

HOUSE No. 02774

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo M. Scaccia

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act making amendments to the Massachusetts business corporation act.

PETITION OF:

NAME:

Angelo M. Scaccia

William F. Galvin

DISTRICT/ADDRESS:

14th Suffolk

Secretary of the Commonwealth

HOUSE No. 02774

By Mr. Scaccia of Boston, a petition (accompanied by bill, House, No. 2774) of Angelo M. Scaccia and William F. Galvin relative to business corporations. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act making amendments to the Massachusetts business corporation act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1.40 of chapter 156D is hereby amended by striking out the word “stock”
2 in each place where it appears and inserting in place thereof the following word:- shares.

3 SECTION 2. Section 1.40 of Chapter 156D is hereby further amended by adding at the end of
4 subsection (a) the following paragraph:

5 “Voting power” means the current power to vote in the election of directors.

6 SECTION 3. Section 2.02(b)(4) of Chapter 156D is deleted in its entirety and replaced with the
7 following:—

8 (4) A provision eliminating or limiting the personal liability of a director to the corporation or its
9 shareholders for monetary damages for breach of fiduciary duty as a director notwithstanding
10 any provision of law imposing such liability; but the provision shall not eliminate or limit the
11 liability of a director (i) for any breach of the director’s duty of loyalty to the corporation or its

12 shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct
13 or a knowing violation of law, (iii) for improper distributions under section 6.40, or (iv) for any
14 transaction from which the director derived an improper personal benefit.

15 SECTION 4. Section 2.05 of chapter 156D is hereby amended by striking out the word “by-
16 laws” in each place where it appears and inserting in place thereof the following word:- bylaws.

17 SECTION 5. Section 2.05 of chapter 156D is hereby further amended by striking out the word
18 "and" in line 19 and inserting in place thereof the following word:- or.

19 SECTION 6. Section 3.02 of chapter 156D is hereby amended by striking out the word “stock”
20 in each place where it appears and inserting in place thereof the following word:- shares.

21 SECTION 7. Clause (1) of subsection (a) of section 4.01 of chapter 156D is hereby amended by
22 striking out its text in its entirety and inserting in place thereof the following words:- shall
23 contain the word “corporation,” “incorporated,” “company” or “limited” or the abbreviation
24 “corp,” “inc,” “co,” or “ltd,” or words or abbreviations of like import in another language; and

25 SECTION 8. Section 5.01 of Chapter 156D is deleted in its entirety and replaced by the
26 following:—

27 Section 5.01. REGISTERED OFFICE AND REGISTERED AGENT

28 Each corporation shall continuously maintain in the commonwealth:

29 (1) a registered office that may, but need not, be the same as any of its places of business; and

30 (2) a registered agent, who may be any of the following individuals or entities whose business
31 office is also the registered office of the corporation:

32 (i) an individual, including the secretary or another officer of the corporation;

33 (ii) a domestic corporation or not-for-profit domestic corporation;

34 (iii) a foreign corporation or not-for-profit foreign corporation qualified to do business in this
35 commonwealth; or

36 (iv) an other entity.

37 SECTION 9. Section 6.02 of chapter 156D is hereby amended by striking out the word
38 “recision” in line 40, and inserting in place thereof the following word:- rescission.

39 SECTION 10. Section 6.23(b) of Chapter 156D is deleted in its entirety and replaced by the
40 following:—

41 (b) Shares of 1 class or series shall not be issued as a share dividend in respect of shares of
42 another class or series unless (1) the articles of organization so authorize, (2) the holders of
43 shares holding the right to cast a majority of all the votes entitled to be cast by the class or series
44 to be issued approve the issue, or (3) there are no outstanding shares of the class or series to be
45 issued. In addition, shares of a class or series having preference over another class or series with
46 respect to distributions, including dividends and distributions upon the dissolution of the
47 corporation, shall not be issued as a share dividend in respect of shares of such other class or
48 series if there are at the time any outstanding shares of any third class or series as to which the
49 shares then to be issued have a right with respect to distributions which is prior, superior or
50 substantially equal unless (1) the articles of organization so authorize, or (2) the holders of shares
51 holding the right to cast a majority of all the votes entitled to be cast by the outstanding shares of
52 such third class or series approve the issue.

53 SECTION 11. Section 6.30(a) of Chapter 156D is deleted in its entirety and replaced by the
54 following:—

55 (a) The shareholders of a corporation shall not have a preemptive right to acquire the
56 corporation's unissued shares except to the extent the articles of organization so provide.

57 SECTION 12. Section 7.04(d) of Chapter 156D is deleted in its entirety and replaced by the
58 following:—

59 (d) If (1) this chapter requires that notice of a proposed action be given to nonvoting
60 shareholders and the action is to be taken by written consent of the voting shareholders, or (2)
61 action is taken by less than unanimous written consent of the voting shareholders, the
62 corporation shall give its nonvoting shareholders or its nonconsenting voting shareholders, as the
63 case may be, written notice of the action not more than 7 days after written consents sufficient to
64 take the action have been delivered to the corporation. The notice must reasonably describe the
65 action taken and contain or be accompanied by the same material that, under any provision of
66 this chapter, would have been required to be sent to nonvoting shareholders or to voting
67 shareholders, as the case may be, in a notice of a meeting at which the proposed action would
68 have been submitted to the shareholders for action.

69 (e) The notice requirements in subsection (d) shall not delay the effectiveness of actions taken
70 by written consent, and a failure to comply with such notice requirements shall not invalidate
71 actions taken by written consent, provided that this subsection shall not be deemed to limit
72 judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by
73 a failure to give such notice within the required time period.

74 SECTION 13. Section 7.07(c) of Chapter 156D is deleted in its entirety and replaced with the
75 following:—

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

80 SECTION 14. Section 7.08 of chapter 156D is hereby amended by striking out the word
81 "stockholder" in line 17, and inserting in place thereof the following word:- shareholder.

82 SECTION 15. Section 7.08 of chapter 156D is hereby further amended by striking out the word
83 "stockholder" in line 23, and inserting in place thereof the following word:- shareholder.

84 SECTION 16. Section 7.27(b) of Chapter 156D is deleted in its entirety and replaced by the
85 following:—

86 (b) If any provision of this chapter requires the affirmative vote of more than a majority of all the
87 votes entitled to be cast on a matter by any voting group, the articles of organization may provide
88 that action may be taken by the affirmative vote of a lesser proportion than the chapter specifies,
89 but not less than a majority of all the votes entitled to be cast on the matter by the voting group.

90 SECTION 17. Section 7.44(a) of Chapter 156D is deleted in its entirety and replaced with the
91 following:—

92 (a) A derivative proceeding shall be dismissed by the court on motion by the corporation if the
93 court finds that either: (1) 1 of the groups specified in subsections (b)(1) and (2) or (f) has
94 determined in good faith after conducting a reasonable inquiry upon which its conclusions are

95 based that the maintenance of the derivative proceeding is not in the best interests of the
96 corporation; or (2) shareholders specified in subsection (b)(3) have determined that the
97 maintenance of the derivative proceeding is not in the best interests of the corporation.

98 SECTION 18. Section 7.44(b)(3) of Chapter 156D is deleted in its entirety and replaced by the
99 following:—

100 (3) the affirmative vote of a majority of all the votes entitled to be cast on the matter, not
101 including the votes cast by holders of shares owned by or voted under the control of a
102 shareholder or related person who has or had a beneficial financial interest in the act or omission
103 complained of or other interest therein that would reasonably be expected to exert an influence
104 on that shareholder's or related person's judgment if called upon to vote in the determination.

105 SECTION 19. Section 7.44(e) of Chapter 156D is deleted in its entirety and replaced with the
106 following:—

107 (e) If a majority of the board of directors does not consist of independent directors at the time
108 the determination by independent directors is made, the corporation shall have the burden of
109 proving that the requirements of subsection (a) have been met and that the determination that
110 maintenance of the derivative proceeding is not in the best interests of the corporation was
111 reasonable and principled. If a majority of the board of directors consists of independent
112 directors at the time the determination is made or if the determination is made by shareholders
113 pursuant to clause (3) of subsection (b) or is made pursuant to subsection (f), the plaintiff shall
114 have the burden of proving that the requirements of subsection (a) have not been met and, if the
115 determination is made by a group specified in clauses (1) or (2) of subsection (b), that the

116 independent directors, in making the determination, have not met the standard set forth in
117 Section 8.30.

118 SECTION 20. Section 8.06 of chapter 156D is hereby amended by striking out the word “stock”
119 in line 38 and inserting in place thereof the following word:- shares.

120 SECTION 21. Sections 8.06(c)(1) and (2) are deleted in their entirety and replaced by the
121 following:—

122 (c) (1) Subsection (b) shall apply to every public corporation, whether or not notice of an annual
123 meeting of the public corporation has been given on or prior to the effective date of this chapter,
124 unless (i) the board of directors of the public corporation, or (ii) the holders of shares of each
125 class of shares outstanding holding the right to cast two-thirds of all the votes entitled to be cast
126 by the class, and the holders of two-thirds of the shares of each outstanding class of otherwise
127 non-voting shares, each voting as a separate voting group, shall at a meeting duly called for the
128 purpose of the vote adopt a vote providing that the corporation elects to be exempt from the
129 provisions of subsection (b). Upon adoption of the vote, subsection (b) shall, unless otherwise
130 provided in the vote, become immediately ineffective with respect to such public corporation and
131 the provisions of section 8.05 shall become immediately effective with respect to the corporation
132 as soon as subsection (b) of this section is no longer effective.

133 (2) In the event that any public corporation shall so elect by vote of the board of directors to be
134 exempt pursuant to clause (1) the public corporation may at any time thereafter adopt a vote of
135 its board of directors electing to be subject to subsection (b). In the event that any public
136 corporation shall so elect by the shareholders to be exempt pursuant to clause (1) of this
137 subsection the public corporation may at any time thereafter by vote of the holders of the shares

138 of all classes of stock outstanding, voting as a single voting group, holding the right to cast two-
139 thirds of all the votes entitled to be cast by all classes, elect to be subject to the provisions of
140 subsection (b). Upon adoption of the vote, subsection (b), unless otherwise provided in the vote,
141 shall immediately become effective.

142 SECTION 22. Section 8.06(d) of Chapter 156D is deleted in its entirety and replaced by the
143 following:—

144 (d) Notwithstanding anything to the contrary in this chapter or in the articles of organization or
145 bylaws of any public corporation, in the case of directors of a public corporation whose terms are
146 staggered pursuant to subsection (b), shareholders may, by the vote of the holders of shares
147 having the right to cast a majority of all the votes entitled to be cast by the holders of all classes
148 of stock outstanding and entitled to vote in the election of directors, voting as a single voting
149 group, effect the removal of any director or directors or the entire board of directors only for
150 cause.

151 SECTION 23. Section 8.10 of chapter 156D is hereby amended by striking out the word “by-
152 laws” in line 12, and inserting in place thereof the following word:- bylaws.

153 SECTION 24. Section 8.21 of Chapter 156D is deleted in its entirety and replaced by the
154 following:—

155 Section 8.21. ACTION WITHOUT MEETING

156 (a) Unless the articles of organization or bylaws provide that action required or permitted by this
157 chapter to be taken by the directors may be taken only at a meeting, the action may be taken

158 without a meeting if each director signs a consent describing the action to be taken and delivers it
159 to the corporation or as the corporations directs for inclusion in the corporate records.

160 (b) Action taken under this section is effective when one or more consents signed by all the
161 directors are delivered as provided in subsection (a), unless the consent specifies a different
162 effective date.

163 (c) A consent signed and delivered under this section has the effect of a meeting vote and may
164 be described as such in any document.

165 SECTION 25. Section 8.25(e) of Chapter 156D is deleted in its entirety and replaced by the
166 following:—

167 (e) A committee may not, however:

168 (1) authorize distributions, including in connection with the reacquisition of shares, except
169 according to a formula or method prescribed by the board of directors;

170 (2) adopt or submit to shareholders action that this chapter requires be approved by
171 shareholders;

172 (3) change the number of the board of directors, remove directors from office or fill vacancies
173 on the board of directors;

174 (4) amend articles of organization pursuant to section 10.02; or

175 (5) adopt, amend or repeal bylaws.

176 SECTION 26. Section 8.31(d) of Chapter 156D is deleted in its entirety and replaced by the
177 following:—

178 (d) For purposes of clause (2) of subsection (a), a conflict of interest transaction is authorized,
179 approved, or ratified if it receives the affirmative vote of a majority of all the votes entitled to be
180 cast on the matter entitled to be counted under this subsection. The votes of shares owned by or
181 voted under the control of a director who has a direct or indirect interest in the transaction, and of
182 shares owned by or voted under the control of an entity described in clause (1) of subsection (b),
183 may not be counted in a vote of shareholders to determine whether to authorize, approve, or
184 ratify a conflict of interest transaction under clause (2) of subsection (a). The vote of these
185 shares, however, is counted in determining whether the transaction is approved under other
186 sections of this chapter. Shares having the right to cast a majority of all the votes entitled to be
187 counted in a vote on a transaction under this subsection, whether or not present, constitutes a
188 quorum for the purpose of taking action under this section.

189 SECTION 27. Section 8.32 of chapter 156D is hereby amended by striking out the words “the
190 obligation of a director of, the corporation” in line 3, and inserting in place thereof the following
191 words:- the obligation of, a director of the corporation.

192 SECTION 28. Section 8.45 of chapter 156D is hereby amended by striking out the words “clerk
193 or an assistant clerk” in line 6, and inserting in place thereof the following words:- secretary or
194 an assistant secretary.

195 SECTION 29. Section 8.54 of chapter 156D is hereby amended by striking out the words
196 “sections 8.51 or 8.51” in lines 19-20, and inserting in place thereof the following words:-
197 section 8.51.

198 SECTION 30. Section 8.58 of chapter 156D is hereby amended by striking out the words
199 "articles of incorporation" in line 20, and inserting in place thereof the following words:- articles
200 of organization.

201 SECTION 31. Section 8.58 of chapter 156D is hereby further amended by striking out the words
202 "clause (3) of subsection (a) of section 11.07" in line 24, and inserting in place thereof the
203 following words:- clause (4) of subsection (a) of section 11.07.

204 SECTION 32. Section 9.21(5) of Chapter 156D is deleted in its entirety and replaced by the
205 following:—

206 (5) Unless (1) a greater percentage vote is required by the articles of organization, pursuant to
207 subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the board of
208 directors, acting pursuant to paragraph (3) of this section, or (2) the articles provide for a lesser
209 percentage vote, in accordance with subsection (b) of section 7.27, approval of the plan of
210 domestication requires the affirmative vote of two-thirds of all the votes entitled generally to be
211 cast on the plan by the articles of organization, and in addition the affirmative vote of two-thirds
212 of all the votes entitled to be cast by any voting group entitled to vote separately on the plan by
213 this chapter, by the articles, by the bylaws, or by action of the board of directors pursuant to
214 paragraph (3) of this section.

215 SECTION 33. Section 9.31(5) of Chapter 156D is deleted in its entirety and replaced by the
216 following:—

217 (5) Unless (1) a greater percentage vote is required by the articles of organization, pursuant to
218 section 7.27(a), by the bylaws, pursuant to section 10.21, or by the board of directors, acting
219 pursuant to paragraph (3) of this section, or (2) the articles provide for a lesser percentage vote,

220 in accordance with subsection (b) of section 7.27, approval of the plan of nonprofit conversion
221 requires the affirmative vote of two-thirds of all the votes entitled generally to be cast on the plan
222 by the articles of organization, and in addition the affirmative vote of two-thirds of all the votes
223 entitled to be cast by any voting group entitled to vote separately on the plan by this chapter, by
224 the articles, by the bylaws, or by action of the board of directors pursuant to paragraph (3) of this
225 section.

226 SECTION 34. Section 9.52 of chapter 156D is hereby amended by striking out the words
227 "organizational documents" in lines 16-17, and inserting in place thereof the following words:-
228 organic documents.

229 SECTION 35. Section 9.52(5) of Chapter 156D is deleted in its entirety and replaced by the
230 following:—

231 (5) Unless (i) a greater percentage vote is required by the articles of organization, pursuant to
232 section 7.27(a), by the bylaws, pursuant to section 10.21, or by the board of directors, acting
233 pursuant to paragraph (3) of this section, or (ii) the articles provide for a lesser percentage vote,
234 in accordance with subsection (b) of section 7.27, approval of the plan of entity conversion
235 requires the affirmative vote of two-thirds of all the votes entitled generally to be cast on the plan
236 by the articles of organization, and in addition the affirmative vote of two-thirds of all the votes
237 entitled to be cast by any voting group entitled to vote separately on the plan by this chapter, by
238 the articles, by the bylaws, or by action of the board of directors pursuant to paragraph (3) of this
239 section.

240 SECTION 36. Section 9.52(6) of Chapter 156D is amended by deleting clause (i) thereof in its
241 entirety and replacing it with the following:—

242 (i) would have a right to vote as a separate voting group on a provision in the plan that, if
243 contained in a proposed amendment to articles of organization, would require action by separate
244 voting groups under section 10.04; provided, however, that receipt of interests in another entity
245 in exchange for shares pursuant to a plan of conversion shall not entitle holders of the exchanged
246 class or series to vote as a separate voting group based solely on the grounds that they were
247 receiving interests in a different issuer; or

248 SECTION 37. Section 9.53 of chapter 156D is hereby amended by striking out the words “any
249 other desired provisions that section 2.02 subsection (b) of permits” in lines 34-35, and inserting
250 in place thereof the following words:- any other desired provisions that subsection (b) of section
251 2.02 permits.

252 SECTION 38. Clause (5) of subsection (a) of section 9.55 of chapter 156D is hereby amended by
253 striking out the words "organizational document" in each place it appears and inserting in place
254 thereof the following words:- organic document.

255 SECTION 39. Section 10.03(e) of Chapter 156D is deleted in its entirety and replaced by the
256 following:—

257 (e) Unless (1) a greater percentage vote is required by the articles of organization, pursuant to
258 subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the board of
259 directors, acting pursuant to subsection (c) of section 10.03, or (2) the articles provide for a lesser
260 percentage vote, in accordance with subsection (b) of section 7.27, approval of the amendment
261 requires:

262 (1) except as otherwise provided in clause (2), the affirmative vote of two-thirds of all the votes
263 entitled generally to be cast on the amendment by the articles of organization, and in addition the

264 affirmative vote of two-thirds of all the votes entitled to be cast by any voting group entitled to
265 vote separately on the amendment by this chapter, by the articles, by the bylaws, or by action of
266 the board of directors pursuant to subsection (c) of section 10.03, or

267 (2) if the amendment relates solely to (A) an increase or reduction in the corporation's capital
268 stock of any class or series then authorized, (B) a change in its authorized shares into a different
269 number of shares or the exchange thereof pro rata for a different number of shares of the same
270 class or series, or (C) a change of its corporate name, the required vote shall be a majority rather
271 than two-thirds, except that if the vote of a separate voting group is required under section 10.04,
272 the required vote of that voting group shall remain two-thirds.

273 If the amendment to the articles of organization changes a quorum or voting requirement for
274 action by the shareholders, approval by the shareholders shall satisfy not only the quorum and
275 voting requirement then applicable for amendment of the articles but also the particular quorum
276 or voting requirement being changed.

277 SECTION 40. Section 10.04(a) is hereby amended by inserting at the beginning thereof the
278 following:—

279 (a) Subject to section 10.05,

280 SECTION 41. Section 10.21(c) of Chapter 156D is deleted in its entirety and replaced by the
281 following:—

282 (c) Any initial bylaw adopted by the incorporators or board of directors, and any bylaw
283 subsequently adopted or amended by the shareholders, that provides for (i) a greater or lesser
284 quorum requirement for shareholders than is provided by this chapter or (ii) a greater voting

285 requirement for shareholders (or for voting groups of shareholders) than is provided by this
286 chapter may not be amended or repealed by the board of directors unless the bylaw otherwise
287 provides.

288 SECTION 42. Section 11.01 of chapter 156D is hereby amended by striking out the words
289 "merger under a plan of merger" in line 9, and inserting in place thereof the following word:-
290 merge under a plan of merger.

291 SECTION 43. Section 11.03(e) of Chapter 156D is deleted in its entirety.

292 SECTION 44. Sections 11.04(5) through 11.04(8), inclusive, of Chapter 156D are deleted in
293 their entirety and replaced by the following:—

294 (5) Unless (i) a greater percentage vote is required by the articles of organization, pursuant to
295 subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the board of
296 directors, acting pursuant to clause (3) of this section, or (ii) the articles provide for a lesser
297 percentage vote, in accordance with subsection (b) of section 7.27, approval of the plan of
298 merger or share exchange requires the affirmative vote of two-thirds of all the votes entitled
299 generally to be cast on the plan by the articles of organization, and in addition the affirmative
300 vote of two-thirds of all the votes entitled to be cast by any voting group entitled to vote
301 separately on the plan by this chapter, by the articles, by the bylaws, or by action of the board of
302 directors pursuant to paragraph (3) of this section 11.04.

303 (6) Except as otherwise expressly provided in the articles of organization, voting by a class or
304 series of shares as a separate voting group is required on a plan of merger or share exchange if
305 the plan contains a provision that, if contained in a proposed amendment to articles of
306 organization, would entitle such class or series to vote as a separate voting group on the proposed

307 amendment under section 10.04; provided however, that (i) receipt of shares of a class or series
308 of shares in exchange for shares pursuant to a plan of merger or share exchange involving each
309 outstanding class and series shall not entitle holders of the exchanged class or series to vote as a
310 separate voting group based solely on the grounds that they are receiving shares of a different
311 issuer or that clauses (1) or (5) of section 10.04 would apply if the change were contained in a
312 proposed amendment to the articles of organization, and (ii) if the proposed provision would, as
313 an amendment, entitle two or more classes or series of shares to vote separately but would affect
314 those classes or series in the same or a substantially similar way, the shares of all such classes or
315 series shall, unless the articles of organization provide otherwise, vote together as a single voting
316 group on the plan.

317 (7) Unless the articles of organization otherwise provide, approval by the corporation's
318 shareholders of a plan of merger or share exchange is not required if:

319 (i) the corporation will survive the merger or is the acquiring corporation in a share exchange;

320 (ii) except for amendments permitted by section 10.05, its articles of organization will not be
321 changed;

322 (iii) each shareholder of the corporation whose shares were outstanding immediately before the
323 effective date of the merger or share exchange will hold the same number of shares, with
324 identical preferences, limitations, and relative rights, immediately after the effective date of
325 change; and

326 (iv) in the case of a plan of merger, the shares of any class or series of shares of such corporation
327 to be issued or delivered pursuant to the plan of merger does not exceed 20 per cent of the shares

328 of such corporation of the same class or series outstanding immediately before the effective date
329 of the merger.

330 (8) If as a result of a merger or share exchange 1 or more shareholders of a domestic corporation
331 would become subject to owner liability for the debts, obligations or liabilities of any other
332 person or entity, approval of the plan of merger or share exchange shall require the execution, by
333 each such shareholder, of a separate written consent to become subject to such owner liability.

334 SECTION 45. Section 11.05(a) of Chapter 156D is deleted in its entirety and replaced by the
335 following:—

336 (a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary
337 corporation, and a foreign parent corporation that owns shares of a domestic subsidiary
338 corporation, in each case that carry at least 90 per cent of the voting power of each class and
339 series of the outstanding shares of the subsidiary that have voting power, may merge the
340 subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without
341 the approval of the board of directors or shareholders of the subsidiary unless the laws of the
342 foreign jurisdiction or jurisdictions under which the parent or the subsidiary is organized or the
343 articles of organization of any of the corporations otherwise provide.

344 SECTION 46. Section 11.06 of chapter 156D is hereby amended by striking out the words
345 "organizational documents" in line 28, and inserting in place thereof the following words:-
346 organic documents.

347 SECTION 47. Section 11.07 of chapter 156D is hereby amended by striking out the words
348 "organizational documents" in line 18, and inserting in place thereof the following words:-
349 organic documents.

350 SECTION 48. Section 12.01(a)(3) of Chapter 156D is deleted in its entirety and replaced by the
351 following:—

352 (3) transfer any or all of its assets to one or more corporations or other entities all of the shares
353 or interests of which are owned, directly or indirectly, by the corporation; or

354 SECTION 49. Section 12.02(e) of Chapter 156D is deleted in its entirety and replaced by the
355 following:—

356 (e) Unless (1) a greater percentage vote is required by the articles of organization, pursuant to
357 subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the board of
358 directors, acting pursuant to subsection (b) of this section 12.02, or (2) the articles provide for a
359 lesser percentage vote, in accordance with subsection (b) of section 7.27, approval of the
360 transaction requires the affirmative vote of two-thirds of all the votes entitled generally to be cast
361 on the matter by the articles of organization, and in addition the affirmative vote of two-thirds of
362 all the votes entitled to be cast by any voting group entitled to vote separately on the matter by
363 the articles, by the bylaws, or by action of the board of directors pursuant to subsection (b) of this
364 section 12.02.

365 SECTION 50. Section 13.01 of Chapter 156D is hereby amended by deleting therefrom the
366 definition of “marketable securities” and by substituting the following new definition in its
367 place:—

368 “Marketable securities”,

369 (1) securities held of record by, or by financial intermediaries or depositories on behalf of, at
370 least 1,000 persons and which were

371 (i) listed on a national securities exchange, or

372 (ii) listed on a regional securities exchange or traded in an interdealer quotation system or other
373 trading system and had at least 250,000 outstanding shares, exclusive of shares held by officers,
374 directors and affiliates, which have a market value of at least \$5,000,000; or

375 (2) securities issued by an open end management investment company registered under the
376 Investment Company Act of 1940 and which may be redeemed at the option of the holder at net
377 asset value.

378 SECTION 51. Section 13.02(a) of Chapter 156D is deleted in its entirety and replaced by the
379 following:—

380 (a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of his
381 shares in the event of, any of the following corporate or other actions:

382 (1) consummation of a plan of merger to which the corporation is a party if shareholder approval
383 is required for the merger by section 11.04 or the articles of organization or if the corporation is a
384 subsidiary that is merged with its parent under section 11.05, unless, in either case, (A) all
385 shareholders are to receive only cash for their shares in amounts proportionate to what they
386 would receive upon a dissolution of the corporation or, in the case of shareholders already
387 holding marketable securities in the merging corporation, only marketable securities of the
388 surviving corporation, marketable securities of the parent in the case of a merger with a
389 subsidiary and/or cash and (B) no director, officer or controlling shareholder has a direct or
390 indirect material financial interest in the merger other than (i) in his capacity as a shareholder of
391 the corporation, (ii) in his capacity as a director, officer, employee or consultant of either the
392 merging or the surviving corporation or of any affiliate of the surviving corporation if his

393 financial interest is pursuant to bona fide arrangements with either corporation or any such
394 affiliate, or (iii) in any other capacity so long as the shareholder owns not more than five percent
395 of the voting shares of all classes and series of the corporation in the aggregate;

396 (2) consummation of a plan of share exchange in which his shares are included unless: (A) both
397 his existing shares and the shares, obligations or other securities to be acquired are marketable
398 securities; and (B) no director, officer or controlling shareholder has a direct or indirect material
399 financial interest in the share exchange other than (i) in his capacity as a shareholder of the
400 corporation whose shares are to be exchanged, (ii) in his capacity as a director, officer, employee
401 or consultant of either the corporation whose shares are to be exchanged or the acquiring
402 corporation or of any affiliate of the acquiring corporation if his financial interest is pursuant to
403 bona fide arrangements with either corporation or any such affiliate, or (iii) in any other capacity
404 so long as the shareholder owns not more than five percent of the voting shares of all classes and
405 series of the corporation whose shares are to be exchanged in the aggregate;

406 (3) consummation of a sale or exchange of all, or substantially all, of the property of the
407 corporation if the sale or exchange is subject to section 12.02, or a sale or exchange of all, or
408 substantially all, of the property of a corporation in dissolution, unless:

409 (i) his shares are then redeemable by the corporation at a price not greater than the cash to be
410 received in exchange for his shares; or

411 (ii) the sale or exchange is pursuant to court order; or

412 (iii) in the case of a sale or exchange of all or substantially all the property of the corporation
413 subject to section 12.02, approval of shareholders for the sale or exchange is conditioned upon
414 the dissolution of the corporation and the distribution in cash or, if his shares are marketable

415 securities, in marketable securities and/or cash, of substantially all of its net assets, in excess of a
416 reasonable amount reserved to meet unknown claims under section 14.07, to the shareholders in
417 accordance with their respective interests within one year after the sale or exchange and no
418 director, officer or controlling shareholder has a direct or indirect material financial interest in
419 the sale or exchange other than (i) in his capacity as a shareholder of the corporation, (ii) in his
420 capacity as a director, officer, employee or consultant of either the corporation or the acquiring
421 corporation or of any affiliate of the acquiring corporation if his financial interest is pursuant to
422 bona fide arrangements with either corporation or any such affiliate, or (iii) in any other capacity
423 so long as the shareholder owns not more than five percent of the voting shares of all classes and
424 series of the corporation in the aggregate;

425 (4) an amendment of the articles of organization that materially and adversely affects rights in
426 respect of a shareholder's shares because it:

427 (i) creates, alters or abolishes the stated rights or preferences of the shares with respect to
428 distributions or to dissolution, including making non-cumulative in whole or in part a dividend
429 theretofore stated as cumulative;

430 (ii) creates, alters or abolishes a stated right in respect of conversion or redemption, including
431 any provision relating to any sinking fund or purchase, of the shares;

432 (iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other
433 securities;

434 (iv) excludes or limits the right of the holder of the shares to vote on any matter, or to cumulate
435 votes, except as such right may be limited by voting rights given to new shares then being
436 authorized of an existing or new class; or

437 (v) reduces the number of shares owned by the shareholder to a fraction of a share if the
438 fractional share so created is to be acquired for cash under section 6.04;

439 (5) an amendment of the articles of organization or of the bylaws or the entering into by the
440 corporation of any agreement to which the shareholder is not a party that adds restrictions on the
441 transfer or registration of transfer of any outstanding shares held by the shareholder or amends
442 any pre-existing restrictions on the transfer or registration of transfer of his shares in a manner
443 which is materially adverse to the ability of the shareholder to transfer his shares;

444 (6) any corporate action taken pursuant to a shareholder vote to the extent the articles of
445 organization, bylaws or a resolution of the board of directors provides that voting or nonvoting
446 shareholders are entitled to appraisal;

447 (7) consummation of a conversion of the corporation to nonprofit status pursuant to subdivision
448 B of PART 9; or

449 (8) consummation of a conversion of the corporation into a form of other entity pursuant to
450 subdivision D of PART 9.

451 (9) consummation of a domestication if the shareholder would have had appraisal rights if the
452 transaction had been effected as a merger.

453 SECTION 52. Section 13.02(b) of Chapter 156D is deleted in its entirety and replaced with the
454 following:—

455 (b) Except as otherwise provided in subsection (a) of section 13.03, in the event of corporate
456 action specified in clauses (1), (2), (3), (7), (8) or (9) of subsection (a), a shareholder may assert
457 appraisal rights only if he seeks them with respect to all of his shares of whatever class or series.

458 SECTION 53. Section 13.21 of chapter 156D is hereby amended by striking out the word
459 "chapter" in line 13, and inserting in place thereof the following word:- PART.

460 SECTION 54. Section 13.22 of chapter 156D is hereby amended by striking out the word
461 "chapter" in line 38, and inserting in place thereof the following word:- PART.

462 SECTION 55. Section 13.25 of chapter 156D is hereby amended by striking out the word
463 "deserved" in line 31, and inserting in place thereof the following word:- described.

464 SECTION 56. Section 13.31 of chapter 156D is hereby amended by striking out the word
465 "chapter" in line 20, and inserting in place thereof the following word:- PART.

466 SECTION 57. Section 14.30 of chapter 156D is hereby amended by striking out the word
467 "stock" in line 11, and inserting in place thereof the following word:- shares.

468 SECTION 58. Section 14.34 of chapter 156D is hereby amended by striking out the word
469 "stock" in line 24, and inserting in place thereof the following word:- shares.

470 SECTION 59. Section 15.01 of chapter 156D is hereby amended by inserting after the word
471 "with" in line 29, the following word:- the.

472 SECTION 60. Section 15.03 of chapter 156D is hereby amended by striking out the word
473 "agents" in line 14, and inserting in place thereof the following word:- agent's.

474 SECTION 61. Section 15.04 of chapter 156D is hereby amended by inserting after the word
475 "information" in line 23, the following word:- in.

476 SECTION 62. Section 15.05 of chapter 156D is hereby amended by striking out the word
477 "corporations" in line 12, and inserting in place thereof the following word:- corporation's.

478 SECTION 63. Section 15.05 of chapter 156D is hereby further amended by striking out the word
479 "stockholders" in line 13, and inserting in place thereof the following word:- shareholders.

480 SECTION 64. Section 15.07 of Chapter 156D is deleted in its entirety and replaced by the
481 following:—

482 Section 15.07. REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN
483 CORPORATION

484 Each foreign corporation authorized to transact business in the commonwealth shall continuously
485 maintain in the commonwealth:

486 (1) a registered office that may, but need not, be the same as any of its places of business; and

487 (2) a registered agent, who may be any of the following individuals or entities whose business
488 office is also the registered office of the foreign corporation:

489 (i) an individual who resides in the commonwealth and whose business office is identical with
490 the registered office;

491 (ii) a domestic corporation or not-for-profit domestic corporation;

492 (iii) a foreign corporation or not-for-profit foreign corporation qualified to do business in this
493 commonwealth; or

494 (iv) an other entity.

495 SECTION 65. Section 15.30 of chapter 156D is hereby amended by inserting after the words "or
496 chapter 63" in line 6, the following words:- of the General Laws.

497 SECTION 66. Section 15.31 of chapter 156D is hereby amended by striking out the word
498 "corporations" in line 13, and inserting in place thereof the following word:- corporation's.

499 SECTION 67. Section 15.31 of chapter 156D is hereby further amended by striking out the word
500 "corporations" in line 19, and inserting in place thereof the following word:- corporation's.

501 SECTION 68. Section 15.32 of chapter 156D is hereby amended by striking out the word
502 "corporations" in line 10, and inserting in place thereof the following word:- corporation's.

503 SECTION 69. Section 16.20(c) of Chapter 156D is deleted in its entirety and replaced by the
504 following:—

505 (c) Unless otherwise provided in the articles of organization or bylaws or unless the annual
506 financial statements of the corporation shall have previously been delivered to the shareholders, a
507 corporation shall deliver a written notice of the availability of its annual financial statements to
508 each shareholder before the earlier to occur of the annual meeting of shareholders or 120 days
509 after the close of the fiscal year.

510 SECTION 70. Section 16.21 of chapter 156D is hereby amended by striking out the title "BY-
511 LAW AMENDMENTS" in line 1, and inserting in place thereof the following title:- BYLAW
512 AMENDMENTS.