

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S

2

SENATE BILL 622
Judiciary Committee Substitute Adopted 6/14/17

Short Title: Business Corporation Act Revisions.

(Public)

Sponsors:

Referred to:

April 5, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS REVISIONS TO THE NORTH CAROLINA BUSINESS
3 CORPORATION ACT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 55-1-22(a) reads as rewritten:

6 "(a) The Secretary of State shall collect the following fees when the documents
7 described in this subsection are delivered to the Secretary for filing:

8 Document Fee

9 ...

10 (28) Articles of validation 150.00"

11 **SECTION 2.** G.S. 55-2-02(b) reads as rewritten:

12 "(b) The articles of incorporation may set forth any provision that under this Chapter is
13 required or permitted to be set forth in the bylaws, and may also set forth: any or all of the
14 following:

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

17 (2) Provisions not inconsistent with law regarding (i) the purpose or purposes
18 for which the corporation is organized; (ii) managing the business and
19 regulating the affairs of the corporation; (iii) defining, limiting, and
20 regulating the powers of the corporation, its board of directors, and
21 shareholders; (iv) a par value for authorized shares or classes of shares; (v)
22 the imposition of personal liability on shareholders for the debts of the
23 corporation to a specified extent and upon specified conditions; (vi) any
24 limitation on the duration of the ~~corporation;~~ and corporation.

25 ...

26 (4) A provision limiting or eliminating any duty of a director, an officer, or any
27 other person, to offer the corporation the right to have or participate in one
28 or more specific classes or categories of business opportunities, prior to the
29 pursuit or taking of the opportunity by the director, officer, or other person."

30 **SECTION 3.** Article 1 of Chapter 55 of the General Statutes is amended by adding
31 a new Part to read:

32 "Part 6. Ratification of Defective Corporate Actions.

33 "**§ 55-1-60. Definitions.**

34 In this Part, the following definitions apply:

35 (1) Corporate action. – Any action taken by or on behalf of the corporation,
36 including any action taken by the incorporator, the board of directors, a



1 committee, a subcommittee, an officer or agent of the corporation, or the
2 shareholders.

3 (2) Date of the defective corporate action. – The date the defective corporate
4 action was purported to have been taken or, if the exact date is unknown, the
5 approximate date thereof.

6 (3) Defective corporate action. – Any corporate action purportedly taken that is,
7 and at the time the corporate action was purportedly taken would have been,
8 within the power of the corporation, but is void or voidable due to a failure
9 of authorization. This term includes an overissue. This term does not include
10 a business combination subject to G.S. 55-9-02, unless the business
11 combination was approved by shareholders in accordance with G.S. 55-9-02.

12 (4) Failure of authorization. – The (i) failure to authorize, approve, or otherwise
13 effect a corporate action in compliance with the provisions of this Chapter,
14 the articles of incorporation or bylaws of the corporation, a corporate
15 resolution, or any plan or agreement to which the corporation is a party, if
16 and to the extent the failure would render the corporate action void or
17 voidable, or (ii) failure of the board of directors or any officer of the
18 corporation to authorize or approve any act or transaction taken by or on
19 behalf of the corporation that would have required for its due authorization
20 the approval of the board of directors or the officer.

21 (5) Overissue. – The purported issuance of either of the following:

22 a. Shares of a class or series in excess of the number of shares of a class
23 or series the corporation has the power to issue under G.S. 55-6-01 at
24 the time of the issuance.

25 b. Shares of any class or series that is not then authorized for issuance
26 by the articles of incorporation.

27 (6) Putative shares. – The shares of any class or series of the corporation,
28 including shares issued upon exercise of rights, options, warrants, or other
29 securities convertible into shares of the corporation, or interests with respect
30 thereto, that were created or issued as a result of a defective corporate action,
31 and that satisfy either of the following conditions:

32 a. Would constitute valid shares but for any failure of authorization.

33 b. Cannot be determined by the board of directors to be valid shares.

34 (7) Validation effective time. – With respect to any defective corporate action
35 ratified under this Part, means the later of (i) the time at which the
36 ratification of the defective corporate action is approved by the shareholders,
37 or if approval of shareholders is not required, the time at which the notice
38 required by G.S. 55-1-64 becomes effective in accordance with G.S. 55-1-41
39 or (ii) the time at which any articles of validation filed in accordance with
40 G.S. 55-1-66 become effective. The validation effective time shall not be
41 affected by the filing or pendency of a judicial proceeding in accordance
42 with this Chapter or otherwise, unless otherwise ordered by the court.

43 (8) Valid shares. – The shares of any class or series of the corporation that have
44 been duly authorized and validly issued in accordance with this Chapter,
45 including as a result of ratification or validation under this Part.

46 **§ 55-1-61. Defective corporate actions.**

47 (a) A defective corporate action is not void or voidable if ratified in accordance with
48 G.S. 55-1-62 or validated in accordance with G.S. 55-1-67.

49 (b) Ratification under G.S. 55-1-62 or validation under G.S. 55-1-67 is not the
50 exclusive means of ratifying or validating any defective corporate action, and the absence or
51 failure of ratification in accordance with this Part does not, of itself, affect the validity or

1 effectiveness of any corporate action properly ratified under common law or otherwise, nor
2 does it create a presumption that the corporate action is or was a defective corporate action or
3 void or voidable.

4 (c) In the case of an overissue, putative shares shall be valid shares effective as of the
5 date originally issued or purportedly issued upon either of the following:

6 (1) The effectiveness under this Part and under Article 10 of this Chapter of an
7 amendment to the articles of incorporation authorizing, designating, or
8 creating the shares.

9 (2) The effectiveness of any other corporate action under this Part ratifying the
10 authorization, designation, or creation of the shares.

11 **"§ 55-1-62. Ratification of defective corporate actions.**

12 (a) Except as otherwise provided in subsection (b) of this section, the board of directors
13 shall ratify a defective corporate action by taking action in accordance with G.S. 55-1-63 that
14 states all of the following:

15 (1) The defective corporate action to be ratified and, if the defective corporate
16 action involved the issuance of putative shares, the number and type of
17 putative shares purportedly issued.

18 (2) The date of the defective corporate action.

19 (3) The nature of the failure of authorization with respect to the defective
20 corporate action to be ratified.

21 (4) That the board of directors approves the ratification of the defective
22 corporate action.

23 (b) In the event that a defective corporate action to be ratified relates to the election of
24 the initial board of directors of the corporation under G.S. 55-2-05(a)(2), a majority of the
25 persons who, at the time of the ratification, are exercising the powers of directors may take an
26 action that states all of the following:

27 (1) The name of the person or persons who first took action in the name of the
28 corporation as the initial board of directors of the corporation.

29 (2) The earlier of the date on which the person or persons identified under
30 subdivision (1) of this subsection first took the action or were purported to
31 have been elected as the initial board of directors.

32 (3) That the ratification of the election of the person or persons identified under
33 subdivision (1) of this subsection as the initial board of directors is
34 approved.

35 (c) If any provision of this Chapter, the articles of incorporation or bylaws, any
36 corporate resolution, or any plan or agreement to which the corporation is a party in effect at
37 the time action under subsection (a) of this section is taken, requires shareholder approval or
38 would have required shareholder approval at the date of the occurrence of the defective
39 corporate action, the ratification of the defective corporate action approved in the action taken
40 by the directors under subsection (a) of this section shall be submitted to the shareholders for
41 approval in accordance with G.S. 55-1-63.

42 (d) Unless otherwise provided in the action taken by the board of directors under
43 subsection (a) of this section, after the action by the board of directors has been taken and, if
44 required, approved by the shareholders, the board of directors may abandon the ratification at
45 any time prior to the validation effective time without further action of the shareholders.

46 **"§ 55-1-63. Action on ratification.**

47 (a) The quorum and voting requirements applicable to a ratifying action by the board of
48 directors under G.S. 55-1-62(a) are the quorum and voting requirements applicable to the
49 corporate action proposed to be ratified at the time the ratifying action is taken.

50 (b) If the ratification of the defective corporate action requires approval by the
51 shareholders under G.S. 55-1-62(c), and, if the approval is to be given at a meeting, the

1 corporation shall notify each holder of valid and putative shares, whether or not entitled to vote,
2 as of the record date for notice of the meeting and as of the date of the occurrence of the
3 defective corporate action, provided that notice shall not be required to be given to holders of
4 valid or putative shares whose identities or addresses for notice cannot be determined from the
5 records of the corporation. The notice shall state that the purpose, or one of the purposes, of the
6 meeting is to consider ratification of a defective corporate action and shall be accompanied by
7 (i) a copy of the action taken by the board of directors in accordance with G.S. 55-1-62(a) or
8 (ii) the information required by subdivisions (1) through (4) of subsection (a) of G.S. 55-1-62.
9 The notice shall also include a statement that any claim that the ratification of the defective
10 corporate action and any putative shares issued as a result of the defective corporate action
11 should not be effective, or should be effective only on certain conditions, shall be brought
12 within 120 days from the applicable validation effective time.

13 (c) Except as provided in subsection (d) of this section with respect to the voting
14 requirements to ratify the election of a director, the quorum and voting requirements applicable
15 to the approval by the shareholders required by G.S. 55-1-62(c) are the quorum and voting
16 requirements applicable to the corporate action proposed to be ratified at the time of the
17 shareholder approval.

18 (d) The approval by shareholders to ratify the election of a director requires that the
19 votes cast within the voting group favoring the ratification of the election exceed the votes cast
20 opposing the ratification of the election at a meeting at which a quorum is present.

21 (e) Putative shares on the record date for determining the shareholders entitled to vote
22 on any matter submitted to shareholders under G.S. 55-1-62(c), and without giving effect to
23 any ratification of putative shares that becomes effective as a result of the vote, shall neither be
24 entitled to vote nor counted for quorum purposes in any vote to approve the ratification of any
25 defective corporate action.

26 (f) If the approval under this section of putative shares would result in an overissue, in
27 addition to the approval required by G.S. 55-1-62, approval of an amendment to the articles of
28 incorporation under Article 10 of this Chapter to increase the number of shares of an authorized
29 class or series, or to authorize the creation of a class or series of shares so there would be no
30 overissue, shall also be required.

31 **"§ 55-1-64. Notice requirements.**

32 (a) Unless shareholder approval is required under G.S. 55-1-62(c), prompt notice of an
33 action taken under G.S. 55-1-62 shall be given to each holder of valid and putative shares,
34 whether or not entitled to vote, as of (i) the date of the action by the board of directors and (ii)
35 the date of the defective corporate action ratified, provided that notice shall not be required to
36 be given to holders of valid and putative shares whose identities or addresses for notice cannot
37 be determined from the records of the corporation.

38 (b) The notice required under subsection (a) of this section shall contain (i) a copy of
39 the action taken by the board of directors in accordance with subsection (a) or (b) of
40 G.S. 55-1-62 or (ii) the information required by subdivisions (1) through (4) of subsection (a)
41 of G.S. 55-1-62 or subdivisions (1) through (3) of subsection (b) of G.S. 55-1-62, as applicable.
42 The notice shall also include a statement that any claim that the ratification of the defective
43 corporate action and any putative shares issued as a result of the defective corporate action
44 should not be effective, or should be effective only on certain conditions, shall be brought
45 within 120 days from the applicable validation effective time.

46 (c) No notice under this section is required with respect to any action required to be
47 submitted to shareholders for approval under G.S. 55-1-62(c) if notice is given in accordance
48 with G.S. 55-1-63(b).

49 (d) A notice required by this section may be given in any manner permitted by
50 G.S. 55-1-41 and, for any public corporation, may be given by means of a filing or furnishing
51 of the notice with the Securities and Exchange Commission which becomes publicly accessible

1 on the Web site of the Securities and Exchange Commission approximately contemporaneously
2 with the filing or furnishing.

3 **"§ 55-1-65. Effect of ratification.**

4 Ratification in accordance with this Part shall have the following effects from and after the
5 validation effective time, and without regard to the 120-day period during which a claim may
6 be brought under G.S. 55-1-67:

- 7 (1) Each defective corporate action ratified in accordance with G.S. 55-1-62 is
8 not void or voidable as a result of the failure of authorization identified in
9 the action taken under subsection (a) or (b) of G.S. 55-1-62 and is a valid
10 corporate action effective as of the date of the defective corporate action.
11 (2) The issuance of each putative share or fraction of a putative share
12 purportedly issued pursuant to a defective corporate action identified in the
13 action taken under G.S. 55-1-62 is not void or voidable, and the putative
14 share or fraction of the putative share is an identical share or fraction of a
15 valid share as of the time it was purportedly issued.
16 (3) Any corporate action taken subsequent to the defective corporate action
17 ratified in accordance with this Part in reliance on the defective corporate
18 action having been validly effected and any subsequent defective corporate
19 action resulting directly or indirectly from the original defective corporate
20 action shall be valid as of the time taken.

21 **"§ 55-1-66. Filings.**

22 (a) If the defective corporate action ratified under this Part would have required under
23 any other section of this Chapter a filing in accordance with this Chapter, then, whether or not a
24 filing was previously made in respect of the defective corporate action and in lieu of a filing
25 otherwise required by this Chapter, the corporation shall file articles of validation in accordance
26 with this section, and the articles of validation shall serve to amend or substitute for any other
27 filing with respect to the defective corporate action required by this Chapter.

28 (b) The articles of validation shall set forth all of the following:

- 29 (1) The defective corporate action that is the subject of the articles of validation,
30 including, in the case of any defective corporate action involving the
31 issuance of putative shares, the number and type of putative shares issued
32 and the date or dates upon which the putative shares were purported to have
33 been issued.
34 (2) The date of the defective corporate action.
35 (3) The nature of the failure of authorization in respect of the defective
36 corporate action.
37 (4) A statement that the defective corporate action was ratified in accordance
38 with G.S. 55-1-62, including the date on which the board of directors ratified
39 the defective corporate action and the date, if any, on which the shareholders
40 approved the ratification of the defective corporate action.
41 (5) The information required by subsection (c) of this section.

42 (c) The articles of validation shall also contain all of the following information that is
43 applicable:

- 44 (1) If a filing was previously made in respect of the defective corporate action
45 and no changes to the filing are required to give effect to the ratification of
46 the defective corporate action in accordance with G.S. 55-1-62, the articles
47 of validation shall set forth (i) the name, title, and filing date of the filing
48 previously made and any articles of correction thereto and (ii) a statement
49 that a copy of the filing previously made, together with any articles of
50 correction thereto, is attached as an exhibit to the articles of validation.

- 1 (2) If a filing was previously made in respect of the defective corporate action
2 and the filing requires any change to give effect to the ratification of the
3 defective corporate action in accordance with G.S. 55-1-62, the articles of
4 validation shall set forth (i) the name, title, and filing date of the filing
5 previously made and any articles of correction thereto, (ii) a statement that a
6 filing containing all of the information required to be included under the
7 applicable section or sections of this Chapter to give effect to the defective
8 corporate action is attached as an exhibit to the articles of validation, and
9 (iii) the date and time that the filing is deemed to have become effective.
- 10 (3) If a filing was not previously made in respect of the defective corporate
11 action and the defective corporate action ratified under G.S. 55-1-62 would
12 have required a filing under any other section of this Chapter, the articles of
13 validation shall set forth (i) a statement that a filing containing all of the
14 information required to be included under the applicable section or sections
15 of this Chapter to give effect to the defective corporate action is attached as
16 an exhibit to the articles of validation and (ii) the date and time that the filing
17 is deemed to have become effective.

18 **§ 55-1-67. Judicial proceedings regarding validity of corporate actions.**

19 (a) Upon application to the Superior Court Division of the General Court of Justice by
20 the corporation, any successor entity to the corporation, a director of the corporation, any
21 shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the
22 corporation, including any shareholder, beneficial shareholder, or unrestricted voting trust
23 beneficial owner as of the date of the defective corporate action ratified under G.S. 55-1-62, or
24 any other person claiming to be substantially and adversely affected by a ratification under
25 G.S. 55-1-62, the appropriate court of the county where the corporation's principal office, or, if
26 none, its registered office, in this State is located, or, if the legal action is designated a
27 mandatory complex business case pursuant to G.S. 7A-45.4, the Business Court, may do all of
28 the following:

- 29 (1) Determine the validity and effectiveness of any corporate action or defective
30 corporate action.
- 31 (2) Determine the validity and effectiveness of any ratification under
32 G.S. 55-1-62.
- 33 (3) Determine the validity of any putative shares.

34 (b) In connection with an action under this section, the court may make findings or
35 orders and take into account any factors or considerations that it deems proper under the
36 circumstances.

37 (c) Service of process of the application under subsection (a) of this section on the
38 corporation may be made in any manner provided by State law or by rule of the applicable
39 court for service on the corporation, and no other party need be joined in order for the court to
40 adjudicate the matter. In an action filed by the corporation, the court may require that notice of
41 the action be provided to other persons specified by the court and permit the other persons to
42 intervene in the action.

43 (d) Notwithstanding any other provision of this section or otherwise under applicable
44 law, any action asserting that the ratification of any defective corporate action and any putative
45 shares issued as a result of the defective corporate action should not be effective, or should be
46 effective only on certain conditions, shall be brought within 120 days of the validation effective
47 time."

48 **SECTION 4.** G.S. 55-7-25 is amended by adding a new subsection to read:

49 "(f) Whenever a provision of this Chapter provides for voting by one or more series as
50 separate voting groups, unless otherwise provided in this Chapter, the requirement provided in
51 G.S. 55-10-04(c) for amendments of articles of incorporation apply to that provision."

1 **SECTION 5.** G.S. 55-7-30 reads as rewritten:

2 "**§ 55-7-30. Voting trusts.**

3 ...
4 (b) A voting trust becomes effective on the date the first shares subject to the trust are
5 registered in the trustee's name. ~~A voting trust is valid for not more than 10 years after its~~
6 ~~effective date unless extended under subsection (c).~~

7 (c) ~~All or some of the parties to a voting trust may extend it for additional terms of not~~
8 ~~more than 10 years each by signing an extension agreement and obtaining the voting trustee's~~
9 ~~written consent to the extension. An extension is valid for not more than 10 years from the date~~
10 ~~the first shareholder signs the extension agreement. The voting trustee must deliver copies of~~
11 ~~the extension agreement and list of beneficial owners to the corporation's principal office. An~~
12 ~~extension agreement binds only those parties signing it.~~

13 (d) Any limits on the duration of a voting trust shall be as set forth in the voting trust. A
14 voting trust that became effective prior to October 1, 2017, is valid for not more than 10 years
15 after its effective date unless the voting trust is amended to provide otherwise by agreement of
16 the parties to the voting trust. An amendment to a voting trust under this subsection shall bind
17 only those parties signing it. The voting trustee shall deliver copies of the amendment and a list
18 of beneficial owners signing it to the corporation's principal office."

19 **SECTION 6.** G.S. 55-7-31 reads as rewritten:

20 "**§ 55-7-31. Shareholders' agreements.**

21 (a) An agreement between two or more shareholders, if in writing and signed by the
22 parties thereto, may provide that in the exercise of any voting rights of shares held by the
23 parties, including any vote with respect to directors, ~~such~~the shares shall be voted as provided
24 by the agreement, or as the parties may agree, or as determined in accordance with any
25 procedure (including arbitration) specified in the agreement. ~~Such agreement shall be valid as~~
26 ~~between the parties thereto for not more than 10 years from the date of its execution. A voting~~
27 ~~agreement created under this section may be extended or renewed in like manner as a voting~~
28 ~~trust may be extended or renewed as provided by G.S. 55-7-30 (c), but~~subsection is not
29 ~~otherwise~~ subject to the provisions of ~~G.S. 55-7-30.~~G.S. 55-7-30 and is specifically
30 enforceable.

31 (b) ~~Except in the case of a public corporation, no written agreement to which all of the~~
32 ~~shareholders have actually assented, whether embodied in the articles of incorporation or~~
33 ~~bylaws or in any side agreement in writing and signed by all the parties thereto, and which~~
34 ~~relates to any phase of the affairs of the corporation, whether to the management of its business~~
35 ~~or division of its profits or otherwise, shall be invalid as between the parties thereto, on the~~
36 ~~ground that it is an attempt by the parties thereto to treat the corporation as if it were a~~
37 ~~partnership or to arrange their relationships in a manner that would be appropriate between~~
38 ~~partners. A transferee of shares covered by such agreement who acquires them with knowledge~~
39 ~~thereof is bound by its provisions.~~Except for public corporations, an agreement among the
40 shareholders of a corporation that complies with this section and does any or all of the
41 following is effective among the shareholders and the corporation even though it is inconsistent
42 with one or more other provisions of this Chapter:

- 43 (1) Eliminates the board of directors or restricts the discretion or powers of the
44 board of directors.
- 45 (2) Governs the authorization or making of distributions, whether or not in
46 proportion to ownership of shares, subject to the limitations in G.S. 55-6-40.
- 47 (3) Establishes who shall be directors or officers of the corporation, or their
48 terms of office or manner of selection or removal.
- 49 (4) Governs, in general or in regard to specific matters, the exercise or division
50 of voting power by or between the shareholders and directors or by among
51 any of them, including use of weighted voting rights or director proxies.

- 1 (5) Establishes the terms and conditions of any agreement for the transfer or use
2 of property or the provision of services between or among the corporation
3 and any shareholder, director, officer, or employee of the corporation.
4 (6) Transfers to one or more shareholders or other persons all or part of the
5 authority to exercise the corporate powers or to manage the business and
6 affairs of the corporation, including the resolution of any issue about which
7 there exists a deadlock among directors or shareholders.
8 (7) Requires dissolution of the corporation at the request of one or more of the
9 shareholders or upon the occurrence of a specified event or contingency.
10 (8) Otherwise governs the exercise of the corporate powers or the management
11 of the business and affairs of the corporation or the relationship between or
12 among the shareholders, the directors, and the corporation and is not
13 contrary to public policy.

14 (e) ~~A written agreement between all or less than all of the shareholders, whether solely~~
15 ~~between themselves or between one or more of them and a party who is not a shareholder, is~~
16 ~~not invalid as between the parties thereto on the ground that it so relates to the conduct of the~~
17 ~~affairs of the corporation as to interfere with the discretion of the board of directors. The effect~~
18 ~~of any such agreement shall be to relieve the directors and impose upon the shareholders who~~
19 ~~are parties to the agreement the liability for managerial acts or omissions which is imposed on~~
20 ~~directors to the extent and so long as the discretion or powers of the board in its management of~~
21 ~~corporate affairs is controlled by such agreement.~~

22 (d) Both of the following requirements apply to an agreement authorized by subsection
23 (b) of this section:

- 24 (1) The agreement shall be set forth (i) in the articles of incorporation or bylaws
25 and approved by all persons who are shareholders at the time of the
26 agreement or (ii) in a written document that is signed by all persons who are
27 shareholders at the time of the agreement and is made known to the
28 corporation.
29 (2) The agreement is subject to amendment only by all persons who are
30 shareholders at the time of the amendment unless the agreement provides
31 otherwise.

32 (e) The existence of an agreement authorized by subsection (b) of this section shall be
33 noted conspicuously on the front or back of each certificate for outstanding shares or on the
34 information statement required by G.S. 55-6-26(b). If, at the time of the agreement, the
35 corporation has shares outstanding represented by certificates, the corporation shall recall the
36 outstanding certificates and issue substitute certificates that comply with this subsection. The
37 failure to note the existence of the agreement on the certificate or information statement shall
38 not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of
39 shares who, at the time of purchase, did not have knowledge of the existence of the agreement
40 is entitled to rescission of the purchase. A purchaser is deemed to have knowledge of the
41 existence of the agreement if its existence is noted on the certificate or information statement
42 for the shares in compliance with this subsection and, if the shares are not represented by a
43 certificate, the information statement is delivered to the purchaser at or prior to the time of
44 purchase of the shares. An action to enforce the right of rescission authorized by this subsection
45 shall be commenced within the earlier of 90 days after discovery of the existence of the
46 agreement or two years after the time of purchase of the shares.

47 (f) An agreement authorized by subsection (b) of this section shall cease to be effective
48 when the corporation becomes a public corporation. If the agreement ceases to be effective for
49 any reason, the board of directors may, if the agreement is contained or referred to in the
50 corporation's articles of incorporation or bylaws, adopt an amendment to the articles of

1 incorporation or bylaws, without shareholder action, to delete the agreement and any references
 2 to it.

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

8 (h) Incorporators or subscribers for shares may act as shareholders with respect to an
 9 agreement authorized by subsection (b) of this section if no shares have been issued when the
 10 agreement is made.

11 (i) A written agreement between all or less than all of the shareholders, whether solely
 12 between themselves or between one or more of them and a party who is not a shareholder, is
 13 not invalid as between the parties thereto on the ground that it relates to the conduct of the
 14 affairs of the corporation so as to limit the discretion or powers of the board of directors. The
 15 effect of the agreement is to relieve the directors of, and impose upon the person or persons in
 16 whom the discretion or powers are vested, liability for managerial acts or omissions that are
 17 imposed on directors to the extent and so long as the discretion or powers of the board of
 18 directors in its management of corporate affairs is controlled by the agreement.

19 (j) Any limits on the duration of any agreement authorized by this section shall be set
 20 forth in the agreement. A voting agreement authorized by subsection (a) of this section that
 21 became effective prior to October 1, 2017, is valid as between the parties thereto for not more
 22 than 10 years after its effective date or, if later, the effective date of the most recent extension
 23 or renewal of the voting agreement, unless it is amended after October 1, 2017, to provide
 24 otherwise by agreement of the parties thereto. An amendment to a voting agreement under this
 25 subsection shall bind only those parties signing it."

26 **SECTION 7.** G.S. 55-8-11 reads as rewritten:

27 **"§ 55-8-11. Compensation of directors.**

28 Unless the articles of incorporation or bylaws provide otherwise, the board of ~~directors~~
 29 ~~directors, without regard to personal interest, may fix the compensation of ~~directors~~ directors~~
 30 ~~for services in any capacity. The compensation established pursuant to this section of directors~~
 31 ~~of a public corporation or of a corporation that so provides in its articles of incorporation is~~
 32 ~~presumed to be fair to the corporation unless proven not to be fair to the corporation by a~~
 33 ~~preponderance of the evidence."~~

34 **SECTION 8.** G.S. 55-8-24(d) reads as rewritten:

35 "(d) A director who is present at a meeting of the board of directors or a committee ~~or~~
 36 ~~subcommittee~~ of the board of directors when corporate action is taken is deemed to have
 37 assented to the action taken ~~unless~~ unless any of the following requirements are met:

- 38 (1) ~~He~~The director objects at the beginning of the meeting (or promptly upon
 39 ~~his~~the director's arrival) to holding it or transacting business at the
 40 ~~meeting~~meeting.
- 41 (2) ~~His~~The director's dissent or abstention from the action taken is entered in the
 42 minutes of the ~~meeting~~ or meeting.
- 43 (3) ~~He~~The director files written notice of ~~his~~the director's dissent or abstention
 44 with the presiding officer of the meeting before its adjournment or with the
 45 corporation immediately after adjournment of the meeting. The right of
 46 dissent or abstention is not available to a director who votes in favor of the
 47 action taken."

48 **SECTION 9.** G.S. 55-8-25 reads as rewritten:

49 **"§ 55-8-25. Committees.**

50 (a) Unless this Chapter, the articles of incorporation, or the bylaws provide otherwise, a
 51 board of directors may create one or more committees and appoint one or more members of the

1 board of directors to serve on ~~any such~~the committee. Unless otherwise provided in the articles
 2 of incorporation, the bylaws, or the resolution of the board of directors designating the
 3 committee, a committee, by action of a majority of its members then in office when the action
 4 is taken, may create one or more subcommittees consisting of one or more members of the
 5 committee and delegate to the one or more subcommittees any or all of the powers and
 6 authority of the committee.

7 (b) Unless this Chapter provides otherwise, the creation of a committee and
 8 appointment of members to it ~~must~~shall be approved by the greater ~~of~~of either of the
 9 following:

10 (1) A majority of all the directors in office when the action is ~~taken; or~~taken.

11 (2) The number of directors required by the articles of incorporation or bylaws
 12 to take action under G.S. 55-8-24.

13 ...
 14 (c) G.S. 55-8-20 through G.S. 55-8-24 apply both to committees and subcommittees of
 15 the board of directors and to their members.

16 ...
 17 (f) The creation of, delegation of authority to, or action by a committee or
 18 subcommittee does not alone constitute compliance by a director with the standards of conduct
 19 described in G.S. 55-8-30.

20 (g) The board of directors may appoint one or more directors as alternate members of
 21 any committee, who may replace any absent or disqualified member at any meeting of the
 22 committee, or a subcommittee of the committee, during the member's absence or
 23 disqualification."

24 **SECTION 10.** G.S. 55-8-30 reads as rewritten:

25 **"§ 55-8-30. General standards for directors.**

26 (a) A director shall discharge ~~his~~the director's duties as a director, including ~~his~~the
 27 director's duties as a member of a ~~committee;~~committee or subcommittee, in accordance with
 28 all of the following:

29 (1) In good ~~faith;~~faith.

30 (2) With the care an ordinarily prudent person in a like position would exercise
 31 under similar ~~circumstances; and~~circumstances.

32 (3) In a manner ~~he~~the director reasonably believes to be in the best interests of
 33 the corporation.

34 (b) In discharging ~~his duties~~the duties of a director's office, a director is entitled to rely
 35 on information, opinions, reports, or statements, including financial statements and other
 36 financial data, if prepared or presented ~~by;~~by any of the following:

37 (1) One or more officers or employees of the corporation whom the director
 38 reasonably believes to be reliable and competent in the matters
 39 ~~presented;~~presented.

40 (2) Legal counsel, public accountants, or other persons as to matters the director
 41 reasonably believes are within their professional or expert ~~competence;~~
 42 ~~or~~competence.

43 (3) A committee or subcommittee of the board of directors of which ~~he~~the
 44 director is not a member if the director reasonably believes the committee or
 45 subcommittee merits confidence.

46 (c) A director is not entitled to the benefit of subsection (b) of this section if ~~he~~the
 47 director has actual knowledge concerning the matter in question that makes reliance otherwise
 48 permitted by subsection (b) of this section unwarranted.

49 (d) A director is not liable for (i) any action taken as a director, or any failure to take
 50 any action, if ~~he~~the director performed the duties of ~~his~~the director's office in compliance with
 51 this section. ~~section~~ or (ii) any failure to offer the corporation the right to have or participate in a

1 business opportunity prior to the pursuit or taking of the opportunity by the director or other
2 person if the corporation's articles of incorporation include a provision authorized by
3 G.S. 55-2-02(b)(4) and the procedures and approvals required by the provision, if any, were
4 complied with or obtained prior to the pursuit or taking of the opportunity by the director or
5 other person. The duties of a director weighing a change of control situation shall not be any
6 different, nor the standard of care any higher, than otherwise provided in this section."

7 **SECTION 11.** G.S. 55-8-31 reads as rewritten:

8 "**§ 55-8-31. Director conflict of interest.**

9 (a) A conflict of interest transaction is a transaction with the corporation in which a
10 director of the corporation has a direct or indirect interest. A conflict of interest transaction is
11 not voidable by the corporation solely because of the director's interest in the transaction if any
12 one of the following is true:

13 (1) The material facts of the transaction and the director's interest were disclosed
14 or known to the board of directors or a committee or subcommittee of the
15 board of directors and the board of ~~directors or committee~~ directors, or the
16 committee or subcommittee of the board of directors, authorized, approved,
17 or ratified the ~~transaction;~~ transaction.

18 (2) The material facts of the transaction and the director's interest were disclosed
19 or known to the shareholders entitled to vote and they authorized, approved,
20 or ratified the ~~transaction;~~ or transaction.

21 (3) The transaction was fair to the corporation.

22 (b) For purposes of this section, a director of the corporation has an indirect interest in a
23 transaction ~~if either of the following is true:~~

24 (1) Another entity in which ~~he~~ the director has a material financial interest or in
25 which ~~he~~ the director is a general partner is a party to the ~~transaction;~~
26 ~~or transaction.~~

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

30 (c) For purposes of ~~subsection~~ subdivision (a)(1) of this section, a conflict of interest
31 transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of
32 the directors on the board of directors (or on the committee or subcommittee) who have no
33 direct or indirect interest in the transaction. If a majority of the directors who have no direct or
34 indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum
35 is present for the purpose of taking action under this section. The presence of, or a vote cast by,
36 a director with a direct or indirect interest in the transaction does not affect the validity of any
37 action taken under ~~subsection~~ subdivision (a)(1) of this section if the transaction is otherwise
38 authorized, approved, or ratified as provided in that ~~subsection.~~ subdivision.

39 "...."

40 **SECTION 12.** G.S. 55-8-42(d) reads as rewritten:

41 "(d) An officer is not liable for (i) any action taken as an officer, or any failure to take
42 any action, if ~~he~~ the officer performed the duties of ~~his~~ the officer's office in compliance with
43 this ~~section.~~ section or (ii) any failure to offer the corporation the right to have or participate in a
44 business opportunity prior to the pursuit or taking of the opportunity by the officer or other
45 person if the corporation's articles of incorporation include a provision authorized by
46 G.S. 55-2-02(b)(4) and the procedures and approvals required by the provision, if any, were
47 complied with or obtained prior to the pursuit or taking of the opportunity by the officer or
48 other person."

49 **SECTION 13.** G.S. 55-8-58 reads as rewritten:

50 "**§ 55-8-58. Application of Part.**

1 (a) ~~If~~Subject to subsection (d) of this section, if the articles of incorporation limit
2 indemnification or advance for expenses, indemnification and advance for expenses are valid
3 only to the extent consistent with the articles.

4 (b) This Part does not limit a corporation's power to pay or reimburse expenses incurred
5 by a director in connection with ~~his~~the director's appearance as a witness in a proceeding at a
6 time when ~~he~~the director has not been made a named defendant or respondent to the
7 proceeding.

8 ...
9 (d) A right of indemnification, or to advances for expenses, created by this Part or under
10 G.S. 55-8-57(a) and in effect at the time of an act or omission, shall not be eliminated or
11 impaired with respect to the act or omission by an amendment of the articles of incorporation or
12 bylaws or a resolution of the directors or shareholders, adopted after the occurrence of the act
13 or omission, unless, in the case of a right created under G.S. 55-8-57(a), the provision creating
14 the right and in effect at the time of the act or omission explicitly authorizes the elimination or
15 impairment of the right after the act or omission has occurred."

16 **SECTION 14.** G.S. 55-10-03(b) reads as rewritten:

17 "(b) Except as provided in ~~G.S. 55-10-02, G.S. 55-7-31(f), 55-10-02, 55-10-07, and~~
18 55-14A-01, after adopting the proposed amendment the board of directors shall submit the
19 amendment to the shareholders for their approval. The board of directors shall also transmit to
20 the shareholders a recommendation that the shareholders approve the amendment, unless one of
21 the following circumstances exist, in which event the board of directors shall communicate the
22 basis for not recommending approval of the amendment to the shareholders at the time it
23 submits the amendment to the shareholders:

24"

25 **SECTION 15.** G.S. 55-10-20(a) reads as rewritten:

26 "(a) A corporation's board of directors may amend or repeal the corporation's bylaws,
27 except to the extent otherwise provided in the articles of incorporation or a bylaw adopted by
28 the shareholders or this Chapter, and except that a bylaw adopted, amended or repealed by the
29 shareholders may not be readopted, amended or repealed by the board of directors if neither the
30 articles of incorporation nor a bylaw adopted by the shareholders authorizes the board of
31 directors to adopt, amend or repeal that particular bylaw or the bylaws generally. The
32 limitations set forth in this subsection on the ability of a corporation's board of directors to
33 amend or repeal the corporation's bylaws shall not apply to any amendment to the extent that it
34 is effected pursuant to G.S. 55-7-31(f)."

35 **SECTION 16.** G.S. 55-11-01(b) reads as rewritten:

36 "(b) The plan of merger ~~must~~shall set ~~forth~~forth all of the following:

- 37 (1) The name of each corporation planning to merge and the name of the
38 surviving corporation into which each other corporation plans to
39 ~~merge~~merge.
- 40 (2) The terms and conditions of the ~~merger~~and merger.
- 41 (3) The manner and basis of converting the shares of each corporation into
42 shares, obligations, or other securities of the surviving or any other
43 ~~corporation~~corporation, or into cash or other property in whole or ~~part~~part,
44 or of cancelling the shares."

45 **SECTION 17.** G.S. 55-11-03 reads as rewritten:

46 "**§ 55-11-03. Action on plan.**

47 (a) After adopting a plan of merger or share exchange, the board of directors of each
48 corporation party to the merger, and the board of directors of the corporation whose shares will
49 be acquired in the share exchange, shall submit the plan of merger (except as provided in
50 ~~subsection (g))~~subsections (g) and (j) of this section and in G.S. 55-11-04) or share exchange
51 for approval by its shareholders.

1 (b) The following requirements shall be met for a plan of merger or share exchange to
2 be approved:

- 3 (1) ~~The board of directors shall recommend to that the shareholders that approve~~
4 ~~the plan of merger or share exchange be approved, or, in the case of an offer~~
5 ~~referred to in subdivision (2) of subsection (j) of this section, that the~~
6 ~~shareholders tender their shares to the offeror in response to the offer, unless~~
7 ~~one of the following circumstances exist, in which event the board of~~
8 ~~directors shall communicate to the shareholders the basis for not~~
9 ~~recommending approval of that the shareholders approve the plan of merger~~
10 ~~or share exchange to the shareholders or tender their shares to the offeror in~~
11 ~~response to the offer at the time it submits to the shareholders the plan of~~
12 ~~merger or share exchange to the shareholders; or communicates with the~~
13 ~~shareholders regarding an offer referred to in subdivision (2) of subsection~~
14 ~~(j) of this section:~~
15 a. The board of directors determines that, because of a conflict of
16 interest or other special circumstances, it should not make a
17 recommendation that the shareholders approve the plan of merger or
18 share ~~exchange~~ exchange or, in the case of an offer referred to in
19 ~~subdivision (2) of subsection (j) of this section, that the shareholders~~
20 ~~tender their shares to the offeror in response to the offer.~~
21 b. G.S. 55-8-26 applies.

22 ...

23 (j) Unless the articles of incorporation otherwise provide, approval by the corporation's
24 shareholders of a plan of merger or share exchange is not required if all of the following
25 requirements are met:

- 26 (1) The plan of merger or share exchange expressly (i) permits or requires the
27 merger or share exchange to be effected under this subsection and (ii)
28 provides that, if the merger or share exchange is to be effected under this
29 subsection, the merger or share exchange shall be effected as soon as
30 practicable following the satisfaction of the requirement set forth in
31 subdivision (6) of this subsection.
32 (2) Another party to the merger or share exchange, or a parent of another party
33 to the merger or share exchange, makes an offer to purchase, on the terms
34 provided in the plan of merger or share exchange, any and all of the
35 outstanding shares of the corporation that, absent this subsection, would be
36 entitled to vote on the plan of merger or share exchange, except that the offer
37 may exclude shares of the corporation that are owned at the commencement
38 of the offer by the corporation, the offeror, or any parent of the offeror, or by
39 any wholly owned subsidiary of the corporation, the offeror, or any parent of
40 the offeror.
41 (3) The offer discloses that the plan of merger or share exchange provides that
42 the merger or share exchange shall be effected as soon as practicable
43 following the satisfaction of the requirement set forth in subdivision (6) of
44 this subsection and that the shares of the corporation that are not tendered in
45 response to the offer shall be treated as set forth in subdivision (8) of this
46 subsection.
47 (4) The offer remains open for at least 10 days.
48 (5) The offeror purchases all shares properly tendered in response to the offer
49 and not properly withdrawn.
50 (6) Any or all of the following types of shares are collectively entitled to cast at
51 least the minimum number of votes on the merger or share exchange that,

absent this subsection, would be required by Articles 9 and 11 of this Chapter and by the articles of incorporation of the corporation for the approval of the merger or share exchange by the shareholders and by any other voting group entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote on the approval were present and voted:

- a. Shares purchased by the offeror in accordance with the offer.
- b. Shares otherwise owned by the offeror or by any parent or wholly owned subsidiary of the offeror.
- c. Shares subject to an agreement to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of the offeror in exchange for stock or other equity interests in the offeror, parent, or subsidiary.

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

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

(k) The following definitions apply in subsection (j) of this section:

(1) Offer. – The offer referred to in subdivision (2) of subsection (j) of this section.

(2) Offeror. – The person making the offer.

(3) Parent. – A person that owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares of or interests in an entity.

(4) Purchased. – Shares tendered in response to an offer are deemed to have been purchased in accordance with the offer at the earliest time as of which (i) the offeror has irrevocably accepted those shares for payment and (ii) either of the following has occurred:

a. In the case of shares represented by certificates, the offeror, or the offeror's designated depository or other agent, has physically received the certificates representing those shares.

b. In the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent, or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent.

(5) Wholly owned subsidiary of a person. – An entity of or in which that person owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares or other interests."

SECTION 18. The title of G.S. 55-11-04 reads as rewritten:

"§ 55-11-04. **Merger between parent corporation and subsidiary or between subsidiaries.**"

SECTION 19. G.S. 55-11-06(a) reads as rewritten:

1 "(a) When a merger pursuant to G.S. 55-11-01, 55-11-04, 55-11-07, or 55-11-09, or
2 ~~55-11-11~~55-11-20 takes effect:

3 "...."

4 **SECTION 20.** G.S. 55-11-10(c) reads as rewritten:

5 "(c) Each merging domestic corporation and each other merging business entity shall
6 approve a written plan of merger ~~containing~~containing all of the following:

- 7 (1) For each merging business entity, its name, type of business entity, and the
8 state or country whose laws govern its organization and internal
9 ~~affairs~~affairs.
- 10 (2) The name of the merging business entity that shall survive the ~~merger~~;
11 merger and, if the surviving business entity is not authorized to transact
12 business or conduct affairs in this State, a designation of its mailing address
13 and a commitment to file with the Secretary of State a statement of any
14 subsequent change in its mailing address.
- 15 (3) The terms and conditions of the ~~merger~~merger.
- 16 (4) The manner and basis ~~for~~of converting the interests in each merging
17 business entity into interests, obligations, or securities of the surviving
18 business ~~entity~~entity, or into cash or other property in whole or in ~~part~~;
19 ~~and~~part, or of cancelling the interests.

20 "...."

21 **SECTION 21.** Subsections (e) and (e1) of G.S. 55-11-10 are repealed.

22 **SECTION 22.** G.S. 55-11-11 is recodified as G.S. 55-11-20.

23 **SECTION 23.** Article 11 of Chapter 55 of the General Statutes is amended by
24 adding two new sections to read:

25 **"§ 55-11-12. Merger between parent unincorporated entity and subsidiary corporation or**
26 **corporations.**

27 (a) Subject to the other provisions of this section and Article 9 of this Chapter, a parent
28 unincorporated entity owning shares of a domestic subsidiary corporation that carry at least
29 ninety percent (90%) of the voting power of each class and series of the outstanding shares of
30 the subsidiary corporation and that have the power to vote in the election of directors at the
31 time of a merger under this section may merge the subsidiary corporation or corporations into
32 itself, or merge itself and one or more subsidiary corporations into another subsidiary
33 corporation, without approval of the board of directors or shareholders of the subsidiary
34 corporation or corporations, unless the articles of incorporation for the subsidiary corporation
35 or corporations require approval of the shareholders of the subsidiary corporation or
36 corporations, if both of the following requirements are met:

- 37 (1) The merger is permitted by the laws of the state or country governing the
38 organization and internal affairs of each merging business entity.
- 39 (2) Each merging business entity complies with the requirements of this section
40 and, to the extent applicable, the laws referred to in subdivision (1) of this
41 subsection.

42 (b) If any shareholder of the domestic subsidiary corporation, other than the parent
43 unincorporated entity, has or will have personal liability for any existing or future obligation of
44 the surviving business entity solely as a result of holding an interest in the surviving business
45 entity, then the plan of merger under subsection (a) of this section shall require the affirmative
46 approval, by vote or written consent, of that shareholder.

47 (c) If the parent unincorporated entity does not own all the outstanding stock of the
48 subsidiary corporation, the surviving business entity shall, within 10 days after the effective
49 date of the merger, notify each shareholder of the subsidiary corporation as of the effective date
50 of the merger, that the merger has become effective.

1 (d) The surviving business entity shall deliver articles of merger to the Secretary of
2 State for filing. The articles of merger shall set forth all of the following:

3 (1) For each merging business entity, its name, type of business entity, and the
4 state or country whose laws govern its organization and internal affairs.

5 (2) The terms and conditions of the merger.

6 (3) The manner and basis of converting the interests in each merging business
7 entity into interests, obligations, or securities of the surviving business
8 entity, or into cash or other property in whole or in part, or of cancelling the
9 interests.

10 (4) The name of the merging business entity that shall survive the merger and, if
11 the surviving business entity is not authorized to transact business or conduct
12 affairs in this State, a designation of its mailing address and a commitment to
13 file with the Secretary of State a statement of any subsequent change in its
14 mailing address.

15 (5) If the surviving business entity is a domestic corporation, any amendment to
16 its articles of incorporation as provided in a plan of merger or board
17 resolution.

18 (e) The provisions of the articles of merger may be made dependent on facts objectively
19 ascertainable outside the articles of merger if the articles of merger set forth the manner in
20 which the facts will operate upon the affected provisions. The facts may include any of the
21 following:

22 (1) Statistical or market indices, market prices of any security or group of
23 securities, interest rates, currency exchange rates, or similar economic or
24 financial data.

25 (2) A determination or action by the corporation or by any other person, group,
26 or body.

27 (3) The terms of, or actions taken under, an agreement to which the corporation
28 is a party, or any other agreement or document.

29 (f) A merger takes effect when the articles of merger become effective.

30 **"§ 55-11-13. Effect of merger with unincorporated entity.**

31 (a) Upon taking effect, a merger pursuant to G.S. 55-11-10 or 55-11-12 shall have all of
32 the following effects:

33 (1) Each other merging business entity merges into the surviving business
34 entity, and the separate existence of each merging business entity, except the
35 surviving business entity, ceases.

36 (2) The title to all real estate and other property owned by each merging
37 business entity is vested in the surviving business entity without reversion or
38 impairment.

39 (3) The surviving business entity has all liabilities of each merging business
40 entity.

41 (4) A proceeding pending by or against any merging business entity may be
42 continued as if the merger did not occur, or the surviving business entity
43 may be substituted in the proceeding for a merging business entity whose
44 separate existence ceases in the merger.

45 (5) If a domestic corporation is the surviving business entity, its articles of
46 incorporation shall be amended to the extent provided in the articles of
47 merger.

48 (6) The interests in each merging business entity that are to be converted into
49 interests, obligations, or securities of the surviving business entity, or into
50 the right to receive cash or other property, are thereupon so converted, and
51 the former holders of the interests are entitled only to the rights provided to

1 them in the plan of merger, resolution, or, in the case of former holders of
2 shares in a domestic corporation, any rights they may have under Article 13
3 of this Chapter.

4 (7) If the surviving business entity is not a domestic corporation, the surviving
5 business entity is deemed to agree that it will promptly pay to the
6 shareholders of any merging domestic corporation exercising appraisal rights
7 the amount, if any, to which they are entitled under Article 13 of this
8 Chapter and otherwise to comply with the requirements of Article 13 of this
9 Chapter as if it were a surviving domestic corporation in the merger.

10 (b) The merger shall not affect the liability or absence of liability of any holder of an
11 interest in a merging business entity for any acts, omissions, or obligations of any merging
12 business entity made or incurred prior to the effectiveness of the merger. The cessation of
13 separate existence of a merging business entity in the merger shall not constitute a dissolution
14 or termination of the merging business entity.

15 (c) If the surviving business entity is not a domestic limited liability company, a
16 domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership,
17 when the merger takes effect the surviving business entity is deemed to have done both of the
18 following:

19 (1) Agreed that it may be served with process in this State in any proceeding for
20 enforcement of (i) any obligation of any merging domestic limited liability
21 company, domestic corporation, domestic nonprofit corporation, domestic
22 limited partnership, or other partnership as defined in G.S. 59-36 that is
23 formed under the laws of this State, (ii) the appraisal rights of shareholders
24 of any merging domestic corporation under Article 13 of this Chapter, and
25 (iii) any obligation of the surviving business entity arising from the merger.

26 (2) Appointed the Secretary of State as its agent for service of process in the
27 proceeding. Service on the Secretary of State of process shall be made by
28 delivering to and leaving with the Secretary of State, or with any clerk
29 authorized by the Secretary of State to accept service of process, duplicate
30 copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt
31 of service of process on behalf of a surviving business entity in the manner
32 provided for in this section, the Secretary of State shall immediately mail a
33 copy of the process by registered or certified mail, return receipt requested,
34 to the surviving business entity. If the surviving business entity is authorized
35 to transact business or conduct affairs in this State, the address for mailing
36 shall be its principal office designated in the latest document filed with the
37 Secretary of State that is authorized by law to designate the principal office
38 or, if there is no principal office on file, its registered office. If the surviving
39 business entity is not authorized to transact business or conduct affairs in this
40 State, the address for mailing shall be the mailing address designated
41 pursuant to G.S. 55-11-10(c)(2) or G.S. 55-11-12(d)(4)."

42 **SECTION 24.** 55-13-01(7) reads as rewritten:

43 "(7) Interested transaction. – A corporate action described in G.S. 55-13-02(a),
44 other than a merger pursuant to ~~G.S. 55-11-04,~~ G.S. 55-11-04 or
45 G.S. 55-11-12, involving an interested person and in which any of the shares
46 or assets of the corporation are being acquired or converted. As used in this
47 definition, the following definitions apply:

48"

49 **SECTION 25.** G.S. 55-13-02 reads as rewritten:

50 "§ 55-13-02. Right to appraisal.

1 (a) In addition to any rights granted under ~~Article 9, Article 9~~ of this Chapter, a
2 shareholder is entitled to appraisal rights and to obtain payment of the fair value of that
3 shareholder's shares, in the event of any of the following corporate actions:

4 (1) Consummation of a merger to which the corporation is a party if either (i)
5 shareholder approval is required for the merger by G.S. 55-11-03 ~~and the~~
6 ~~shareholder is entitled to vote on the merger, or would be required but for~~
7 the provisions of G.S. 55-11-03(j), except that appraisal rights shall not be
8 available to any shareholder of the corporation with respect to shares of any
9 class or series that remain outstanding after consummation of the merger or
10 (ii) the corporation is a subsidiary and the merger is governed by
11 ~~G.S. 55-11-04, G.S. 55-11-04 or G.S. 55-11-12.~~

12 (2) Consummation of a share exchange to which the corporation is a party as the
13 corporation whose shares will be ~~acquired if the shareholder is entitled to~~
14 ~~vote on the exchange, acquired,~~ except that appraisal rights shall not be
15 available to any shareholder of the corporation with respect to any class or
16 series of shares of the corporation that is not exchanged.

17 (3) Consummation of a disposition of assets pursuant to ~~G.S. 55-12-02 if the~~
18 ~~shareholder is entitled to vote on the disposition.~~ G.S. 55-12-02.

19 ...

20 (b) Notwithstanding subsection (a) of this section, the availability of appraisal rights
21 under subdivisions (1), (2), (3), (4), (6), and (8) of subsection (a) of this section shall be limited
22 in accordance with the following provisions:

23 ...

24 (2) The applicability of subdivision (1) of this subsection shall be determined as
25 of (i) the record date fixed to determine the shareholders entitled to receive
26 notice of, and to vote at, the meeting of shareholders to act upon the
27 corporate action requiring appraisal rights or, in the case of an offer made
28 pursuant to G.S. 55-11-03(j), the date of the offer, or (ii) the day before the
29 effective date of such the corporate action if there is no meeting of
30 ~~shareholders.~~ shareholders and no offer made pursuant to G.S. 55-11-03(j).

31 ...

32 (c) Notwithstanding any other provision of this section, the articles of incorporation as
33 originally filed or any amendment to the articles may limit or eliminate appraisal rights for any
34 class or series of preferred shares. Any shares with respect to any corporate action, except that
35 (i) no limitation or elimination shall be effective if the class or series does not have the right to
36 vote separately as a voting group, alone or as part of a group, on the corporate action or if the
37 corporate action is an amendment to the articles of incorporation that changes the corporation
38 into a nonprofit corporation or a cooperative organization, and (ii) any limitation or elimination
39 contained in an amendment to the articles of incorporation that limits or eliminates appraisal
40 rights for any shares that are outstanding immediately prior to the effective date of the
41 amendment amendment, or that the corporation is or may be required to issue or sell thereafter
42 pursuant to any conversion, exchange, or other right existing immediately before the effective
43 date of the amendment, however, shall not apply to any corporate action that becomes effective
44 within one year of that date if the corporate action would otherwise afford appraisal rights.

45 (d) ~~A shareholder holding shares of a class or series that were issued and outstanding as~~
46 ~~of the effective date of this act but that did not as of that date entitle the shareholder to vote on~~
47 ~~a corporate action described in subdivision (a)(1), (2), or (3) of this section shall be entitled to~~
48 ~~appraisal rights, and to obtain payment of the fair value of the shareholder's shares of such class~~
49 ~~or series, to the same extent as if such shares did entitle the shareholder to vote on such~~
50 ~~corporate action."~~

51 **SECTION 26.** G.S. 55-13-20 reads as rewritten:

1 **"§ 55-13-20. Notice of appraisal rights.**

2 (a) If any corporate action specified in G.S. 55-13-02(a) is to be submitted to a vote at a
3 shareholders' ~~meeting, meeting,~~ or where no approval of the action is required pursuant to
4 G.S. 55-11-03(j), the meeting notice or, if applicable, the offer made pursuant to
5 G.S. 55-11-03(j), mustshall state that the corporation has concluded that shareholders are, are
6 not, or may be entitled to assert appraisal rights under this Article. If the corporation concludes
7 that appraisal rights are or may be available, a copy of this Article ~~must~~shall accompany the
8 meeting notice or offer sent to those record shareholders entitled to exercise appraisal rights.

9 (b) In a merger pursuant to ~~G.S. 55-11-04,~~ G.S. 55-11-04 or G.S. 55-11-12, the parent
10 corporation ~~must~~shall notify in writing all record shareholders of the subsidiary who are
11 entitled to assert appraisal rights that the corporate action became effective. ~~In the case of any~~
12 ~~other corporate action specified in G.S. 55-13-02(a) with respect to which shareholders of a~~
13 ~~class or series do not have the right to vote, but with respect to which those shareholders are~~
14 ~~entitled to assert appraisal rights, the corporation must notify in writing all record shareholders~~
15 ~~of such class or series that the corporate action became effective.~~ Notice required under this
16 subsection ~~must~~shall be sent within 10 days after the corporate action became effective and
17 include the materials described in G.S. 55-13-22.

18 ...

19 (d) If any corporate action described in G.S. 55-13-02(a) is proposed, or a merger
20 pursuant to G.S. 55-11-04 or G.S. 55-11-12 is effected, then the notice or offer referred to in
21 subsection (a) or (c) of this section, if the corporation concludes that appraisal rights are or may
22 be available, and the notice referred to in subsection (b) of this ~~section~~section, shall be
23 accompanied by both of the following:

24 ...

25 (e) The right to receive the information described in ~~this~~ subsection (d) of this section
26 may be waived in writing by a shareholder before or after the corporate action."

27 **SECTION 27.** G.S. 55-13-21 reads as rewritten:

28 **"§ 55-13-21. Notice of intent to demand payment and consequences of voting or**
29 **consenting.**

30 (a) If a corporate action specified in G.S. 55-13-02(a) is submitted to a vote at a
31 shareholders' meeting, a shareholder ~~who is entitled to vote on the corporate action and who~~
32 wishes to assert appraisal rights with respect to any class or series of shares must do the
33 following:

34 ...

35 (b) If a corporate action specified in G.S. 55-13-02(a) is to be approved by less than
36 unanimous written consent, a shareholder ~~who is entitled to vote on the corporate action and~~
37 who wishes to assert appraisal rights with respect to any class or series of ~~shares~~ shares must
38 satisfy both of the following requirements:

39 (1) The shareholder must deliver to the corporation, before the proposed action
40 becomes effective, written notice of the shareholder's intent to demand
41 payment if the proposed action is effectuated, except that the written notice
42 is not required if the notice required by G.S. 55-13-20(c) is given less than
43 25 days prior to the date the proposed action is effectuated.

44 (2) ~~must~~ The shareholder must not execute a consent in favor of the proposed
45 action with respect to that class or series of shares.

46 (b1) If a corporate action specified in G.S. 55-13-02(a) does not require shareholder
47 approval pursuant to G.S. 55-11-03(j), a shareholder who wishes to assert appraisal rights with
48 respect to any class or series of shares must satisfy both of the following requirements:

49 (1) The shareholder must deliver to the corporation, before the shares are
50 purchased pursuant to the offer made consistent with subdivision (2) of

1 subsection (j) of G.S. 55-11-03, written notice of the shareholder's intent to
2 demand payment if the proposed action is effectuated.

3 (2) The shareholder must not tender, or cause or permit to be tendered, any
4 shares of the class or series in response to the offer.

5 (c) A shareholder who fails to satisfy the requirements of subsection (a) ~~or (b)~~(a), (b),
6 ~~or (b1)~~ of this section is not entitled to payment under this Article."

7 **SECTION 28.** G.S. 55-13-22(a) reads as rewritten:

8 "(a) If a corporate action requiring appraisal rights under G.S. 55-13-02(a) becomes
9 effective, the corporation must deliver a written appraisal notice and form required by
10 subdivision (b)(1) of this section to all shareholders who satisfied the requirements of
11 G.S. 55-13-21. In the case of a merger under ~~G.S. 55-11-04, G.S. 55-11-04~~ or G.S. 55-11-12,
12 the parent corporation must deliver a written appraisal notice and form to all record
13 shareholders of the subsidiary who may be entitled to assert appraisal rights. ~~In the case of any~~
14 ~~other corporate action specified in G.S. 55-13-02(a) that becomes effective and with respect to~~
15 ~~which shareholders of a class or series do not have the right to vote but with respect to which~~
16 ~~such shareholders are entitled to assert appraisal rights, the corporation must deliver a written~~
17 ~~appraisal notice and form to all record shareholders of such class or series who may be entitled~~
18 ~~to assert appraisal rights."~~

19 **SECTION 29.** G.S. 55A-11-09(c) reads as rewritten:

20 "(c) Each merging domestic nonprofit corporation and each other merging business
21 entity shall approve a written plan of merger ~~containing~~containing all of the following:

- 22 (1) For each merging business entity, its name, type of business entity, and the
23 state or country whose laws govern its organization and internal
24 ~~affairs;~~affairs.
25 (2) The name of the merging business entity that shall survive the
26 ~~merger;~~merger.
27 (3) The terms and conditions of the ~~merger;~~merger.
28 (4) The manner and basis ~~for~~of converting the interests in each merging
29 business entity into interests, obligations, or securities of the surviving
30 business ~~entity~~entity, or into cash or other property in whole or in ~~part;~~
31 ~~and~~part, or of cancelling the interests.

32 "...."

33 **SECTION 30.** G.S. 57D-9-41(a) reads as rewritten:

34 "(a) Each merging entity must approve a written plan of merger ~~the~~all of the
35 following:

- 36 ...
37 (4) The manner and basis ~~for~~of converting the interests in each merging entity
38 into interests, obligations, or securities of the surviving ~~entity~~entity, or into
39 cash or other property or any combination ~~thereof;~~thereof, or of cancelling
40 the interests.

41 "...."

42 **SECTION 31.** G.S. 59-73.31(a) reads as rewritten:

43 "(a) Each merging domestic partnership and each other merging business entity shall
44 approve a written plan of merger ~~containing~~containing all of the following:

- 45 (1) For each merging business entity, its name, type of business entity, and the
46 state or country whose laws govern its organization and internal
47 ~~affairs;~~affairs.
48 (2) The name of the merging business entity that shall survive the
49 ~~merger;~~merger.
50 (3) The terms and conditions of the ~~merger;~~ and merger.

- 1 (4) The manner and basis ~~for~~of converting the interests in each merging
2 business entity into interests, obligations, or securities of the surviving
3 business ~~entity~~entity, or into cash or other property in whole or in ~~part~~part,
4 or of cancelling the interests."

5 **SECTION 32.** G.S. 59-1071(a) reads as rewritten:

6 "(a) Each merging domestic limited partnership and each other merging business entity
7 shall approve a written plan of merger ~~containing~~containing all of the following:

- 8 (1) For each merging business entity, its name, type of business entity, and the
9 state or country whose laws govern its organization and internal
10 ~~affairs~~affairs.
11 (2) The name of the merging business entity that shall survive the
12 ~~merger~~merger.
13 (3) The terms and conditions of the ~~merger~~merger.
14 (4) The manner and basis ~~for~~of converting the interests in each merging
15 business entity into interests, obligations, or securities of the surviving
16 business ~~entity~~entity, or into cash or other property in whole or in ~~part~~part,
17 ~~and~~part, or of cancelling the interests.
18 (5) If the surviving business entity is a domestic limited partnership, any
19 amendments to its certificate of limited partnership that are to be made in
20 connection with the merger."

21 **SECTION 33.** The Revisor of Statutes may cause to be printed all relevant
22 portions of the Official Comments to the Model Business Corporation Act and all explanatory
23 comments of the drafters of this act as the Revisor deems appropriate.

24 **SECTION 33.1.** G.S. 55-1-40(13a) reads as rewritten:

25 "(13a) ~~An item is "mailed" when it is deposited.~~ "Mail," when used as a verb, means
26 to deposit in the United States mail with postage thereon prepaid and
27 correctly addressed. When a corporation mails an item to a shareholder,
28 "correctly addressed" means addressed to the shareholder's address as shown
29 in the corporation's current record of shareholders."

30 **SECTION 34.** This act becomes effective October 1, 2017.