically governing appraisal proceedings. Through such proceeding the Court shall determine
582 the fair value of the shares exclusive of any element of value arising from the accomplishment or
583 expectation of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance,
584 together with interest, if any, to be paid upon the amount determined to be the fair value. In
585 determining such fair value, the Court shall take into account all relevant factors. Unless the Court
586 in its discretion determines otherwise for good cause shown, and except as provided in this

587 subsection, interest from the effective date of the merger, consolidation ~~or~~, conversion, transfer,
588 domestication or continuance through the date of payment of the judgment shall be compounded
589 quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge)
590 as established from time to time during the period between the effective date of the merger,
591 consolidation ~~or~~, conversion, transfer, domestication or continuance and the date of payment of
592 the judgment. At any time before the entry of judgment in the proceedings, the surviving, resulting
593 or converted entity may pay to each person entitled to appraisal an amount in cash, in which case
594 interest shall accrue thereafter as provided herein only upon the sum of (1) the difference, if any,
595 between the amount so paid and the fair value of the shares as determined by the Court, and (2)
596 interest theretofore accrued, unless paid at that time. Upon application by the surviving, resulting
597 or converted entity or by any person entitled to participate in the appraisal proceeding, the Court
598 may, in its discretion, proceed to trial upon the appraisal prior to the final determination of the
599 persons entitled to an appraisal. Any person whose name appears on the list filed by the surviving,
600 resulting or converted entity pursuant to subsection (f) of this section may participate fully in all
601 proceedings until it is finally determined that such person is not entitled to appraisal rights under
602 this section.

603 (k) ~~From~~ Subject to the remainder of this subsection, from and after the effective date of
604 the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, no person who
605 has demanded appraisal rights with respect to some or all of such person's shares as provided in
606 subsection (d) of this section shall be entitled to vote such shares for any purpose or to receive
607 payment of dividends or other distributions on such shares (except dividends or other distributions
608 payable to stockholders of record at a date which is prior to the effective date of the merger,
609 consolidation ~~or~~, conversion, transfer, domestication or continuance); ~~provided, however, that if~~

610 ~~no petition for an appraisal is filed within the time provided in subsection (e) of this section, or if,~~
611 If a person who has made a demand for an appraisal in accordance with this section shall deliver
612 to the surviving, resulting or converted entity a written withdrawal of such person's demand for
613 an appraisal in respect of some or all of such person's shares in accordance with subsection (e) of
614 this section, either within 60 days after such effective date or thereafter with the written approval
615 of the corporation, then the right of such person to an appraisal of the shares subject to the
616 withdrawal shall cease. Notwithstanding the foregoing, ~~no~~an appraisal proceeding in the Court of
617 Chancery shall not be dismissed as to any person without the approval of the Court, and such
618 approval may be conditioned upon such terms as the Court deems just, including without
619 limitation, a reservation of jurisdiction for any application to the Court made under subsection (j)
620 of this section; provided, however that this provision shall not affect the right of any person who
621 has not commenced an appraisal proceeding or joined that proceeding as a named party to
622 withdraw such person's demand for appraisal and to accept the terms offered upon the merger,
623 consolidation ~~or,~~ conversion, transfer, domestication or continuance within 60 days after the
624 effective date of the merger, consolidation ~~or,~~ conversion, transfer, domestication or continuance,
625 as set forth in subsection (e) of this section. If a petition for an appraisal is not filed within the time
626 provided in subsection (e) of this section, the right to appraisal with respect to all shares shall
627 cease.

628 Section 10. Amend § 265, Title 8 of the Delaware Code by making deletions as shown by
629 strike through and insertions as shown by underline as follows:

630 § 265. Conversion of other entities to a domestic corporation.

631 (c) The certificate of conversion to corporation shall state:

632 (4) ~~Repealed~~ If a plan of conversion is adopted in accordance with subsection (k)
633 of this section, that all provisions of the plan of conversion shall be approved prior to the
634 effectiveness of such certificate in accordance with all law applicable to the other entity, including
635 any approval required under such applicable law for the authorization of the type of corporate
636 action specified in the plan of conversion.

637 (k) In connection with a conversion under this section, the converting other entity may
638 adopt a plan of conversion that may state: (i) the terms and conditions of the conversion, (ii) that
639 the certificate of incorporation of the converted corporation of this State shall be as set forth in an
640 attachment to the plan of conversion, (iii) the manner, if any, of exchanging or converting shares
641 of stock, rights or securities of, or interests in, the other entity that is to be converted to a
642 corporation of this State, in accordance with subsection (j) of this section, (iv) any corporate action
643 to be taken by the converted corporation of this State in connection with the conversion of the
644 other entity, each of which shall require approval in accordance with all law applicable to the other
645 entity, including any approval required under such applicable law for the authorization of the type
646 of corporate action specified in the plan of conversion, (v) any details or provisions as are deemed
647 desirable, and (vi) such other provisions or facts as shall be required to be set forth in a plan of
648 conversion by the laws applicable to the other entity. Any of the terms of the plan of conversion
649 may be made dependent upon facts ascertainable outside of such plan, provided that the manner
650 in which such facts shall operate upon the terms of the plan of conversion is clearly and expressly
651 set forth in the plan of conversion. The term “facts,” as used in the preceding sentence, includes,
652 but is not limited to, the occurrence of any event, including a determination or action by any person
653 or body, including the other entity or the converted corporation.

654 (l) Any corporate action to be taken by the converted corporation of this State in connection
655 with the conversion of the other entity that is set forth in a plan of conversion approved in the
656 manner provided for by subsection (k) of this section and that is within the power of a corporation
657 under subchapter II of this chapter shall be deemed authorized, adopted and approved, as
658 applicable, by the converted corporation of this State and the board of directors, stockholders or
659 members of the corporation, as applicable, and shall not require any further action of the board of
660 directors, stockholders or members of the corporation under this title. In the event that any such
661 action requires the filing of a certificate under any other section of this title, the certificate shall
662 state that in accordance with this section, no action by the board of directors, stockholders,
663 members or as otherwise required by such other section of this title is required.

664 Section 11. Amend § 266, Title 8 of the Delaware Code by making deletions as shown by
665 strike through and insertions as shown by underline as follows:

666 § 266. Conversion of a domestic corporation to other entities.

667 (b) The board of directors of the corporation which desires to convert under this section
668 shall adopt a resolution approving such conversion, specifying the type of entity into which the
669 corporation shall be converted and recommending the approval of such conversion by the
670 stockholders of the corporation. If a plan of conversion is to be adopted in accordance with
671 subsection (l) of this section, such plan shall be approved together with the resolution approving
672 the conversion. Such resolution shall be submitted to the stockholders of the corporation at an
673 annual or special meeting. Due notice of the time, and purpose of the meeting shall be given to
674 each holder of stock, whether voting or nonvoting, of the corporation at the address of the
675 stockholder as it appears on the records of the corporation, at least 20 days prior to the date of the
676 meeting. At the meeting, the resolution shall be considered and a vote taken for its adoption or

677 rejection. If a majority of the outstanding shares of stock of the corporation, entitled to vote thereon
678 shall be voted for the adoption of the resolution, the conversion shall be authorized, provided that,
679 if the corporation is converting to a partnership having 1 or more general partners, then, in addition
680 to the foregoing approval, authorization of the conversion shall require approval of each
681 stockholder of the corporation who will become a general partner of such partnership as a result
682 of the conversion.

683 (c) If a corporation shall convert in accordance with this section to another entity organized,
684 formed or created under the laws of a jurisdiction other than the State of Delaware, the corporation
685 shall file with the Secretary of State a certificate of conversion executed in accordance with § 103
686 of this title, which certifies:

687 (7) If a plan of conversion is adopted in accordance with subsection (1) of this
688 section, that all provisions of the plan of conversion shall be approved in accordance with this
689 section.

690 (g) In connection with a conversion of a domestic corporation to another entity pursuant to
691 this section, shares of stock, of the corporation of this State which is to be converted may be
692 exchanged for or converted into cash, property, or shares of stock, rights or securities of, or
693 interests in, the entity to which the corporation of this State is being converted or, in addition to or
694 in lieu thereof, may be exchanged for or converted into cash, property, shares of stock, rights or
695 securities of, or interests in, another domestic corporation or other entity or may be cancelled.

696 (1) In connection with a conversion under this section, the converting corporation may
697 adopt a plan of conversion that may state: (i) the terms and conditions of the conversion, (ii) that
698 the document, instrument, agreement or other writing, as the case may be, governing the internal
699 affairs of the entity to which the converting corporation is being converted and the conduct of its

700 business shall be as set forth in an attachment to the plan of conversion, (iii) the manner, if any, of
701 exchanging or converting shares of stock of the converting corporation which are to be exchanged
702 for or converted into cash, property, or shares of stock, rights or securities of, or interests in, the
703 entity to which the corporation of this State is being converted or, in addition to or in lieu thereof,
704 cash, property, shares of stock, rights or securities of, or interests in, another domestic corporation
705 or other entity or cancelling such shares, in accordance with subsection (g) of this section, (iv) any
706 details or provisions as are deemed desirable, and (v) such other provisions or facts as shall be
707 required to be set forth in a plan of conversion by the laws applicable to the entity to which the
708 corporation of this State is being converted. Any of the terms of the plan of conversion may be
709 made dependent upon facts ascertainable outside of such plan, provided that the manner in which
710 such facts shall operate upon the terms of the plan of conversion is clearly and expressly set forth
711 in the plan of conversion. The term “facts,” as used in the preceding sentence, includes, but is not
712 limited to, the occurrence of any event, including a determination or action by any person or body,
713 including the entity to which the corporation of this State is being converted or the converting
714 corporation.

715 Section 12. Amend § 272, Title 8 of the Delaware Code by making deletions as shown by
716 strike through and insertions as shown by underline as follows:

717 § 272. Mortgage or pledge of assets.

718 (a) The authorization or consent of stockholders to the mortgage or pledge of a
719 corporation’s property and assets shall not be necessary, except to the extent that the certificate of
720 incorporation otherwise provides.

721 (b) Without limiting the rights of a secured party under applicable law, no resolution by
722 stockholders shall be required by § 271(a) of this title for a sale, lease or exchange of property or

723 assets if such property or assets are collateral that secures a mortgage or are pledged to a secured
724 party and either:

725 (1) The secured party exercises its rights under the law governing such mortgage or
726 pledge or other applicable law, whether under Article 9 of a Uniform Commercial Code, a
727 real property law or other law, to effect such sale, lease or exchange without the consent of
728 the corporation; or

729 (2) In lieu of the secured party exercising such rights, the board of directors of the
730 corporation authorizes an alternative sale, lease or exchange of such property or assets,
731 whether with the secured party or with another person, that results in the reduction or
732 elimination of the total liabilities or obligations secured by such property or assets,
733 provided that (i) the value of such property or assets is less than or equal to the total amount
734 of such liabilities or obligations being eliminated or reduced and (ii) such sale, lease or
735 exchange is not prohibited by the law governing such mortgage or pledge. The provision
736 of consideration to the corporation or to its stockholders shall not create a presumption that
737 the value of such property or assets is greater than the total amount of such liabilities or
738 obligations being eliminated or reduced.

739 (c) A failure to satisfy the proviso in subsection (b)(2)(i) of this section shall not result in
740 the invalidation of a sale, lease or exchange if the transferee of the property or assets provided
741 value therefor (which may include the reduction or elimination of the total liabilities or obligations
742 secured by such property or assets) and acted in good faith (as defined in § 1-201(b)(20) of Title
743 6). The preceding sentence shall not apply to a proceeding against the corporation and any other
744 necessary parties to enjoin such sale, lease or exchange before the consummation thereof and shall
745 not eliminate any liability for monetary damages for any claim, including a claim in the right of

746 the corporation, based upon a violation of fiduciary duty by a current or former director or officer
747 or stockholder.

748 (d) A provision of the certificate of incorporation that requires the authorization or consent
749 of stockholders for a sale, lease or exchange of property or assets shall not apply to a transaction
750 permitted by subsection (b) of this section unless such provision expressly so requires; provided
751 that this subsection (d) shall apply only to certificate of incorporation provisions that first become
752 effective on or after August 1, 2023.

753 Section 13. Amend § 390, Title 8 of the Delaware Code by making deletions as shown by
754 strike through and insertions as shown by underline as follows:

755 § 390. Transfer, domestication or continuance of domestic corporations.

756 (b) The board of directors of the corporation which desires to transfer to or domesticate or
757 continue in a foreign jurisdiction shall adopt a resolution approving such transfer, domestication
758 or continuance, specifying the foreign jurisdiction to which the corporation shall be transferred or
759 in which the corporation shall be domesticated or continued and, if applicable, that in connection
760 with such transfer, domestication or continuance the corporation's existence as a corporation of
761 this State is to continue and recommending the approval of such transfer or domestication or
762 continuance by the stockholders of the corporation. If a plan of transfer, domestication or
763 continuance is to be adopted in accordance with subsection (j) of this section, such plan shall be
764 approved together with the resolution approving the transfer, domestication or continuance. Such
765 resolution shall be submitted to the stockholders of the corporation at an annual or special meeting.
766 Due notice of the time, place and purpose of the meeting shall be given to each holder of stock,
767 whether voting or nonvoting, of the corporation at the address of the stockholder as it appears on
768 the records of the corporation, at least 20 days prior to the date of the meeting. At the meeting, the

769 resolution shall be considered and a vote taken for its adoption or rejection. If ~~all~~ a majority of the
770 outstanding shares of stock of the corporation, ~~whether voting or nonvoting,~~ entitled to vote
771 thereon shall be voted for the adoption of the resolution (provided that, if the corporation is
772 transferring, domesticating or continuing as a partnership having 1 or more general partners, then,
773 in addition to the foregoing approval, authorization of the transfer, domestication or continuance
774 shall require approval of each stockholder of the corporation who will become a general partner
775 of such partnership as a result of the transfer, domestication or continuance), the corporation shall
776 file with the Secretary of State a certificate of transfer if its existence as a corporation of this State
777 is to cease or a certificate of transfer and domestic continuance if its existence as a corporation of
778 this State is to continue, executed in accordance with § 103 of this title, which certifies:

779 (7) If a plan of transfer, domestication or continuance is adopted in accordance with
780 subsection (j) of this section, that all provisions of the plan of transfer, domestication or
781 continuance shall be approved in accordance with this section.

782 (j) In connection with a transfer, domestication or continuance under this section, the
783 transferring, domesticating or continuing corporation may adopt a plan of transfer, domestication
784 or continuance, as applicable, that may state: (i) the terms and conditions of the transfer,
785 domestication or continuance, (ii) the mode of carrying the same into effect, (iii) that the document,
786 instrument, agreement or other writing, as the case may be, governing the internal affairs of the
787 resulting entity and the conduct of its business shall be as set forth in an attachment to the plan,
788 (iv) the manner, if any, of exchanging or converting shares of stock of the corporation of this State
789 which are to be exchanged for or converted into cash, property, or shares of stock, rights or
790 securities of, or interests in, the resulting entity or, in addition to or in lieu thereof, cash, property,
791 shares of stock, rights or securities of, or interests in, another domestic corporation or other entity

792 or cancelling such shares, in accordance with subsection (g) of this section, (v) any details or
793 provisions as are deemed desirable, and (vi) such other provisions or facts as shall be required to
794 be set forth in a plan of transfer, domestication or continuance, as applicable, by the laws applicable
795 to the resulting entity. Any of the terms of the plan of transfer, domestication or continuance may
796 be made dependent upon facts ascertainable outside of such plan, provided that the manner in
797 which such facts shall operate upon the terms of the plan is clearly and expressly set forth in the
798 plan. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the
799 occurrence of any event, including a determination or action by any person or body, including the
800 resulting entity or the transferring, domesticating or continuing corporation.

801 (k) Any provision of the certificate of incorporation of a corporation incorporated before
802 August 1, 2023, or any provision in any voting trust agreement or other written agreement between
803 or among any such corporation and 1 or more of its stockholders in effect on or before August 1,
804 2023, that restricts, conditions or prohibits the consummation of a merger or consolidation shall
805 be deemed to apply to a transfer, domestication or continuance as if it were a merger or
806 consolidation unless the certificate of incorporation or such agreement expressly provides
807 otherwise with respect to a transfer, domestication or continuance or, if the certificate of
808 incorporation or such agreement does not so expressly provide, a conversion, in which case such
809 express provision shall be deemed to apply to a transfer, domestication or continuance as if it were
810 a conversion.

811 Section 14. Sections 1 through 8, 11 and 12 shall be effective on August 1, 2023.

812 Section 15. Section 9 of this Act only applies to the following transactions:

813 (1) A merger, conversion, domestication, transfer, or continuance effected under §§
814 253, 266, or 390 of Title 8 of the Delaware Code that is authorized or provided for pursuant to
815 resolutions of the board of directors adopted on or after August 1, 2023.

816 (2) A merger effected under § 267 of Title 8 of the Delaware Code that is authorized
817 on or after August 1, 2023, in accordance with an entity’s governing documents and the laws
818 of the jurisdiction under which the entity is formed or organized.

819 (3) Except as otherwise provided in paragraphs (1) and (2) of this Section, any other
820 merger or consolidation consummated pursuant to an agreement of merger or consolidation
821 entered into on or after August 1, 2023.

822 Section 16. Section 10 of this Act only applies to corporations that have converted under
823 § 265 of Title 8 of the Delaware Code and with respect to which a plan of conversion is entered
824 into on or after August 1, 2023, or, if a plan of conversion is not entered into in connection with
825 the conversion, a corporation with respect to which the approvals required by § 265(h) of Title 8
826 of the Delaware Code are obtained on or after August 1, 2023.

827 Section 17. Section 13 of this Act only applies to domestications, transfers, or continuances
828 effected under § 390 of Title 8 of the Delaware Code that are authorized pursuant to resolutions of
829 the board of directors adopted on or after August 1, 2023.

SYNOPSIS

Sections 1, 2, 3 and 4. Sections 1, 2, 3 and 4 of this Act amend §§ 152, 153, 157 and 160 of Title 8.

Amended §§ 152 and 153 clarify that treasury shares may be sold for less than par value. Amended § 153(c) clarifies the types of consideration that a corporation may receive for selling treasury shares, and references to “amounts” of minimum consideration have been deleted from §§ 152 and 157 to eliminate redundancy.

Amended § 157(b) clarifies that § 157(c) is the exclusive means to delegate to a person or body the authority to enter into transactions to issue rights or options. A reference in § 157(b) to permitting the exercise price of a right or option to be determined by formula has been deleted to eliminate redundancy because such formulas are permitted by § 157(d). Amended § 157(c) eliminates the requirement that the board of directors, or a board committee, fix a maximum number of rights or options that may be authorized for issuance by a person or body under a § 157(c) delegation. Amended § 157(c) also clarifies that the board, or a board committee, may fix two different time periods in a § 157(c) delegation: a period during which rights or options may be issued and a different time period during which shares may be issued upon exercise of the rights or options.

Amended § 160(b) clarifies that treasury shares resulting from a stock redemption or repurchase may be resold under § 153(c), unless the treasury shares are retired. Amended § 160(b) also clarifies that treasury shares may not be resold if the shares are required to be retired by a provision of the certificate of incorporation.

Section 5. Section 5 of this Act amends § 204 of Title 8 to make the following technical changes:

- (1) The amendments to § 204(c)(2), which currently dispenses with the need for a vote of stockholders in circumstances where no valid stock is outstanding and entitled to vote, clarifies that the determination as to whether any shares of valid stock are outstanding and entitled to vote must be made at the time the board adopts the resolutions approving the defective corporate act.
- (2) The amendment to § 204(d) similarly applies the time of the board's adoption of the resolutions ratifying the defective corporate act as the time for determining which shares constitute valid stock and which shares constitute putative stock entitled to vote on the adoption of the ratification of a defective corporate act requiring a vote of the holders of valid stock.
- (3) The amendments to § 204(e) dispense with the need for filing a certificate of validation in circumstances where the underlying defective corporate act required the filing of a certificate under another section of the Delaware General Corporation Law and such a certificate has been filed and requires no change to give effect to the defective corporate act.
- (4) The amendments to § 204(e) also simplify the required contents of a certificate of validation, including eliminating the requirement that certificates of validation describe the underlying defective corporate acts and the nature of the failure of authorization relating to those acts.

Section 6. Section 6 of this Act amends § 228(e) of Title 8 to simplify the determination of the record date to be used for purposes of identifying the stockholders or members who are entitled to notice of action by consent by stockholders or members. There are three different possibilities for determining the record date for action by consent under § 213(b) of Title 8, which could differ from the record date for the notice required by § 228(e) of Title 8 before the changes

made by this Section. The changes made by this Section provide that a notice of action by consent shall be provided to those persons (i) who were stockholders or members as of the record date for the action by consent, (ii) who would have been entitled to notice of the meeting if the action had been taken at a meeting and the record date for the notice of the meeting was the record date for the action by consent, and (iii) who have not consented to the action by consent.

The changes to § 228(e) of Title 8 also provide that a notice that constitutes a notice of internet availability of proxy materials for purposes of the federal Securities Exchange Act will satisfy the notice requirements of § 228(e) for corporations entitled to use such notices under the relevant regulation promulgated under the Securities Exchange Act.

Section 7. Section 7 of this Act amends § 242 of Title 8 to add a new subsection (d). Paragraph (d)(1) includes the language that had previously been in paragraph (b)(1) providing that no meeting or vote of stockholders is required to adopt an amendment to the certificate of incorporation that effects only changes described in paragraphs (a)(1) or (a)(7). Paragraph (d)(1) also provides that no meeting or vote of stockholders is required for an amendment to the certificate of incorporation that reclassifies by subdividing the issued shares of a class of stock into a greater number of issued shares, i.e., a forward stock split, provided that such class is the only class of such corporation's capital stock then outstanding (and is not divided into series). Paragraph (d)(1) also provides that no vote of stockholders is required, in connection with such subdivision, for such amendment to increase the authorized number of shares of such class, up to an amount proportionate to the subdivision.

Paragraph (d)(2) provides that a corporation listed on a national securities exchange can amend its certificate of incorporation to reclassify by combining the issued shares of a class into a lesser number of issued shares, i.e., a reverse stock split, without obtaining the vote or votes otherwise required by subsection (b) if (i) the shares are listed on a national exchange immediately before the amendment becomes effective and such corporation meets the listing requirement of such exchange relating to the minimum number of holders immediately after the amendment becomes effective, (ii) at a meeting of stockholders at which a vote is taken for and against the proposed amendment, the votes cast for the amendment exceed the votes cast against the amendment and (iii) if the amendment increases or decreases the number of shares of a class of stock that has not opted out of the class vote pursuant to the last sentence of paragraph (b)(2), the votes cast for the amendment by the holders of such class exceed the votes cast against the amendment by the holders of such class. Under the voting standard set forth in paragraph (d)(2)(B) and (C), abstentions have no effect on whether the required approval is obtained.

The addition of subsection (d) does not eliminate the stockholder vote required to change the par value of a class of stock, whether or not in connection with any subdivision or combination.

Notably, the “unless otherwise expressly required by the certificate of incorporation” lead-in to subsection (d) permits a corporation to “opt in” to the stockholder votes that otherwise would be required under subsection (b) in connection with any subdivision or combination of the issued shares or increase or decrease in the authorized number of shares contemplated by subsection (d). Any such provision in the certificate of incorporation must expressly state that the stockholder vote otherwise required under subsection (b) is required to adopt any amendment to the certificate of incorporation specified in subsection (d) or must expressly “opt out” of the provisions of

subsection (d). A general recitation in the certificate of incorporation of the vote generally required under subsection (b) without a specific reference to the amendments specified in subsection (d) is not sufficient.

Section 242(a)(3) is also being amended to require that reclassifications by way of subdividing and combining, i.e., forward stock splits and reverse stock splits, must apply to outstanding shares and shares held in treasury, i.e., all “issued” shares. New subsection (d) also reflects this change.

Section 8. Section 8 of this Act amends § 260 of Title 8 to confirm the authority of a corporation, following a merger, consolidation, conversion, or domestication, to issue bonds, other obligations, shares of its capital stock, and other securities, and to mortgage its franchise, rights, privileges, and property, in connection with such merger, consolidation, conversion, or domestication.

Section 9. Section 9 of this Act amends § 262 of Title 8, in connection with the amendments to § 390 of Title 8 set forth in Section 13 of this Act, to provide appraisal rights to stockholders in connection with a transfer, domestication, or continuance of the corporation in a foreign jurisdiction, unless appraisal rights are denied under the “market out” exception set forth in amended § 262(b). Amended § 262 eliminates appraisal rights in connection with a merger, consolidation, conversion, or domestication of an entity that has converted to a Delaware corporation under § 265, if the merger, consolidation, conversion, or domestication is authorized under § 265, as amended by Section 3 of this Act. Conforming changes to the other subsections of § 262 provide that appraisal rights are available in a domestication in a similar manner as a merger, consolidation, or conversion. Amended §262(k) clarifies that an appraisal demand may be withdrawn more than 60 days after the effective date of the transaction resulting in appraisal rights if the withdrawal is approved by the corporation, but the amendment does not change the existing rule that appraisal rights cease if a petition for appraisal is not filed under §262(e).

Sections 10, 11 and 13. Sections 10, 11 and 13 of this Act amend §§ 265, 266 and 390 of Title 8 to permit an other entity or corporation to adopt a plan of conversion or a plan of domestication setting forth the terms and conditions of the conversion or domestication, including the manner of exchanging or converting the equity interests of the other entity or corporation to be converted or domesticated and any other details or provisions deemed desirable. A plan of conversion, adopted under amended § 265, also may set forth corporate action to be taken by the converted corporation in connection with the conversion, each of which must be approved in accordance with the requirements of all applicable law before effectiveness of the conversion. Once so approved, any such corporate action that is within the power of a Delaware corporation under Chapter 1 of Title 8 set forth in the plan of conversion shall be deemed authorized, adopted, and approved, as applicable, by the converted corporation and its board of directors, stockholders, or members, as applicable, and does not require any further action of the board of directors, stockholders, or members of the converted corporation under Title 8. The amendments to §§ 265, 266, and 390 provide that the terms of a plan of conversion or plan of domestication may be made dependent upon facts ascertainable outside of such plan if the manner in which such facts operate upon the terms of the plan is clearly and expressly set forth in such plan. The amendments further provide that a certificate of conversion, certificate of transfer or certificate of transfer and domestic continuance, adopted under §§ 266 or 390, and that a certificate of conversion, adopted under §

265, shall certify that, prior to the time such certificate becomes effective, the plan of conversion or plan of domestication, as applicable, shall be approved in accordance with §§ 266 or 390 or in accordance with all law applicable to the other entity.

Also, Section 13 changes the requirement for stockholder approval of the transfer, domestication, or continuance of a corporation in a foreign jurisdiction, from all of the outstanding shares of stock of the corporation to a majority of the outstanding shares of stock entitled to vote on a transfer, domestication, or continuance. If the corporation is transferring, domesticating, or continuing as a partnership with one or more general partners, the transfer, domestication, or continuance also requires the approval of each stockholder that is to become a general partner of the partnership. The amendments require that a certificate of domestication to be filed with the Secretary of State must contain the agreement of the transferring, domesticating or continuing corporation to be served with process in the State of Delaware for any action for enforcement of any obligation of the resulting entity arising from the transfer, domestication, or continuance as well as in appraisal proceedings under § 262 of Title 8. The amendments also provide that, for any corporation incorporated before August 1, 2023, any provision contained in its certificate of incorporation or in a voting trust agreement or other written agreement between or among the corporation and one or more stockholders in effect on or before August 1, 2023 that restricts, conditions or prohibits consummation of a merger or consolidation is also deemed to apply to a transfer, domestication, or continuance, unless the certificate of incorporation or such agreement expressly provides otherwise with respect to a transfer, domestication, or continuance, or if the certificate of incorporation or such agreement does not so expressly provide, a conversion as contemplated by § 266(k) in which case such express provision shall be deemed to apply to a transfer, domestication or continuance as if it were a conversion.

Section 12. Section 12 of this Act amends § 272 of Title 8. New § 272(b) adds a safe harbor for selling, leasing or exchanging collateral assets that secure a mortgage or pledge without obtaining stockholder approval under § 271 of Title 8. Amended § 272(b)(1) clarifies this approval is not required if the secured party can sell the collateral without the corporation's consent (including without the consent of its board of directors and stockholders) under the law governing the mortgage or pledge or other applicable law. If a secured party is entitled to sell the collateral in such circumstances, but wishes not to, § 272(b)(2) permits the secured party and the board of directors to agree to an alternative transaction (e.g., a strict foreclosure or sale to a third party), without obtaining § 271 stockholder approval, if the value of the assets is less than or equal to the amount of the liability or obligation being reduced or eliminated as a result of the transaction. A specific type of asset valuation is not prescribed, and a transaction would not fail the asset value test solely because consideration is paid to the corporation or its stockholders. For example, consideration might be paid to those parties in the ordinary course of similar transactions or paid as "nuisance value" to avoid claims in litigation. Amended § 272(b) is not intended to affect a secured party's obligation to comply with article 9 of a uniform commercial code, real property law or other applicable law.

Amended § 272 does not create a general insolvency exception to § 271 of the type that the Supreme Court of the State of Delaware declined to adopt in *Stream TV Networks, Inc. v. SeeCubic, Inc.*, 279 A.3d 323 (Del. 2022). The amendments to § 272 establish safe harbors for when stockholder approval is not required by § 271. Amended § 272 does not preclude further case law

developments on which transactions constitute a “sale, lease or exchange” of assets for purposes of § 271, nor is amended § 272 intended to preclude further development of the quantitative and qualitative analyses used by the Delaware courts to interpret § 271.

New § 272(c) provides that, after a transaction is completed, it cannot be invalidated for failure to satisfy the asset value test if the transferee of the assets provided value and acted in good faith (as defined in § 1-201(b)(20) of Title 6). However, a transaction may be enjoined before consummation, and § 272(c) does not preclude monetary damages for a claim based on a violation of fiduciary duty by a director, officer or stockholder. New § 272(c) does not change the fiduciary duties of directors or officers (or, as applicable, stockholders) in connection with a sale, lease or exchange, or the level of judicial scrutiny that will apply to the decision to enter into a sale, lease or exchange, each of which will be determined based on the common law of fiduciary duty, including the duty of loyalty. New § 272(c) does not eliminate defenses otherwise available, including based on § 141(e) of Title 8 or a § 102(b)(7) of Title 8 provision. The adoption of § 272(c) is not intended to preclude application of a similar remedies scheme for a § 271 violation.

New § 272(d) provides that a certificate of incorporation provision that requires stockholder authorization of a sale, lease or exchange of assets does not apply to a sale, lease or exchange permitted by § 272(b) unless the certificate of incorporation expressly so provides. New § 272(d) applies only to certificate of incorporation provisions that first become effective after August 1, 2023.

The amendments to § 272 apply to nonstock corporations through the translator provisions of § 114.

Section 14. Section 14 provides that the effective date of Sections 1 through 8, 11 and 12 is August 1, 2023.

Sections 15. Section 15 provides that Section 9 only applies to mergers, consolidations, conversions, domestications, transfers, and continuances adopted or entered into on or after August 1, 2023, as determined under Section 15.

Section 16. Section 16 provides that Section 10 only applies to corporations with respect to which a plan of conversion is entered into on or after August 1, 2023, or, if a plan of conversion is not entered into in connection with the conversion, any such corporations with respect to which the approvals required by § 265(h), as amended by this Act, are obtained on or after August 1, 2023.

Section 17. Section 17 provides that Section 13 is effective only with respect to corporations domesticating, transferring, or continuing pursuant to resolutions of the board of directors approving the action that are adopted on or after August 1, 2023.