

1 SPONSOR: [INSERT SPONSORS]

2 DELAWARE [HOUSE OF REPRESENTATIVES][STATE SENATE]
3 [152nd GENERAL ASSEMBLY]

4
5 [HOUSE][SENATE] BILL NO. [●]
6

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

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

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

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

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

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

27 which such shares may be issued. No such resolution shall permit a person or body to issue stock
28 to such person or body.

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

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

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

39 § 153. Consideration for stock.

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

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

48 § 157. Rights and options respecting stock.

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

57 (c) The board of directors may adopt a resolution to delegate to a person or body, in
58 addition to the board of directors, the authority to enter into 1 or more transactions to issue rights
59 or options, and with respect to such transactions, the rights or options may be issued in such
60 numbers, at such times and for such consideration, and the terms upon which shares may be
61 acquired from the corporation upon the exercise of any such rights or options may be, as such
62 person or body may determine; provided that the resolution fixes (i) the maximum number of
63 ~~rights or options, and the maximum number of shares issuable upon exercise thereof,~~ of the
64 rights or options that may be issued pursuant to such resolution, (ii) a time period during which
65 such rights or options, and a time period during which the shares issuable upon exercise thereof,
66 may be issued, and (iii) a the minimum amount of consideration (if any) for which such rights or
67 options may be issued and a the minimum amount of consideration for the shares issuable upon
68 exercise thereof. No such resolution shall permit a person or body to issue rights or options to
69 such person or body.

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

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

75 § 160. Corporation's powers respecting ownership, voting, etc., of its own stock; rights
76 of stock called for redemption.

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

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

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

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

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

92 (B) Such defective corporate act did not result from a failure to comply with §
93 203 of this title; or

94 (2) As of the ~~record date for determining the stockholders entitled to vote on the~~
95 ~~ratification of such defective corporate act~~ adoption of the resolutions of the board of
96 directors adopted pursuant to paragraph (b)(1) of this section, there are no shares of valid
97 stock outstanding and entitled to vote thereon, regardless of whether there then exist any
98 shares of putative stock.

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

105 (2) The notice shall also be given to the holders of record of valid stock and putative
106 stock, whether voting or nonvoting, as of the time of the defective corporate act (or, in the
107 case of any defective corporate act that involved the establishment of a record date for notice
108 of or voting at any meeting of stockholders, for action by written consent of stockholders in
109 lieu of a meeting, or for any other purpose, the record date for notice of or voting at such
110 meeting, the record date for action by written consent, or the record date for such other
111 action, as the case may be), other than holders whose identities or addresses cannot be
112 determined from the records of the corporation.

113 (3) The notice shall contain a copy of the resolutions adopted by the board of
114 directors pursuant to paragraph (b)(1) of this section or the information required by

115 paragraphs (b)(1)(A) through (E) of this section and a statement that any claim that the
116 defective corporate act or putative stock ratified hereunder is void or voidable due to the
117 failure of authorization, or that the Court of Chancery should declare in its discretion that a
118 ratification in accordance with this section not be effective or be effective only on certain
119 conditions must be brought within 120 days from the applicable validation effective time.

120 ~~(4)~~ At such meeting, the quorum and voting requirements applicable to ratification of
121 such defective corporate act shall be the quorum and voting requirements applicable to the
122 type of defective corporate act proposed to be ratified at the time of the approval of the
123 ratification, except that:

124 ~~(1)~~ a. If the certificate of incorporation or bylaws of the corporation, any plan or
125 agreement to which the corporation was a party or any provision of this title in effect as
126 of the time of the defective corporate act would have required a larger number or portion
127 of stock or of any class or series thereof or of specified stockholders for a quorum to be
128 present or to approve the defective corporate act, the presence or approval of such larger
129 number or portion of stock or of such class or series thereof or of such specified
130 stockholders shall be required for a quorum to be present or to approve the ratification of
131 the defective corporate act, as applicable, except that the presence or approval of shares
132 of any class or series of which no shares are then outstanding, or of any person that is no
133 longer a stockholder, shall not be required;

134 ~~(2)~~ b. The approval by stockholders of the ratification of the election of a director
135 shall require the affirmative vote of the majority of shares present at the meeting and
136 entitled to vote on the election of such director, except that if the certificate of
137 incorporation or bylaws of the corporation then in effect or in effect at the time of the

138 defective election require or required a larger number or portion of stock or of any class
139 or series thereof or of specified stockholders to elect such director, the affirmative vote of
140 such larger number or portion of stock or of any class or series thereof or of such
141 specified stockholders shall be required to ratify the election of such director, except that
142 the presence or approval of shares of any class or series of which no shares are then
143 outstanding, or of any person that is no longer a stockholder, shall not be required; and

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

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

154 (e)(1) If a defective corporate act ratified pursuant to this section would have required
155 under any other section of this title the filing of a certificate in accordance with § 103 of this
156 title, ~~then, whether~~ and either (x) such certificate requires any change to give effect to the
157 defective corporate act in accordance with this section (including a change to the date and time
158 of the effectiveness of such certificate) or (y) not a certificate was not previously filed under §
159 103 of this title in respect of ~~such~~ the defective corporate act ~~and, then,~~ in lieu of filing the

160 certificate otherwise required by this title, the corporation shall file a certificate of validation
161 with respect to such defective corporate act in accordance with § 103 of this title.

162 (2) A separate certificate of validation shall be required for each defective corporate
163 act requiring the filing of a certificate of validation under this section, except that (i) 2 or
164 more defective corporate acts may be included in a single certificate of validation if the
165 corporation filed, or to comply with this title would have filed, a single certificate under
166 another provision of this title to effect such acts, and (ii) 2 or more overissues of shares of
167 any class, classes or series of stock may be included in a single certificate of validation,
168 provided that the increase in the number of authorized shares of each such class or series set
169 forth in the certificate of validation shall be effective as of the date of the first such overissue.

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

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

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

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

183 a.1. ~~If a certificate was previously filed under § 103 of this title in respect of~~
184 ~~such defective corporate act and no changes to such certificate are required to give~~
185 ~~effect to such defective corporate act in accordance with this section, the certificate of~~
186 ~~validation shall set forth (x) the name, title and filing date of the certificate previously~~
187 ~~filed and of any certificate of correction thereto and (y) a statement that a copy of the~~
188 ~~certificate previously filed, together with any certificate of correction thereto, is~~
189 ~~attached as an exhibit to the certificate of validation;~~

190 b. If a certificate was previously filed under § 103 of this title in respect of the
191 defective corporate act and such certificate requires any change to give effect to the
192 defective corporate act in accordance with this section (including a change to the date
193 and time of the effectiveness of such certificate), the certificate of validation shall set
194 forth:

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

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

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

203 e. 2. If a certificate was not previously filed under § 103 of this title in
204 respect of the defective corporate act and the defective corporate act ratified
205 pursuant to this section would have required under any other section of this title

206 the filing of a certificate in accordance with § 103 of this title, the certificate of
207 validation shall set forth:

208 ~~(x)~~A. a statement that a certificate containing all of the information
209 required to be included under the applicable section or sections of this title to give
210 effect to the defective corporate act is attached as an exhibit to the certificate of
211 validation, and

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

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

218 (g) In respect of each defective corporate act ratified by the board of directors pursuant to
219 subsection (b) of this section, prompt notice of the ratification shall be given to all holders of
220 valid stock and putative stock, whether voting or nonvoting, as of the date the board of directors
221 adopts the resolutions approving such defective corporate act, or as of a date within 60 days after
222 such date of adoption, as established by the board of directors, at the address of such holder as it
223 appears or most recently appeared, as appropriate, on the records of the corporation. The notice
224 shall also be given to the holders of record of valid stock and putative stock, whether voting or
225 nonvoting, as of the time of the defective corporate act, other than holders whose identities or
226 addresses cannot be determined from the records of the corporation. The notice shall contain a
227 copy of the resolutions adopted pursuant to subsection (b) of this section or the information
228 specified in paragraphs (b)(1)(A) through (E) or paragraphs (b)(2)(A) through (C) of this section,

229 as applicable, and a statement that any claim that the defective corporate act or putative stock
230 ratified hereunder is void or voidable due to the failure of authorization, or that the Court of
231 Chancery should declare in its discretion that a ratification in accordance with this section not be
232 effective or be effective only on certain conditions must be brought within 120 days from the
233 later of the validation effective time or the time at which the notice required by this subsection is
234 given. Notwithstanding the foregoing, (i) no such notice shall be required if notice of the
235 ratification of the defective corporate act is to be given in accordance with subsection (d) of this
236 section, and (ii) in the case of a corporation that has a class of stock listed on a national securities
237 exchange, the notice required by this subsection and ~~the second sentence of subsection (d)~~ of this
238 section may be deemed given if disclosed in a document publicly filed by the corporation with
239 the Securities and Exchange Commission pursuant to § 13, § 14 or § 15(d) (15 U.S.C. § 78m, §
240 77n or § 78o(d)) of the Securities Exchange Act of 1934, as amended, and the rules and
241 regulations promulgated thereunder, or the corresponding provisions of any subsequent United
242 States federal securities laws, rules or regulations. If any defective corporate act has been
243 approved by stockholders acting pursuant to § 228 of this title, the notice required by this
244 subsection may be included in any notice required to be given pursuant to § 228(e) of this title
245 and, if so given, shall be sent to the stockholders entitled thereto under § 228(e) and to all holders
246 of valid and putative stock to whom notice would be required under this subsection if the
247 defective corporate act had been approved at a meeting and the record date for determining the
248 stockholders entitled to notice of such meeting had been the date for determining the
249 stockholders entitled to notice under the first sentence of this subsection other than any
250 stockholder who approved the action by consent in lieu of a meeting pursuant to § 228 of this
251 title or any holder of putative stock who otherwise consented thereto in writing. Solely for

252 purposes of subsection (d) of this section and this subsection, notice to holders of putative stock,
253 and notice to holders of valid stock and putative stock as of the time of the defective corporate
254 act, shall be treated as notice to holders of valid stock for purposes of §§ 222 and 228, 229, 230,
255 232 and 233 of this title.

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

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

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

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

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

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

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

273 (e) ~~Prompt~~ If an action by consent under subsections (a) or (b) of this section has been
274 taken by stockholders or members by less than unanimous consent, prompt notice of the taking

275 of the corporate action without a meeting by less than unanimous consent the action by consent
276 shall be given to those stockholders or members as of the record date for the action by consent
277 who have not consented and who, ~~if the action had been taken at a meeting,~~ would have been
278 entitled to notice of the meeting if the action had been taken at a meeting and the record date for
279 the notice of such the meeting had been the date that consents signed by a sufficient number of
280 ~~holders or members to take the action were delivered to the corporation as provided in this~~
281 ~~section~~ were the record date for the action by consent. The notice required by this subsection
282 may be provided by a notice which constitutes a notice of internet availability of proxy materials
283 under rules promulgated under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq. In
284 the event that the action which is consented to is such as would have required the filing of a
285 certificate under any other section of this title, if such action had been voted on by stockholders
286 or by members at a meeting thereof, the certificate filed under such other section shall state, in
287 lieu of any statement required by such section concerning any vote of stockholders or members,
288 that consent has been given in accordance with this section.

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

291 § 242. Amendment of certificate of incorporation after receipt of payment for stock;
292 nonstock corporations.

293 (a) After a corporation has received payment for any of its capital stock, or after a
294 nonstock corporation has members, it may amend its certificate of incorporation, from time to
295 time, in any and as many respects as may be desired, so long as its certificate of incorporation as
296 amended would contain only such provisions as it would be lawful and proper to insert in an
297 original certificate of incorporation filed at the time of the filing of the amendment; and, if a

298 change in stock or the rights of stockholders, or an exchange, reclassification, subdivision,
299 combination or cancellation of stock or rights of stockholders is to be made, such provisions as
300 may be necessary to effect such change, exchange, reclassification, subdivision, combination or
301 cancellation. In particular, and without limitation upon such general power of amendment, a
302 corporation may amend its certificate of incorporation, from time to time, so as:

303 (1) To change its corporate name; or

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

306 (3) To increase or decrease its authorized capital stock or to reclassify the same, by
307 changing the number, par value, designations, preferences, or relative, participating, optional, or
308 other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or
309 by changing shares with par value into shares without par value, or shares without par value into
310 shares with par value either with or without increasing or decreasing the number of shares, or by
311 subdividing or combining the ~~outstanding~~ issued shares of any class or series of a class of shares
312 into a greater or lesser number of ~~outstanding~~ issued shares; or

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

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

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

319 (7) To delete:

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

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

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

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

330 (1) If the corporation has capital stock, its board of directors shall adopt a resolution
331 setting forth the amendment proposed, declaring its advisability, and either calling a special
332 meeting of the stockholders entitled to vote in respect thereof for the consideration of such
333 amendment or directing that the amendment proposed be considered at the next annual meeting
334 of the stockholders; ~~provided, however, that unless otherwise expressly required by the~~
335 ~~certificate of incorporation, no meeting or vote of stockholders shall be required to adopt an~~
336 ~~amendment that effects only changes described in paragraph (a)(1) or (7) of this section.~~ Such
337 special or annual meeting shall be called and held upon notice in accordance with § 222 of this
338 title. The notice shall set forth such amendment in full or a brief summary of the changes to be
339 effected thereby unless such notice constitutes a notice of internet availability of proxy materials
340 under the rules promulgated under the Securities Exchange Act of 1934 [15 U.S.C. § 78a et
341 seq.]. At the meeting a vote of the stockholders entitled to vote thereon shall be taken for and
342 against any proposed amendment that requires adoption by stockholders. If no vote of

343 stockholders is required to effect such amendment, or if a majority of the outstanding stock
344 entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote
345 thereon as a class has been voted in favor of the amendment, a certificate setting forth the
346 amendment and certifying that such amendment has been duly adopted in accordance with this
347 section shall be executed, acknowledged and filed and shall become effective in accordance with
348 § 103 of this title.

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

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

358 (2) An amendment to increase or decrease the authorized number of shares of a class of
359 capital stock or an amendment to reclassify by combining the issued shares of a class of capital
360 stock into a lesser number of issued shares of the same class of stock may be made and effected,
361 without obtaining the vote or votes of stockholders otherwise required by subsection (b) of this
362 section if: (A) the shares of such class are listed on a national securities exchange immediately
363 before such amendment becomes effective and meet the listing requirement of such national
364 securities exchange relating to the minimum number of holders immediately after such
365 amendment becomes effective, (B) at a meeting called in accordance with paragraph (b)(1) of

366 this section, a vote of the stockholders entitled to vote thereon, voting as a single class, is taken
367 for and against the proposed amendment, and the votes cast for the amendment exceed the votes
368 cast against the amendment, and (C) if the amendment increases or decreases the authorized
369 number of shares of a class of capital stock for which no provision has been made pursuant to the
370 last sentence of paragraph (b)(2) of this section, the votes cast for the amendment by the holders
371 of such class exceed the votes cast against the amendment by the holders of such class.

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

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

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

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

387 (c) The surviving ~~or~~, resulting, converted or domesticated corporation may issue
388 certificates take any of the following actions in order to effect the merger or consolidation in the

389 manner and on the terms specified in the agreement or in order to effect the conversion or
390 domestication in the manner and on the terms, or pursuant to a plan of conversion or plan of
391 domestication, approved by the other entity or the non-United States entity, as applicable:

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

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

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

402 § 262. Appraisal rights.

403 (a) Any stockholder of a corporation of this State who holds shares of stock on the date of
404 the making of a demand pursuant to subsection (d) of this section with respect to such shares,
405 who continuously holds such shares through the effective date of the merger, consolidation, ~~or~~
406 conversion, transfer, domestication or continuance, who has otherwise complied with subsection
407 (d) of this section and who has neither voted in favor of the merger, consolidation ~~or~~, conversion,
408 transfer, domestication or continuance nor consented thereto in writing pursuant to § 228 of this
409 title shall be entitled to an appraisal by the Court of Chancery of the fair value of the
410 stockholder's shares of stock under the circumstances described in subsections (b) and (c) of this
411 section. As used in this section, the word "stockholder" means a holder of record of stock in a

412 corporation; the words “stock” and “share” mean and include what is ordinarily meant by those
413 words; the words “depository receipt” mean a receipt or other instrument issued by a depository
414 representing an interest in 1 or more shares, or fractions thereof, solely of stock of a corporation,
415 which stock is deposited with the depository; the words “beneficial owner” mean a person who is
416 the beneficial owner of shares of stock held either in voting trust or by a nominee on behalf of
417 such person; and the word “person” means any individual, corporation, partnership,
418 unincorporated association or other entity.

419 (b) Appraisal rights shall be available for the shares of any class or series of stock of a
420 constituent ~~or~~, converting, transferring, domesticating or continuing corporation in a merger,
421 consolidation ~~or~~, conversion, transfer, domestication or continuance to be effected pursuant to §
422 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 255, § 256, §
423 257, § 258, § 263, § 264 ~~or~~, § 266 or § 390 of this title (other than, in each case and solely with
424 respect to a converted or domesticated corporation, a merger, consolidation ~~or~~, conversion,
425 transfer, domestication or continuance authorized pursuant to and in accordance with the
426 provisions of § 265 or § 388 of this title):

427 (1) Provided, however, that no appraisal rights under this section shall be available for the
428 shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the
429 record date fixed to determine the stockholders entitled to receive notice of the meeting of
430 stockholders, or at the record date fixed to determine the stockholders entitled to consent
431 pursuant to § 228 of this title, to act upon the agreement of merger or consolidation or the
432 resolution providing for the conversion, transfer, domestication or continuance (or, in the case of
433 a merger pursuant to § 251(h) of this title, as of immediately prior to the execution of the
434 agreement of merger), were either: (i) listed on a national securities exchange or (ii) held of

435 record by more than 2,000 holders; and further provided that no appraisal rights shall be
436 available for any shares of stock of the constituent corporation surviving a merger if the merger
437 did not require for its approval the vote of the stockholders of the surviving corporation as
438 provided in § 251(f) of this title.

439 (2) Notwithstanding paragraph (b)(1) of this section, appraisal rights under this section
440 shall be available for the shares of any class or series of stock of a constituent ~~or~~, converting,
441 transferring, domesticating or continuing corporation if the holders thereof are required by the
442 terms of an agreement of merger or consolidation, or by the terms of a resolution providing for
443 conversion, transfer, domestication or continuance, pursuant to § 251, § 252, § 254, § 255, § 256,
444 § 257, § 258, § 263, § 264 ~~or~~, § 266 or § 390 of this title to accept for such stock anything except:

445 a. Shares of stock of the corporation surviving or resulting from such merger or
446 consolidation, or of the converted entity or the entity resulting from a transfer, domestication or
447 continuance if such entity is a corporation as a result of the conversion, transfer, domestication or
448 continuance, or depository receipts in respect thereof;

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

454 (c) Any corporation may provide in its certificate of incorporation that appraisal rights
455 under this section shall be available for the shares of any class or series of its stock as a result of
456 an amendment to its certificate of incorporation, any merger or consolidation in which the
457 corporation is a constituent corporation, the sale of all or substantially all of the assets of the

458 corporation ~~or~~, a conversion effected pursuant to § 266 of this title or a transfer, domestication or
459 continuance effected pursuant to § 390 of this title. If the certificate of incorporation contains
460 such a provision, the provisions of this section, including those set forth in subsections (d), (e),
461 and (g) of this section, shall apply as nearly as is practicable.

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

463 (1) If a proposed merger, consolidation ~~or~~, conversion, transfer, domestication or
464 continuance for which appraisal rights are provided under this section is to be submitted for
465 approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting,
466 shall notify each of its stockholders who was such on the record date for notice of such meeting
467 (or such members who received notice in accordance with § 255(c) of this title) with respect to
468 shares for which appraisal rights are available pursuant to subsection (b) or (c) of this section that
469 appraisal rights are available for any or all of the shares of the constituent corporations or the
470 converting, transferring, domesticating or continuing corporation, and shall include in such
471 notice either a copy of this section (and, if 1 of the constituent corporations or the converting
472 corporation is a nonstock corporation, a copy of § 114 of this title) or information directing the
473 stockholders to a publicly available electronic resource at which this section (and, § 114 of this
474 title, if applicable) may be accessed without subscription or cost. Each stockholder electing to
475 demand the appraisal of such stockholder's shares shall deliver to the corporation, before the
476 taking of the vote on the merger, consolidation ~~or~~, conversion, transfer, domestication or
477 continuance, a written demand for appraisal of such stockholder's shares; provided that a
478 demand may be delivered to the corporation by electronic transmission if directed to an
479 information processing system (if any) expressly designated for that purpose in such notice. Such
480 demand will be sufficient if it reasonably informs the corporation of the identity of the

481 stockholder and that the stockholder intends thereby to demand the appraisal of such
482 stockholder's shares. A proxy or vote against the merger, consolidation ~~or~~, conversion, transfer,
483 domestication or continuance shall not constitute such a demand. A stockholder electing to take
484 such action must do so by a separate written demand as herein provided. Within 10 days after the
485 effective date of such merger, consolidation ~~or~~, conversion, transfer, domestication or
486 continuance, the surviving, resulting or converted entity shall notify each stockholder of each
487 constituent or converting, transferring, domesticating or continuing corporation who has
488 complied with this subsection and has not voted in favor of or consented to the merger,
489 consolidation ~~or~~, conversion, transfer, domestication or continuance, and any beneficial owner
490 who has demanded appraisal under paragraph (d)(3) of this section, of the date that the merger,
491 consolidation ~~or~~, conversion, transfer, domestication or continuance has become effective; or

492 (2) If the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance
493 was approved pursuant to § 228, § 251(h), § 253, or § 267 of this title, then either a constituent ~~or~~
494 , converting, transferring, domesticating or continuing corporation before the effective date of
495 the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, or the
496 surviving, resulting or converted entity within 10 days after such effective date, shall notify each
497 stockholder of any class or series of stock of such constituent ~~or~~, , converting, transferring,
498 domesticating or continuing corporation who is entitled to appraisal rights of the approval of the
499 merger, consolidation ~~or~~, conversion, transfer, domestication or continuance and that appraisal
500 rights are available for any or all shares of such class or series of stock of such constituent ~~or~~,
501 converting, transferring, domesticating or continuing corporation, and shall include in such
502 notice either a copy of this section (and, if 1 of the constituent corporations or the converting,
503 transferring, domesticating or continuing corporation is a nonstock corporation, a copy of § 114

504 of this title) or information directing the stockholders to a publicly available electronic resource
505 at which this section (and § 114 of this title, if applicable) may be accessed without subscription
506 or cost. Such notice may, and, if given on or after the effective date of the merger, consolidation
507 ~~or~~, conversion, transfer, domestication or continuance, shall, also notify such stockholders of the
508 effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance.
509 Any stockholder entitled to appraisal rights may, within 20 days after the date of giving such
510 notice or, in the case of a merger approved pursuant to § 251(h) of this title, within the later of
511 the consummation of the offer contemplated by § 251(h) of this title and 20 days after the date of
512 giving such notice, demand in writing from the surviving ~~or~~, resulting or converted entity the
513 appraisal of such holder's shares; provided that a demand may be delivered to such entity by
514 electronic transmission if directed to an information processing system (if any) expressly
515 designated for that purpose in such notice. Such demand will be sufficient if it reasonably
516 informs such entity of the identity of the stockholder and that the stockholder intends thereby to
517 demand the appraisal of such holder's shares. If such notice did not notify stockholders of the
518 effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance,
519 either (i) each such constituent corporation or the converting, transferring, domesticating or
520 continuing corporation shall send a second notice before the effective date of the merger,
521 consolidation ~~or~~, conversion, transfer, domestication or continuance notifying each of the holders
522 of any class or series of stock of such constituent ~~or~~, converting, transferring, domesticating or
523 continuing corporation that are entitled to appraisal rights of the effective date of the merger,
524 consolidation ~~or~~, conversion, transfer, domestication or continuance or (ii) the surviving,
525 resulting or converted entity shall send such a second notice to all such holders on or within 10
526 days after such effective date; provided, however, that if such second notice is sent more than 20

527 days following the sending of the first notice or, in the case of a merger approved pursuant to §
528 251(h) of this title, later than the later of the consummation of the offer contemplated by § 251(h)
529 of this title and 20 days following the sending of the first notice, such second notice need only be
530 sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of
531 such holder's shares in accordance with this subsection and any beneficial owner who has
532 demanded appraisal under paragraph (d)(3) of this section. An affidavit of the secretary or
533 assistant secretary or of the transfer agent of the corporation or entity that is required to give
534 either notice that such notice has been given shall, in the absence of fraud, be prima facie
535 evidence of the facts stated therein. For purposes of determining the stockholders entitled to
536 receive either notice, each constituent corporation or the converting, transferring, domesticating
537 or continuing corporation may fix, in advance, a record date that shall be not more than 10 days
538 prior to the date the notice is given, provided, that if the notice is given on or after the effective
539 date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, the
540 record date shall be such effective date. If no record date is fixed and the notice is given prior to
541 the effective date, the record date shall be the close of business on the day next preceding the day
542 on which the notice is given.

543 (3) Notwithstanding subsection (a) of this section (but subject to this paragraph (d)(3)), a
544 beneficial owner may, in such person's name, demand in writing an appraisal of such beneficial
545 owner's shares in accordance with either paragraph (d)(1) or (2) of this section, as applicable;
546 provided that (i) such beneficial owner continuously owns such shares through the effective date
547 of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance and otherwise
548 satisfies the requirements applicable to a stockholder under the first sentence of subsection (a) of
549 this section and (ii) the demand made by such beneficial owner reasonably identifies the holder

550 of record of the shares for which the demand is made, is accompanied by documentary evidence
551 of such beneficial owner's beneficial ownership of stock and a statement that such documentary
552 evidence is a true and correct copy of what it purports to be, and provides an address at which
553 such beneficial owner consents to receive notices given by the surviving, resulting or converted
554 entity hereunder and to be set forth on the verified list required by subsection (f) of this section.

555 (e) Within 120 days after the effective date of the merger, consolidation ~~or~~, conversion,
556 transfer, domestication or continuance, the surviving, resulting or converted entity, or any person
557 who has complied with subsections (a) and (d) of this section ~~hereof~~ and who is otherwise
558 entitled to appraisal rights, may commence an appraisal proceeding by filing a petition in the
559 Court of Chancery demanding a determination of the value of the stock of all such stockholders.
560 Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger,
561 consolidation ~~or~~, conversion, transfer, domestication or continuance, any person entitled to
562 appraisal rights who has not commenced an appraisal proceeding or joined that proceeding as a
563 named party shall have the right to withdraw such person's demand for appraisal and to accept
564 the terms offered upon the merger, consolidation ~~or~~, conversion, transfer, domestication or
565 continuance. Within 120 days after the effective date of the merger, consolidation ~~or~~, conversion,
566 transfer, domestication or continuance, any person who has complied with the requirements of
567 subsections (a) and (d) of this section ~~hereof~~, upon request given in writing (or by electronic
568 transmission directed to an information processing system (if any) expressly designated for that
569 purpose in the notice of appraisal), shall be entitled to receive from the surviving, resulting or
570 converted entity a statement setting forth the aggregate number of shares not voted in favor of
571 the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance (or, in the case
572 of a merger approved pursuant to § 251(h) of this title, the aggregate number of shares (other

573 than any excluded stock (as defined in § 251(h)(6)d. of this title)) that were the subject of, and
574 were not tendered into, and accepted for purchase or exchange in, the offer referred to in §
575 251(h)(2) of this title)), and, in either case, with respect to which demands for appraisal have
576 been received and the aggregate number of stockholders or beneficial owners holding or owning
577 such shares (provided that, where a beneficial owner makes a demand pursuant to paragraph (d)
578 (3) of this section, the record holder of such shares shall not be considered a separate stockholder
579 holding such shares for purposes of such aggregate number). Such statement shall be given to the
580 person within 10 days after such person's request for such a statement is received by the
581 surviving, resulting or converted entity or within 10 days after expiration of the period for
582 delivery of demands for appraisal under subsection (d) of this section ~~hereof~~, whichever is later.

583 (g) At the hearing on such petition, the Court shall determine the persons who have
584 complied with this section and who have become entitled to appraisal rights. The Court may
585 require the persons who have demanded an appraisal for their shares and who hold stock
586 represented by certificates to submit their certificates of stock to the Register in Chancery for
587 notation thereon of the pendency of the appraisal proceedings; and if any person fails to comply
588 with such direction, the Court may dismiss the proceedings as to such person. If immediately
589 before the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance the
590 shares of the class or series of stock of the constituent ~~or~~, converting, transferring, domesticating
591 or continuing corporation as to which appraisal rights are available were listed on a national
592 securities exchange, the Court shall dismiss the proceedings as to all holders of such shares who
593 are otherwise entitled to appraisal rights unless (1) the total number of shares entitled to appraisal
594 exceeds 1% of the outstanding shares of the class or series eligible for appraisal, (2) the value of
595 the consideration provided in the merger, consolidation ~~or~~, conversion, transfer, domestication or

596 continuance for such total number of shares exceeds \$1 million, or (3) the merger was approved
597 pursuant to § 253 or § 267 of this title.

598 (h) After the Court determines the persons entitled to an appraisal, the appraisal
599 proceeding shall be conducted in accordance with the rules of the Court of Chancery, including
600 any rules specifically governing appraisal proceedings. Through such proceeding the Court shall
601 determine the fair value of the shares exclusive of any element of value arising from the
602 accomplishment or expectation of the merger, consolidation ~~or~~, conversion, transfer,
603 domestication or continuance, together with interest, if any, to be paid upon the amount
604 determined to be the fair value. In determining such fair value, the Court shall take into account
605 all relevant factors. Unless the Court in its discretion determines otherwise for good cause
606 shown, and except as provided in this subsection, interest from the effective date of the merger,
607 consolidation ~~or~~, conversion, transfer, domestication or continuance through the date of payment
608 of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve
609 discount rate (including any surcharge) as established from time to time during the period
610 between the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or
611 continuance and the date of payment of the judgment. At any time before the entry of judgment
612 in the proceedings, the surviving, resulting or converted entity may pay to each person entitled to
613 appraisal an amount in cash, in which case interest shall accrue thereafter as provided herein only
614 upon the sum of (1) the difference, if any, between the amount so paid and the fair value of the
615 shares as determined by the Court, and (2) interest theretofore accrued, unless paid at that time.
616 Upon application by the surviving, resulting or converted entity or by any person entitled to
617 participate in the appraisal proceeding, the Court may, in its discretion, proceed to trial upon the
618 appraisal prior to the final determination of the persons entitled to an appraisal. Any person

619 whose name appears on the list filed by the surviving, resulting or converted entity pursuant to
620 subsection (f) of this section may participate fully in all proceedings until it is finally determined
621 that such person is not entitled to appraisal rights under this section.

622 (k) ~~From Subject to the remainder of this subsection, from~~ and after the effective date of
623 the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, no person who
624 has demanded appraisal rights with respect to some or all of such person's shares as provided in
625 subsection (d) of this section shall be entitled to vote such shares for any purpose or to receive
626 payment of dividends or other distributions on such shares (except dividends or other
627 distributions payable to stockholders of record at a date which is prior to the effective date of the
628 merger, consolidation ~~or~~, conversion, transfer, domestication or continuance); ~~provided,~~
629 ~~however, that if no petition for an appraisal is filed within the time provided in subsection (e) of~~
630 ~~this section, or if.~~ If a person who has made a demand for an appraisal in accordance with this
631 section shall deliver to the surviving, resulting or converted entity a written withdrawal of such
632 person's demand for an appraisal in respect of some or all of such person's shares in accordance
633 with subsection (e) of this section, either within 60 days after such effective date or thereafter
634 with the written approval of the corporation, then the right of such person to an appraisal of the
635 shares subject to the withdrawal shall cease. Notwithstanding the foregoing, ~~no~~ an appraisal
636 proceeding in the Court of Chancery shall not be dismissed as to any person without the approval
637 of the Court, and such approval may be conditioned upon such terms as the Court deems just,
638 including without limitation, a reservation of jurisdiction for any application to the Court made
639 under subsection (j) of this section; provided, however that this provision shall not affect the
640 right of any person who has not commenced an appraisal proceeding or joined that proceeding as
641 a named party to withdraw such person's demand for appraisal and to accept the terms offered

642 upon the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance within 60
643 days after the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication
644 or continuance, as set forth in subsection (e) of this section. If a petition for an appraisal is not
645 filed within the time provided in subsection (e) of this section, the right to appraisal with respect
646 to all shares shall cease.

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

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

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

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

656 (k) In connection with a conversion under this section, the converting other entity may
657 adopt a plan of conversion that may state: (i) the terms and conditions of the conversion, (ii) that
658 the certificate of incorporation of the converted corporation of this State shall be as set forth in
659 an attachment to the plan of conversion, (iii) the manner, if any, of exchanging or converting
660 shares of stock, rights or securities of, or interests in, the other entity that is to be converted to a
661 corporation of this State, in accordance with subsection (j) of this section, (iv) any corporate
662 action to be taken by the converted corporation of this State in connection with the conversion of
663 the other entity, each of which shall require approval in accordance with all law applicable to the
664 other entity, including any approval required under such applicable law for the authorization of

665 the type of corporate action specified in the plan of conversion, (v) any details or provisions as
666 are deemed desirable, and (vi) such other provisions or facts as shall be required to be set forth in
667 a plan of conversion by the laws applicable to the other entity. Any of the terms of the plan of
668 conversion may be made dependent upon facts ascertainable outside of such plan, provided that
669 the manner in which such facts shall operate upon the terms of the plan of conversion is clearly
670 and expressly set forth in the plan of conversion. The term “facts,” as used in the preceding
671 sentence, includes, but is not limited to, the occurrence of any event, including a determination
672 or action by any person or body, including the other entity or the converted corporation.

673 (l) Any corporate action to be taken by the converted corporation of this State in
674 connection with the conversion of the other entity that is set forth in a plan of conversion
675 approved in the manner provided for by subsection (k) of this section and that is within the
676 power of a corporation under subchapter II of this chapter shall be deemed authorized, adopted
677 and approved, as applicable, by the converted corporation of this State and the board of directors,
678 stockholders or members of the corporation, as applicable, and shall not require any further
679 action of the board of directors, stockholders or members of the corporation under this title. In
680 the event that any such action requires the filing of a certificate under any other section of this
681 title, the certificate shall state that in accordance with this section, no action by the board of
682 directors, stockholders, members or as otherwise required by such other section of this title is
683 required.

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

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

687 (b) The board of directors of the corporation which desires to convert under this section
688 shall adopt a resolution approving such conversion, specifying the type of entity into which the
689 corporation shall be converted and recommending the approval of such conversion by the
690 stockholders of the corporation. If a plan of conversion is to be adopted in accordance with
691 subsection (l) of this section, such plan shall be approved together with the resolution approving
692 the conversion. Such resolution shall be submitted to the stockholders of the corporation at an
693 annual or special meeting. Due notice of the time, and purpose of the meeting shall be given to
694 each holder of stock, whether voting or nonvoting, of the corporation at the address of the
695 stockholder as it appears on the records of the corporation, at least 20 days prior to the date of the
696 meeting. At the meeting, the resolution shall be considered and a vote taken for its adoption or
697 rejection. If a majority of the outstanding shares of stock of the corporation, entitled to vote
698 thereon shall be voted for the adoption of the resolution, the conversion shall be authorized,
699 provided that, if the corporation is converting to a partnership having 1 or more general partners,
700 then, in addition to the foregoing approval, authorization of the conversion shall require approval
701 of each stockholder of the corporation who will become a general partner of such partnership as
702 a result of the conversion.

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

707 (7) If a plan of conversion is adopted in accordance with subsection (l) of this
708 section, that all provisions of the plan of conversion shall be approved in accordance with this
709 section.

710 (g) In connection with a conversion of a domestic corporation to another entity pursuant
711 to this section, shares of stock~~;~~ of the corporation of this State which is to be converted may be
712 exchanged for or converted into cash, property, or shares of stock, rights or securities of, or
713 interests in, the entity to which the corporation of this State is being converted or, in addition to
714 or in lieu thereof, may be exchanged for or converted into cash, property, shares of stock, rights
715 or securities of, or interests in, another domestic corporation or other entity or may be cancelled.

716 (l) In connection with a conversion under this section, the converting corporation may
717 adopt a plan of conversion that may state: (i) the terms and conditions of the conversion, (ii) that
718 the document, instrument, agreement or other writing, as the case may be, governing the internal
719 affairs of the entity to which the converting corporation is being converted and the conduct of its
720 business shall be as set forth in an attachment to the plan of conversion, (iii) the manner, if any,
721 of exchanging or converting shares of stock of the converting corporation which are to be
722 exchanged for or converted into cash, property, or shares of stock, rights or securities of, or
723 interests in, the entity to which the corporation of this State is being converted or, in addition to
724 or in lieu thereof, cash, property, shares of stock, rights or securities of, or interests in, another
725 domestic corporation or other entity or cancelling such shares, in accordance with subsection (g)
726 of this section, (iv) any details or provisions as are deemed desirable, and (v) such other
727 provisions or facts as shall be required to be set forth in a plan of conversion by the laws
728 applicable to the entity to which the corporation of this State is being converted. Any of the
729 terms of the plan of conversion may be made dependent upon facts ascertainable outside of such
730 plan, provided that the manner in which such facts shall operate upon the terms of the plan of
731 conversion is clearly and expressly set forth in the plan of conversion. The term “facts,” as used
732 in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a

733 determination or action by any person or body, including the entity to which the corporation of
734 this State is being converted or the converting corporation.

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

737 § 272. Mortgage or pledge of assets.

738 (a) The authorization or consent of stockholders to the mortgage or pledge of a
739 corporation's property and assets shall not be necessary, except to the extent that the certificate
740 of incorporation otherwise provides.

741 (b) Without limiting the rights of a secured party under applicable law, no resolution by
742 stockholders shall be required by § 271(a) of this title for a sale, lease or exchange of property or
743 assets if such property or assets are collateral that secures a mortgage or are pledged to a secured
744 party and either:

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

749 (2) In lieu of the secured party exercising such rights, the board of directors of the
750 corporation authorizes an alternative sale, lease or exchange of such property or assets,
751 whether with the secured party or with another person, that results in the reduction or
752 elimination of the total liabilities or obligations secured by such property or assets,
753 provided that (i) the value of such property or assets is less than or equal to the total
754 amount of such liabilities or obligations being eliminated or reduced and (ii) such sale,
755 lease or exchange is not prohibited by the law governing such mortgage or pledge. The

756 provision of consideration to the corporation or to its stockholders shall not create a
757 presumption that the value of such property or assets is greater than the total amount of
758 such liabilities or obligations being eliminated or reduced.

759 (c) A failure to satisfy the proviso in subsection (b)(2)(i) of this section shall not result in
760 the invalidation of a sale, lease or exchange if the transferee of the property or assets provided
761 value therefor (which may include the reduction or elimination of the total liabilities or
762 obligations secured by such property or assets) and acted in good faith (as defined in § 1-201(b)
763 (20) of Title 6). The preceding sentence shall not apply to a proceeding against the corporation
764 and any other necessary parties to enjoin such sale, lease or exchange before the consummation
765 thereof and shall not eliminate any liability for monetary damages for any claim, including a
766 claim in the right of the corporation, based upon a violation of fiduciary duty by a current or
767 former director or officer or stockholder.

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

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

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

776 (b) The board of directors of the corporation which desires to transfer to or domesticate
777 or continue in a foreign jurisdiction shall adopt a resolution approving such transfer,

778 domestication or continuance, specifying the foreign jurisdiction to which the corporation shall
779 be transferred or in which the corporation shall be domesticated or continued and, if applicable,
780 that in connection with such transfer, domestication or continuance the corporation's existence as
781 a corporation of this State is to continue and recommending the approval of such transfer or
782 domestication or continuance by the stockholders of the corporation. If a plan of transfer,
783 domestication or continuance is to be adopted in accordance with subsection (j) of this section,
784 such plan shall be approved together with the resolution approving the transfer, domestication or
785 continuance. Such resolution shall be submitted to the stockholders of the corporation at an
786 annual or special meeting. Due notice of the time, place and purpose of the meeting shall be
787 given to each holder of stock, whether voting or nonvoting, of the corporation at the address of
788 the stockholder as it appears on the records of the corporation, at least 20 days prior to the date of
789 the meeting. At the meeting, the resolution shall be considered and a vote taken for its adoption
790 or rejection. If ~~all~~ a majority of the outstanding shares of stock of the corporation, ~~whether voting~~
791 ~~or nonvoting,~~ entitled to vote thereon shall be voted for the adoption of the resolution (provided
792 that, if the corporation is transferring, domesticating or continuing as a partnership having 1 or
793 more general partners, then, in addition to the foregoing approval, authorization of the transfer,
794 domestication or continuance shall require approval of each stockholder of the corporation who
795 will become a general partner of such partnership as a result of the transfer, domestication or
796 continuance), the corporation shall file with the Secretary of State a certificate of transfer if its
797 existence as a corporation of this State is to cease or a certificate of transfer and domestic
798 continuance if its existence as a corporation of this State is to continue, executed in accordance
799 with § 103 of this title, which certifies:

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

803 (j) In connection with a transfer, domestication or continuance under this section, the
804 transferring, domesticating or continuing corporation may adopt a plan of transfer, domestication
805 or continuance, as applicable, that may state: (i) the terms and conditions of the transfer,
806 domestication or continuance, (ii) the mode of carrying the same into effect, (iii) that the
807 document, instrument, agreement or other writing, as the case may be, governing the internal
808 affairs of the resulting entity and the conduct of its business shall be as set forth in an attachment
809 to the plan, (iv) the manner, if any, of exchanging or converting shares of stock of the
810 corporation of this State which are to be exchanged for or converted into cash, property, or
811 shares of stock, rights or securities of, or interests in, the resulting entity or, in addition to or in
812 lieu thereof, cash, property, shares of stock, rights or securities of, or interests in, another
813 domestic corporation or other entity or cancelling such shares, in accordance with subsection (g)
814 of this section, (v) any details or provisions as are deemed desirable, and (vi) such other
815 provisions or facts as shall be required to be set forth in a plan of transfer, domestication or
816 continuance, as applicable, by the laws applicable to the resulting entity. Any of the terms of the
817 plan of transfer, domestication or continuance may be made dependent upon facts ascertainable
818 outside of such plan, provided that the manner in which such facts shall operate upon the terms
819 of the plan is clearly and expressly set forth in the plan. The term “facts,” as used in the
820 preceding sentence, includes, but is not limited to, the occurrence of any event, including a
821 determination or action by any person or body, including the resulting entity or the transferring,
822 domesticating or continuing corporation.

823 (k) Any provision of the certificate of incorporation of a corporation incorporated before
824 August 1, 2023, or any provision in any voting trust agreement or other written agreement
825 between or among any such corporation and 1 or more of its stockholders in effect on or before
826 August 1, 2023, that restricts, conditions or prohibits the consummation of a merger or
827 consolidation shall be deemed to apply to a transfer, domestication or continuance as if it were a
828 merger or consolidation unless the certificate of incorporation or such agreement expressly
829 provides otherwise with respect to a transfer, domestication or continuance or, if the certificate of
830 incorporation or such agreement does not so expressly provide, a conversion, in which case such
831 express provision shall be deemed to apply to a transfer, domestication or continuance as if it
832 were a conversion.

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

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

835 (1) A merger, conversion, domestication, transfer, or continuance effected under §§
836 253, 266, or 390 of Title 8 of the Delaware Code that is authorized or provided for pursuant
837 to resolutions of the board of directors adopted on or after August 1, 2023.

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

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

844 Section 16. Section 10 of this Act only applies to corporations that have converted under
845 § 265 of Title 8 of the Delaware Code and with respect to which a plan of conversion is entered

846 into on or after August 1, 2023, or, if a plan of conversion is not entered into in connection with
847 the conversion, a corporation with respect to which the approvals required by § 265(h) of Title 8
848 of the Delaware Code are obtained on or after August 1, 2023.

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

852

853

SYNOPSIS

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

856 Amended §§ 152 and 153 clarify that treasury shares may be sold for less than par value.
857 Amended § 153(c) clarifies the types of consideration that a corporation may receive for selling
858 treasury shares, and references to “amounts” of minimum consideration have been deleted from
859 §§ 152 and 157 to eliminate redundancy.

860 Amended § 157(b) clarifies that § 157(c) is the exclusive means to delegate to a person or
861 body the authority to enter into transactions to issue rights or options. A reference in § 157(b) to
862 permitting the exercise price of a right or option to be determined by formula has been deleted to
863 eliminate redundancy because such formulas are permitted by § 157(d). Amended § 157(c)
864 eliminates the requirement that the board of directors, or a board committee, fix a maximum
865 number of rights or options that may be authorized for issuance by a person or body under a §
866 157(c) delegation. Amended § 157(c) also clarifies that the board, or a board committee, may fix
867 two different time periods in a § 157(c) delegation: a period during which rights or options may
868 be issued and a different time period during which shares may be issued upon exercise of the
869 rights or options.

870 Amended § 160(b) clarifies that treasury shares resulting from a stock redemption or
871 repurchase may be resold under § 153(c), unless the treasury shares are retired. Amended §
872 160(b) also clarifies that treasury shares may not be resold if the shares are required to be retired
873 by a provision of the certificate of incorporation.

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

876 (1) The amendments to § 204(c)(2), which currently dispenses with the need for a vote of
877 stockholders in circumstances where no valid stock is outstanding and entitled to
878 vote, clarifies that the determination as to whether any shares of valid stock are

879 outstanding and entitled to vote must be made at the time the board adopts the
880 resolutions approving the defective corporate act.

881 (2) The amendment to § 204(d) similarly applies the time of the board's adoption of the
882 resolutions ratifying the defective corporate act as the time for determining which
883 shares constitute valid stock and which shares constitute putative stock entitled to
884 vote on the adoption of the ratification of a defective corporate act requiring a vote of
885 the holders of valid stock.

886 (3) The amendments to § 204(e) dispense with the need for filing a certificate of
887 validation in circumstances where the underlying defective corporate act required the
888 filing of a certificate under another section of the Delaware General Corporation Law
889 and such a certificate has been filed and requires no change to give effect to the
890 defective corporate act.

891 (4) The amendments to § 204(e) also simplify the required contents of a certificate of
892 validation, including eliminating the requirement that certificates of validation
893 describe the underlying defective corporate acts and the nature of the failure of
894 authorization relating to those acts.

895 Section 6. Section 6 of this Act amends § 228(e) of Title 8 to simplify the determination
896 of the record date to be used for purposes of identifying the stockholders or members who are
897 entitled to notice of action by consent by stockholders or members. There are three different
898 possibilities for determining the record date for action by consent under § 213(b) of Title 8,
899 which could differ from the record date for the notice required by § 228(e) of Title 8 before the
900 changes made by this Section. The changes made by this Section provide that a notice of action
901 by consent shall be provided to those persons (i) who were stockholders or members as of the
902 record date for the action by consent, (ii) who would have been entitled to notice of the meeting
903 if the action had been taken at a meeting and the record date for the notice of the meeting was the
904 record date for the action by consent, and (iii) who have not consented to the action by consent.

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

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

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

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

936 Notably, the “unless otherwise expressly required by the certificate of incorporation”
937 lead-in to subsection (d) permits a corporation to “opt in” to the stockholder votes that otherwise
938 would be required under subsection (b) in connection with any subdivision or combination of the
939 issued shares or increase or decrease in the authorized number of shares contemplated by
940 subsection (d). Any such provision in the certificate of incorporation must expressly state that
941 the stockholder vote otherwise required under subsection (b) is required to adopt any amendment
942 to the certificate of incorporation specified in subsection (d) or must expressly “opt out” of the
943 provisions of subsection (d). A general recitation in the certificate of incorporation of the vote
944 generally required under subsection (b) without a specific reference to the amendments specified
945 in subsection (d) is not sufficient.

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

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

955 Section 9. Section 9 of this Act amends § 262 of Title 8, in connection with the
956 amendments to § 390 of Title 8 set forth in Section 13 of this Act, to provide appraisal rights to
957 stockholders in connection with a transfer, domestication, or continuance of the corporation in a
958 foreign jurisdiction, unless appraisal rights are denied under the “market out” exception set forth
959 in amended § 262(b). Amended § 262 eliminates appraisal rights in connection with a merger,
960 consolidation, conversion, or domestication of an entity that has converted to a Delaware
961 corporation under § 265, if the merger, consolidation, conversion, or domestication is authorized

962 under § 265, as amended by Section 3 of this Act. Conforming changes to the other subsections
963 of § 262 provide that appraisal rights are available in a domestication in a similar manner as a
964 merger, consolidation, or conversion. Amended §262(k) clarifies that an appraisal demand may
965 be withdrawn more than 60 days after the effective date of the transaction resulting in appraisal
966 rights if the withdrawal is approved by the corporation, but the amendment does not change the
967 existing rule that appraisal rights cease if a petition for appraisal is not filed under §262(e).

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

990 Also, Section 13 changes the requirement for stockholder approval of the transfer,
991 domestication, or continuance of a corporation in a foreign jurisdiction, from all of the
992 outstanding shares of stock of the corporation to a majority of the outstanding shares of stock
993 entitled to vote on a transfer, domestication, or continuance. If the corporation is transferring,
994 domesticating, or continuing as a partnership with one or more general partners, the transfer,
995 domestication, or continuance also requires the approval of each stockholder that is to become a
996 general partner of the partnership. The amendments require that a certificate of domestication to
997 be filed with the Secretary of State must contain the agreement of the transferring, domesticating
998 or continuing corporation to be served with process in the State of Delaware for any action for
999 enforcement of any obligation of the resulting entity arising from the transfer, domestication, or
1000 continuance as well as in appraisal proceedings under § 262 of Title 8. The amendments also
1001 provide that, for any corporation incorporated before August 1, 2023, any provision contained in
1002 its certificate of incorporation or in a voting trust agreement or other written agreement between
1003 or among the corporation and one or more stockholders in effect on or before August 1, 2023
1004 that restricts, conditions or prohibits consummation of a merger or consolidation is also deemed
1005 to apply to a transfer, domestication, or continuance, unless the certificate of incorporation or
1006 such agreement expressly provides otherwise with respect to a transfer, domestication, or

1007 continuance, or if the certificate of incorporation or such agreement does not so expressly
1008 provide, a conversion as contemplated by § 266(k) in which case such express provision shall be
1009 deemed to apply to a transfer, domestication or continuance as if it were a conversion.

1010
1011 Section 12. Section 12 of this Act amends § 272 of Title 8. New § 272(b) adds a safe
1012 harbor for selling, leasing or exchanging collateral assets that secure a mortgage or pledge
1013 without obtaining stockholder approval under § 271 of Title 8. Amended § 272(b)(1) clarifies
1014 this approval is not required if the secured party can sell the collateral without the corporation’s
1015 consent (including without the consent of its board of directors and stockholders) under the law
1016 governing the mortgage or pledge or other applicable law. If a secured party is entitled to sell
1017 the collateral in such circumstances, but wishes not to, § 272(b)(2) permits the secured party and
1018 the board of directors to agree to an alternative transaction (e.g., a strict foreclosure or sale to a
1019 third party), without obtaining § 271 stockholder approval, if the value of the assets is less than
1020 or equal to the amount of the liability or obligation being reduced or eliminated as a result of the
1021 transaction. A specific type of asset valuation is not prescribed, and a transaction would not fail
1022 the asset value test solely because consideration is paid to the corporation or its stockholders.
1023 For example, consideration might be paid to those parties in the ordinary course of similar
1024 transactions or paid as “nuisance value” to avoid claims in litigation. Amended § 272(b) is not
1025 intended to affect a secured party’s obligation to comply with article 9 of a uniform commercial
1026 code, real property law or other applicable law.

1027
1028 Amended § 272 does not create a general insolvency exception to § 271 of the type that
1029 the Supreme Court of the State of Delaware declined to adopt in *Stream TV Networks, Inc. v.*
1030 *SeeCubic, Inc.*, 279 A.3d 323 (Del. 2022). The amendments to § 272 establish safe harbors for
1031 when stockholder approval is not required by § 271. Amended § 272 does not preclude further
1032 case law developments on which transactions constitute a “sale, lease or exchange” of assets for
1033 purposes of § 271, nor is amended § 272 intended to preclude further development of the
1034 quantitative and qualitative analyses used by the Delaware courts to interpret § 271.

1035
1036 New § 272(c) provides that, after a transaction is completed, it cannot be invalidated for
1037 failure to satisfy the asset value test if the transferee of the assets provided value and acted in
1038 good faith (as defined in § 1-201(b)(20) of Title 6). However, a transaction may be enjoined
1039 before consummation, and § 272(c) does not preclude monetary damages for a claim based on a
1040 violation of fiduciary duty by a director, officer or stockholder. New § 272(c) does not change
1041 the fiduciary duties of directors or officers (or, as applicable, stockholders) in connection with a
1042 sale, lease or exchange, or the level of judicial scrutiny that will apply to the decision to enter
1043 into a sale, lease or exchange, each of which will be determined based on the common law of
1044 fiduciary duty, including the duty of loyalty. New § 272(c) does not eliminate defenses
1045 otherwise available, including based on § 141(e) of Title 8 or a § 102(b)(7) of Title 8 provision.
1046 The adoption of § 272(c) is not intended to preclude application of a similar remedies scheme for
1047 a § 271 violation.

1048
1049 New § 272(d) provides that a certificate of incorporation provision that requires
1050 stockholder authorization of a sale, lease or exchange of assets does not apply to a sale, lease or
1051 exchange permitted by § 272(b) unless the certificate of incorporation expressly so provides.

1052 New § 272(d) applies only to certificate of incorporation provisions that first become effective
1053 after August 1, 2023.

1054
1055 The amendments to § 272 apply to nonstock corporations through the translator provisions
1056 of § 114.

1057

1058 Section 14. Section 14 provides that the effective date of Sections 1 through 8, 11 and 12
1059 is August 1, 2023.

1060 Sections 15. Section 15 provides that Section 9 only applies to mergers, consolidations,
1061 conversions, domestications, transfers, and continuances adopted or entered into on or after
1062 August 1, 2023, as determined under Section 15.

1063 Section 16, Section 16 provides that Section 10 only applies to corporations with respect
1064 to which a plan of conversion is entered into on or after August 1, 2023, or, if a plan of
1065 conversion is not entered into in connection with the conversion, any such corporations with
1066 respect to which the approvals required by § 265(h), as amended by this Act, are obtained on or
1067 after August 1, 2023.

1068 Section 17. Section 17 provides that Section 13 is effective only with respect to
1069 corporations domesticating, transferring, or continuing pursuant to resolutions of the board of
1070 directors approving the action that are adopted on or after August 1, 2023.

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1073