

**HOUSE . . . . . No. 2878**

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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:	DISTRICT/ADDRESS:
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>
<i>William F. Galvin</i>	<i>Secretary of the Commonwealth</i>
<i>David M. Nangle</i>	<i>17th Middlesex</i>

**HOUSE . . . . . No. 2878**

By Mr. Scaccia of Boston, a petition (accompanied by bill, House, No. 2878) of Angelo M. Scaccia, William F. Galvin and David M. Nangle for legislation to further regulate business corporations. State Administration and Regulatory Oversight.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Thirteen**

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 1.24(d)(1) of chapter 156D is hereby amended by deleting the  
2 words “of the articles of correction” and inserting in their place the following words: on which  
3 the articles of correction were filed.

4

5 SECTION 2. Section 1.26 of chapter 156D is hereby amended by deleting the words  
6 “after the return of the document to” in the second sentence and inserting in their place the  
7 following words: after the secretary of state has given the notice required by section 1.25(c) in.

8

9 SECTION 3. Section 1.40(a) of chapter 156D is hereby amended as follows:

10  By deleting the word “stock” wherever it appears and inserting in its place the following  
11 word: shares;

12  By inserting the words “and series” after the words “shares of all classes” in the  
13 definition of “Authorized shares”;

14  By inserting the words “any or all of” in the first sentence of the definition of  
15 “Distribution” after the words “benefit of” and before the words “its shareholders”;

16  By deleting the words “filed organizational document” in the definition of “Nonfiling  
17 entity” and inserting in their place the following words: public organic document;

18  By inserting the words “or a subsequent statement of change under section 5.02” in the  
19 definition of “Principal office” after the words “annual report” and before the word “where”;

20  By deleting the phrase “appointed under chapter 156B unless the corporation has also  
21 appointed a ‘secretary’ or the context otherwise requires” in the definition of “Secretary” and  
22 inserting in its place the following phrase: unless the corporation has appointed another person as

23 “clerk” to perform the functions of “secretary”;

24  And by adding at the end of Section 1.40(a) the following paragraph:

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

26

27  SECTION 4. Section 1.41(e) of chapter 156D is hereby amended by deleting the following

28 words: “shown in its most recent annual report.”

29

30  SECTION 5. Section 2.02 (b)(1)(iii) of chapter 156D is hereby amended by deleting the

31 words “or any class thereof.”

32

33  SECTION 6. Section 2.02 (b)(1)(iv) of chapter 156D is hereby amended by inserting the words

34 “or series” after the words “or classes” and before the words “of shares.”

35

36  SECTION 7. Section 2.02(b)(4) of chapter 156D is deleted in its entirety and replaced by the

37 following:

38  (4) A provision eliminating or limiting the personal liability of a director to the corporation or

39 its shareholders for monetary damages for breach of fiduciary duty as a director notwithstanding

40 any provision of law imposing such liability; but the provision shall not eliminate or limit the

41 liability of a director (i) for any breach of the director’s duty of loyalty to the corporation or its

42 shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct

43 or a knowing violation of law, (iii) for improper distributions under section 6.40, or (iv) for any

44 transaction from which the director derived an improper personal benefit.

45

46  SECTION 8. Section 2.05 of chapter 156D is hereby amended by deleting the word “by-laws”

47 in each place where it appears and inserting in its place the following word: bylaws.

48

49  SECTION 9. Section 2.05(a)(2) of chapter 156D is hereby amended as follows:

50  By deleting the words “the initial directors named in the articles of organization” and inserting

51 in their place the following quoted words: “the directors, president, treasurer and secretary

52 named in the articles of organization shall be the initial directors, president, treasurer and

53 secretary”; and

54  By deleting the words “shall be elected” and inserting in their place the following words: may

55 be elected to replace the initial president, treasurer and secretary.

56

57  SECTION 10. Section 2.05(c) of chapter 156D is hereby amended by deleting the word “and”

58 and inserting in its place the following word: or.

59

60  SECTION 11. Section 3.02(a)(6) of chapter 156D is hereby amended by deleting the words

61 “any other entity” and inserting in their place the following words: any other domestic business

62 corporation, any domestic nonprofit corporation, any foreign business or nonprofit corporation or

63 any other entity.

64

65 SECTION 12. Section 3.02(a)(12) of chapter 156D is hereby amended by deleting the words  
66 “any other corporation or entity” and inserting in their place the following words: any other  
67 domestic business corporation, domestic nonprofit corporation, foreign business or nonprofit  
68 corporation or other entity.

69

70 SECTION 13. Section 3.02(b) of chapter 156D is hereby amended by deleting the word  
71 “stock” in each place where it appears and inserting in its place the following word: shares.

72

73 SECTION 14. Section 4.01(a)(1) of chapter 156D is deleted in its entirety and replaced by the  
74 following:

75  (1) shall contain the word “corporation,” “incorporated,” “company,” or “limited”

76  or the abbreviation “corp.,” “inc.,” “co.” or “ltd.,” or words or abbreviations of like import in  
77 another language; and

78

79 SECTION 15. Section 5.01 of chapter 156D is deleted in its entirety and replaced by the  
80 following:

81 Section 5.01. REGISTERED OFFICE AND REGISTERED AGENT

82 Each corporation shall continuously maintain in the commonwealth:

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

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

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

87  (ii) a domestic business corporation, a domestic nonprofit corporation or a domestic other  
88 entity;

89  (iii) a foreign business corporation or a foreign nonprofit corporation authorized in either case  
90 to transact business in this commonwealth; or

91  (iv) a foreign other entity authorized to transact business in this commonwealth.

92

93  SECTION 16. The second sentence of Section 6.01(a) of chapter 156D is deleted in its  
94 entirety and is replaced by the following two sentences:

95  The articles of organization also shall, before the issuance of any shares of a class or series,  
96 prescribe the number of authorized shares of the class or series and its distinguishing

97 designation, preferences, limitations and relative rights. All shares of a class or series must have  
98 a distinguishing designation and preferences, limitations and relative rights that are identical with  
99 those of other shares of the same class or series.

100

101 SECTION 17. Section 6.02(d) of chapter 156D is hereby amended by deleting the word  
102 “recision” and inserting in its place the following word: rescission.

103

104 SECTION 18. Section 6.23(b) of chapter 156D is deleted in its entirety and replaced by the  
105 following:

106  (b) Shares of 1 class or series shall not be issued as a share dividend in respect of shares of  
107 another class or series unless (1) the articles of organization so authorize, (2) the holders of  
108 shares entitled to cast a majority of all the votes entitled to be cast by the class or series to be  
109 issued approve the issue, or (3) there are no outstanding shares of the class or series to be issued.  
110 In addition, shares of a class or series having preference over another class or series with respect  
111 to distributions, including dividends and distributions upon the dissolution of the corporation,  
112 shall not be issued as a share dividend in respect of shares of such other class or series if there  
113 are at the time any outstanding shares of any third class or series as to which the shares then to be  
114 issued have a right with respect to distributions which is prior, superior or substantially equal  
115 unless (1) the articles of organization so authorize, or (2) the holders of shares entitled to cast a  
116 majority of all the votes entitled to be cast by the outstanding shares of such third class or series  
117 approve the issue.

118

119 SECTION 19. Section 6.30(a) of Chapter 156D is deleted in its entirety and replaced by the  
120 following:

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

123

124 SECTION 20. Section 6.40(f) of chapter 156D is hereby amended by deleting the words  
125 “subordinated by agreement” and inserting in their place the following words: the indebtedness  
126 is expressly made subordinate.

127

128 SECTION 21. Sections 6.41(f)(2) and (3) of chapter 156D are deleted in their entirety and  
129 replaced by the following:

130  (2) in the case of a distribution in liquidation by a corporation in dissolution under Part 14, the  
131 later of (i) the date on which the effect of the challenged distribution would have been measured  
132 under subsection (e) or (g) of section 6.40 if it had not been a distribution in liquidation and (ii) 6  
133 months after the end of the 3-year period referred to in subsection (d); or

134  (3) in the case of a distribution in liquidation by a corporation not in dissolution under Part 14,  
135 as described in the second clause of the last sentence of subsection (h) of section 6.40, three  
136 years after the date on which the effect of the challenged distribution would have been measured  
137 under subsection (e) or (g) of section 6.40 if it had not been a distribution in liquidation.

138

139 SECTION 22. Section 7.04(d) of chapter 156D is deleted in its entirety and replaced by the  
140 following two subsections:

141  (d) If (1) this chapter requires that notice of a proposed action be given to nonvoting  
142 shareholders and the action is to be taken by written consent of the voting shareholders, or (2)

143 action is taken by less than unanimous written consent of the voting shareholders, the  
144 corporation shall give its nonvoting shareholders or its non-consenting voting shareholders, as  
145 the case may be, written notice of the action not more than 7 days after written consents  
146 sufficient to take the action have been delivered to the corporation. The notice must reasonably  
147 describe the action taken and contain or be accompanied by the same material that, under any  
148 provision of this chapter, would have been required to be sent to nonvoting shareholders or to  
149 voting shareholders, as the case may be, in a notice of a meeting at which the proposed action  
150 would have been submitted to the shareholders for action.

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

156

157  SECTION 23. Section 7.07(c) of chapter 156D is hereby amended by deleting the words “the  
158 date fixed for the original meeting” and inserting in their place the following words: the record  
159 date fixed for the original meeting.

160

161  SECTION 24. Section 7.08(2)(i) of chapter 156D is hereby amended by deleting the word  
162 “stockholder” and inserting in its place the following word: shareholder.

163

164  SECTION 25. Section 7.08(2)(iii) of chapter 156D is hereby amended by deleting the word  
165 “stockholder” and inserting in its place the following word: shareholder.

166

167  SECTION 26. Section 7.27(b) of chapter 156D is deleted in its entirety and replaced by the  
168 following:

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

174

175  SECTION 27. Section 7.44(a) of chapter 156D is deleted in its entirety and replaced by the  
176 following:

177  (a) A derivative proceeding shall be dismissed by the court on motion by the corporation if  
178 the court finds that either: (1) 1 of the groups specified in subsection (b)(1), (b)(2) or (f) has  
179 determined in good faith after conducting a reasonable inquiry upon which its conclusions are  
180 based that the maintenance of the derivative proceeding is not in the best interests of the  
181 corporation; or (2) shareholders specified in subsection (b)(3) have determined that the  
182 maintenance of the derivative proceeding is not in the best interests of the corporation.

183

184 SECTION 28. Section 7.44(b)(3) of chapter 156D is deleted in its entirety and replaced by the  
185 following:

186  (3) the affirmative vote of a majority of all the votes entitled to be cast on the matter at a  
187 meeting at which a quorum exists, not including the votes cast by holders of shares owned by or  
188 voted under the control of a shareholder or related person who has or had a beneficial financial  
189 interest in the act or omission complained of or other interest therein that would reasonably be  
190 expected to exert an influence on that shareholder's or related person's judgment if called upon to  
191 vote in the determination. Shares entitled to cast a majority of all the votes entitled to be cast on  
192 the matter and entitled to be counted under this clause (3) constitute a quorum for the purpose of  
193 this clause.

194

195 SECTION 29. Section 7.44(e) of chapter 156D is deleted in its entirety and replaced by the  
196 following:

197  (e) If a majority of the board of directors does not consist of independent directors at the time  
198 the determination by independent directors is made, the corporation shall have the burden of  
199 proving that the requirements of subsection (a) have been met and that the determination that  
200 maintenance of the derivative proceeding is not in the best interests of the corporation was  
201 reasonable and principled. If a majority of the board of directors consists of independent  
202 directors at the time the determination by independent directors is made or if the determination is  
203 made by shareholders pursuant to clause (3) of subsection (b) or by a panel appointed pursuant to  
204 subsection (f), the plaintiff shall have the burden of proving that the requirements of subsection  
205 (a) have not been met.

206

207 SECTION 30. Section 8.06(b) of chapter 156D is hereby amended by deleting the word  
208 “stock” and inserting in its place the following word: shares.

209

210 SECTION 31. Section 8.06(c)(1) of Chapter 156D is hereby amended as follows:

211  By deleting the portion of the first sentence that begins with the word “unless”

212  and inserting in its place the following quoted phrase:

213  “unless (i) the board of directors of the public corporation shall have elected to be exempt from  
214 the provisions of subsection (b), or (ii) holders of shares of each class or series of the corporation  
215 that has voting power, voting as separate voting groups if required by the articles of organization,  
216 at a meeting duly called for the purpose, shall have so elected by vote of two-thirds of all the  
217 votes entitled to be cast by the voting group.”; and

218  By inserting the following additional sentence after the first sentence: A vote by which

219  the corporation elected to be exempt from the provisions of subsection (b) of section 50A of  
220 chapter 156B shall constitute such a vote.

221

222  SECTION 32. Section 8.06(c)(2) of chapter 156D is hereby amended by deleting the

223 second sentence and inserting in its place the following sentence:

224  In the event that any public corporation shall have so elected by a vote of shareholders  
225 pursuant to clause (1) of this subsection, the public corporation may at any time thereafter, by a  
226 vote or votes cast by holders of two-thirds of all shares having voting power that would satisfy  
227 the requirements of clause (1) if it were applicable, elect to be subject to the provisions of  
228 subsection (b).

229

230  SECTION 33. Section 8.06(d) of chapter 156D is hereby amended by deleting the words  
231 “the shares outstanding and entitled to vote in the election of directors” and inserting in their  
232 place the following words: holders of shares with voting power casting a majority of all the votes  
233 entitled to be cast by such holders, voting as a single group.

234

235  SECTION 34. Section 8.10(b) of chapter 156D is hereby amended by deleting the word “by-  
236 laws” and inserting in its place the following word: bylaws.

237

238  SECTION 35. Section 8.21 of chapter 156D is deleted in its entirety and replaced by the  
239 following:

240  Section 8.21. ACTION WITHOUT MEETING

241  (a) Unless the articles of organization or bylaws provide that action required or permitted by  
242 this chapter to be taken by the directors may be taken only at a meeting, the action may be taken  
243 without a meeting if each director signs a consent describing the action to be taken and it is  
244 delivered to the corporation or as the corporation directs for inclusion in the corporate records.

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

248  (c) A consent complying with this section has the effect of a meeting vote and may be  
249 described as such in any document.

250

251  SECTION 36. Section 8.25(e) of chapter 156D is deleted in its entirety and replaced by the  
252 following:

253  (e) A committee may not, however:

254  (1) authorize distributions, including any purchase, redemption or other acquisition of shares,  
255 unless made according to a formula or method prescribed by the board of directors;

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

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

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

261  (5) adopt, amend or repeal bylaws.

262



263 □SECTION 37. Section 8.31(d) of chapter 156D is deleted in its entirety and replaced by the  
264 following:

265 □(d) For purposes of clause (2) of subsection (a), a conflict of interest transaction is  
266 □authorized, approved, or ratified if at a meeting at which a quorum exists it receives the  
267 affirmative vote of a majority of all the votes entitled to be cast on the matter and counted under  
268 this subsection. The votes of shares owned by or voted under the control of a director who has a  
269 direct or indirect interest in the transaction, and of shares owned by or voted under the control of  
270 an entity described in clause (1) of subsection (b), may not be counted in a vote of shareholders  
271 to determine whether to authorize, approve, or ratify a conflict of interest transaction under  
272 clause (2) of subsection (a). The vote of those shares, however, is counted in determining  
273 whether the transaction is approved under other sections of this chapter. Shares entitled to cast a  
274 majority of all the votes entitled to be counted in a vote under this subsection constitute a  
275 quorum for the purpose of this section.

276 □  
277 □ SECTION 38. Section 8.32(a) of chapter 156D is hereby amended by deleting the phrase  
278 “the obligation of a director of, the corporation” and inserting in its place the following phrase:  
279 the obligation of, a director of the corporation.

280 □  
281 □ SECTION 39. The first sentence of Section 8.45 of chapter 156D is hereby amended by  
282 deleting the words “the clerk or an assistant clerk” and inserting in their place the following  
283 words: the secretary or an assistant secretary.

284 □  
285 □ SECTION 40. Section 8.53(c)(1)(i) of chapter 156D is hereby amended by deleting the  
286 words “by the vote” and inserting in their place the following words: by such a vote.

287 □  
288 □ SECTION 41. Section 8.54(a)(3)(ii) of chapter 156D is hereby amended by deleting the  
289 phrase “sections 8.51 or 8.51” and inserting in its place the following phrase: section 8.51.

290 □  
291 □SECTION 42. Section 8.58(b) of chapter 156D is hereby amended as follows:

292 □By deleting the words "articles of incorporation" and inserting in their place the  
293 □following quoted words: “articles of organization”; and  
294 □By deleting the number 3 that appears in parentheses immediately after the word  
295 □"clause” and inserting in its place the number 4.

296 □  
297 □SECTION 43. Section 9.21(5) of Chapter 156D is deleted in its entirety and replaced by the  
298 following:

299 □(5) Unless (1) a greater percentage vote is required by the articles of organization, pursuant to  
300 subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the board of  
301 directors, acting pursuant to paragraph (3) of this section, or (2) the articles provide for a lesser  
302 percentage vote, in accordance with subsection (b) of section 7.27, approval of the plan of

303 domestication requires (i) the affirmative vote of two-thirds of all the votes entitled generally to  
304 be cast on the plan by the articles of organization and, in addition, (ii) the affirmative vote of  
305 two-thirds of all the votes entitled to be cast by any voting group entitled to vote separately on  
306 the plan by this chapter, by the articles, by the bylaws, or by action of the board of directors  
307 pursuant to paragraph (3) of this section.

308 □

309 □SECTION 44. Section 9.21(6)(i) is hereby amended by deleting the word “are” and inserting in  
310 its place the following word: is.

311 □

312 □SECTION 45. Section 9.31(5) of chapter 156D is deleted in its entirety and replaced by the  
313 following:

314 □(5) Unless (1) a greater percentage vote is required by the articles of organization, pursuant to  
315 section 7.27(a), by the bylaws, pursuant to section 10.21, or by the board of directors, acting  
316 pursuant to paragraph (3) of this section, or (2) the articles provide for a lesser percentage vote,  
317 in accordance with section 7.27(b), approval of the plan of nonprofit conversion requires (i) the  
318 affirmative vote of two-thirds of all the votes entitled generally to be cast on the plan by the  
319 articles of organization, and, in addition, (ii) the affirmative vote of two-thirds of all the votes  
320 entitled to be cast by any voting group entitled to vote separately on the plan by this chapter, by  
321 the articles, by the bylaws, or by action of the board of directors pursuant to paragraph (3) of this  
322 section.

323 □

324 □SECTION 46. Section 9.52(4) of chapter 156D is hereby amended by deleting the words  
325 "organizational documents" and inserting in their place the following words: organic documents.

326 □

327 □SECTION 47. Section 9.52(5) of Chapter 156D is deleted in its entirety and replaced by the  
328 following:

329 □(5) Unless (i) a greater percentage vote is required by the articles of organization, pursuant to  
330 section 7.27(a), by the bylaws, pursuant to section 10.21, or by the board of directors, acting  
331 pursuant to paragraph (3) of this section, or (ii) the articles provide for a lesser percentage vote,  
332 in accordance with subsection (b) of section 7.27, approval of the plan of entity conversion  
333 requires (i) the affirmative vote of two-thirds of all the votes entitled generally to be cast on the  
334 plan by the articles of organization and, in addition, (ii) the affirmative vote of two-thirds of all  
335 the votes entitled to be cast by any voting group entitled to vote separately on the plan by this  
336 chapter, by the articles, by the bylaws, or by action of the board of directors pursuant to  
337 paragraph (3) of this section.

338 □

339 □SECTION 48. Section 9.52(6) of chapter 156D is amended by deleting clause (i) thereof in its  
340 entirety and replacing it with the following:

341 □(i) would have a right to vote as a separate voting group on a provision in the plan that, if  
342 contained in a proposed amendment to the articles of organization, would require action by

343 separate voting groups under section 10.04; provided, however, that receipt of interests in  
344 another entity in exchange for shares pursuant to a plan of conversion shall not entitle holders of  
345 the exchanged class or series to vote as a separate voting group based solely on the ground that  
346 they were receiving interests in a different issuer; or

347

348  SECTION 49. Section 9.53(b)(3) of chapter 156D is hereby amended by deleting the  
349 phrase “any other desired provisions that section 2.02 subsection (b) of permits” and inserting in  
350 its place the following phrase: any other desired provisions that section 2.02(b) permits.

351

352 SECTION 50. Section 9.55(a)(5) of chapter 156D is hereby amended by deleting the words  
353 "organizational document" in each place they appear and inserting in their place the following  
354 words: organic document.

355

356 SECTION 51. Section 10.03(e) of chapter 156D is deleted in its entirety and replaced by the  
357 following:

358  (e) Unless (1) a greater percentage vote is required by the articles of organization, pursuant to  
359 subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the board of  
360 directors, acting pursuant to subsection (c) of this section, or (2) the articles provide for a lesser  
361 percentage vote, in accordance with subsection (b) of section 7.27, approval of the amendment  
362 requires:

363  (1) except as otherwise provided in clause (2), (i) the affirmative vote of two-thirds of all the  
364 votes entitled generally to be cast on the amendment by the articles of organization and, in  
365 addition, (ii) the affirmative vote of two-thirds of all the votes entitled to be cast by any voting  
366 group entitled to vote separately on the amendment by this chapter, by the articles, by the  
367 bylaws, or by action of the board of directors pursuant to subsection (c) of this section, or

368  (2) if the amendment relates solely to (A) an increase or reduction in the corporation's capital  
369 stock of any class or series then authorized, (B) a change in its authorized shares into a different  
370 number of shares or the exchange thereof pro rata for a different number of shares of the same  
371 class or series, or (C) a change of its corporate name, the required vote shall be a majority rather  
372 than two-thirds, except that, if the vote of a separate voting group is required under section  
373 10.04, the required vote of that voting group shall remain two-thirds.

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

378

379 SECTION 52. Section 10.04(a) of chapter 156D is hereby amended by deleting the text  
380 preceding paragraph subsection (1), and inserting in its place the following:

381  Subject to Section 10.05, if the corporation has more than one class or series

382  of shares outstanding, the holders of the outstanding shares of a class or series are entitled to

383 vote as a separate voting group, whether or not shareholder voting is otherwise required by this  
384 chapter, on a proposed amendment to the articles of organization if the amendment would:

385

386 SECTION 53. Section 10.21(c) of chapter 156D is deleted in its entirety and replaced by the  
387 following:

388  (c) Any initial bylaw adopted by the incorporators or board of directors, and any bylaw  
389  subsequently adopted or amended by the shareholders, that provides for (i) a greater or lesser  
390 quorum requirement for shareholders than is provided by this chapter or (ii) a greater voting  
391 requirement for shareholders (or for voting groups of shareholders) than is provided by this  
392 chapter may not be amended or repealed by the board of directors unless the bylaw otherwise  
393 provides.

394

395  SECTION 54. Part 11 of chapter 156D is amended by deleting the words “organizational  
396 documents” each time they appear in Part 11 and inserting in their place the following words:  
397 organic documents.

398

399 SECTION 55. Section 11.01 of chapter 156D is hereby amended as follows:

400 By deleting in its entirety the phrase “As used in this part:” and the definition of “Interests”  
401 and replacing them with the following:

402  As used in this Part, the following words have the following meanings, unless the context  
403 requires otherwise:

404 “Interest,” includes any form of membership in a domestic or foreign nonprofit corporation.

405 And by deleting in paragraph (1) of the definition of “Party to a merger” or “party to a share  
406 exchange” the words “merger under a plan of merger” and inserting in their place the following  
407 words: merge under a plan of merger.

408

409 SECTION 56. Section 11.02 of chapter 156D is hereby amended by deleting the words “or  
410 other entity” in the text preceding subsection (a) and inserting in their place the following words:  
411 or a domestic or foreign other entity.

412

413 SECTION 57. Section 11.02(b) of chapter 156D is hereby amended by deleting the words “the  
414 law under which a domestic other entity is organized” and inserting in their place the following  
415 words: the organic law applicable to a domestic other entity.

416

417 SECTION 58. Section 11.02(b)(1) is hereby amended by deleting the words “filed  
418 organizational document” and inserting in their place the following words: organic document.

419

420 SECTION 59. Section 11.03(a)(2) of chapter 156D is hereby amended by deleting the words  
421 “or other entity” and inserting in their place the following words: or by a domestic or foreign  
422 other entity.

423

424 SECTION 60. Section 11.03(b) of chapter 156D is hereby amended by deleting the words “the  
425 law under which a domestic other entity is organized” and inserting in their place the following  
426 words: the organic law applicable to a domestic other entity.

427

428 SECTION 61. Section 11.03(b)(1) is hereby amended by deleting the words “filed  
429 organizational document” and inserting in their place the following words: organic document.

430

431 SECTION 62. Section 11.03(c) of chapter 156D is hereby amended by deleting the words  
432 “domestic or” in the text preceding paragraph (1).

433

434 SECTION 63. Section 11.03 of chapter 156D is hereby further amended by deleting subsection  
435 (e) in its entirety and changing the parenthetical letters designating subsections (f) and (g) to (e)  
436 and (f) respectively.

437

438 SECTION 64. Sections 11.04(5) through 11.04(8), inclusive, of Chapter 156D are deleted  
439 in their entirety and replaced by the following:

440  (5) Unless (i) a greater percentage vote is required by the articles of organization, pursuant to  
441 subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the board of  
442 directors, acting pursuant to paragraph (3) of this section, or (ii) the articles provide for a lesser  
443 percentage vote, in accordance with subsection (b) of section 7.27, approval of the plan of  
444 merger or share exchange requires (i) the affirmative vote of two-thirds of all the votes entitled  
445 generally to be cast on the plan by the articles of organization and, in addition, (ii) the  
446 affirmative vote of two-thirds of all the votes entitled to be cast by any voting group entitled to  
447 vote separately on the plan by this chapter, by the articles, by the bylaws, or by action of the  
448 board of directors pursuant to paragraph (3) of this section.

449  (6) Except as otherwise expressly provided in the articles of organization, voting by a class or  
450 series of shares as a separate voting group is required on a plan of merger or share exchange if  
451 the plan contains a provision that, if contained in a proposed amendment to articles of  
452 organization, would entitle such class or series to vote as a separate voting group on the proposed  
453 amendment under section 10.04; provided however, that (i) receipt of shares of a class or series  
454 of shares in exchange for shares pursuant to a plan of merger or share exchange involving each  
455 outstanding class and series shall not entitle holders of the exchanged class or series to vote as a  
456 separate voting group based solely on the grounds that they are receiving shares of a different  
457 issuer or that paragraphs (1) or (5) of section 10.04 would apply if the change were contained in  
458 a proposed amendment to the articles of organization, and (ii) if the proposed provision would,  
459 as an amendment, entitle two or more classes or series of shares to vote separately but would  
460 affect those classes or series in the same or a substantially similar way, the shares of all such  
461 classes or series shall, unless the articles of organization provide otherwise, vote together as a  
462 single voting group on the plan.

463 ☐(7) Unless the articles of organization otherwise provide, approval by the corporation's  
464 shareholders of a plan of merger or share exchange is not required if:  
465 ☐(i) the corporation will survive the merger or is the acquiring corporation in a share exchange;  
466 ☐(ii) except for amendments permitted by section 10.05, its articles of organization will not be  
467 changed;  
468 ☐(iii) each shareholder of the corporation whose shares were outstanding immediately before  
469 the effective date of the merger or share exchange will hold the same number of shares, with  
470 identical preferences, limitations, and relative rights, immediately after the effective date of  
471 change; and  
472 ☐(iv) in the case of a plan of merger, the shares of any class or series of shares of such  
473 corporation to be issued or delivered pursuant to the plan of merger (including any shares  
474 issuable upon conversion of convertible securities or exercise of rights issued or delivered  
475 pursuant to the plan of merger) does not exceed 20 per cent of the shares of such corporation of  
476 the same class or series outstanding immediately before the effective date of the merger.

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

482 ☐  
483 ☐ SECTION 65. Section 11.05(a) of Chapter 156D is deleted in its entirety and replaced by  
484 the following:

485 ☐ (a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary  
486 corporation, and a foreign parent corporation that owns shares of a domestic subsidiary  
487 corporation, in each case that carry at least 90 per cent of the voting power of each class and  
488 series of the outstanding shares of the subsidiary that have voting power, may merge the  
489 subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without  
490 the approval of the board of directors or shareholders of the subsidiary unless the laws of the  
491 foreign jurisdiction or jurisdictions under which the parent or the subsidiary is organized or the  
492 articles of organization of any of the corporations otherwise provide.

493 ☐  
494 ☐SECTION 66. Subsection (c) of section 11.06 of chapter 156D is hereby amended by deleting  
495 the words “or share exchange” each of the three times they appear in that subsection.

496 ☐  
497 ☐SECTION 67. The first sentence of section 11.08(b) of chapter 156D is hereby amended by  
498 deleting the word “with” the first time it appears and inserting in its place the following word:  
499 by.

500 ☐  
501 ☐SECTION 68. Section 12.01(a)(3) of Chapter 156D is deleted in its entirety and replaced by  
502 the following:

503  (3) transfer any or all of its assets to one or more domestic or foreign business  
504  corporations or domestic or foreign other entities all of the shares or interests of which are  
505 owned, directly or indirectly, by the corporation; or  
506

507  SECTION 69. Section 12.02(e) of Chapter 156D is deleted in its entirety and replaced by the  
508 following:

509  (e) Unless (1) a greater percentage vote is required by the articles of organization, pursuant to  
510 subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the board of  
511 directors, acting pursuant to subsection (b) of this section, or (2) the articles provide for a lesser  
512 percentage vote, in accordance with subsection (b) of section 7.27, approval of the transaction  
513 requires (i) the affirmative vote of two-thirds of all the votes entitled generally to be cast on the  
514 matter by the articles of organization and, in addition, (ii) the affirmative vote of two-thirds of all  
515 the votes entitled to be cast by any voting group entitled to vote separately on the matter by the  
516 articles, by the bylaws, or by action of the board of directors pursuant to subsection (b) of this  
517 section.

518

519  SECTION 70. Section 13.01 of Chapter 156D is hereby amended by deleting the definition of  
520 “Marketable securities” and by inserting in its place the following definition:

521  “Marketable securities”,

522  (1) securities held of record by, or by financial intermediaries or depositories on behalf of, at  
523 least 1,000 persons, which are

524  (a) listed on a national securities exchange; or

525  (b) listed on a regional securities exchange or traded in an interdealer quotation  
526  or other trading system and are of a class or series that has at least 250,000 shares outstanding  
527 with a market value of at least \$5,000,000, excluding in each case shares owned by officers,  
528 directors and affiliates; or

529  (2) securities issued by an open end management investment company registered

530  under the Investment Company Act of 1940 that may be redeemed at the option of the holder  
531 at net asset value.

532

533  SECTION 71. Section 13.02(a) of Chapter 156D is deleted in its entirety and replaced by the  
534 following:

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

537  (1) consummation of a plan of merger to which the corporation is a party if shareholder  
538 approval is required for the merger by section 11.04 or the articles of organization or if the  
539 corporation is a subsidiary and the merger is governed by section 11.05, unless, in either case,  
540 (A) all shareholders are to receive only cash for their shares in amounts proportionate to what  
541 they would receive upon a dissolution of the corporation or, in the case of shareholders already  
542 holding marketable securities in the merging corporation, only marketable securities of the

543 surviving corporation, marketable securities of the parent in the case of a merger with a  
544 subsidiary and/or cash and (B) no director, officer or controlling shareholder has a direct or  
545 indirect material financial interest in the merger other than (i) in his capacity as a shareholder of  
546 the corporation, (ii) in his capacity as a director, officer, employee or consultant of either the  
547 merging or the surviving corporation or of any affiliate of the surviving corporation if his  
548 financial interest is pursuant to bona fide arrangements with either corporation or any such  
549 affiliate, or (iii) in any other capacity provided that the shareholder does not own shares entitled  
550 to cast more than five percent of all votes entitled to be cast by holders of all classes and series of  
551 shares either generally or on the plan of merger;

552 □(2) consummation of a plan of share exchange in which his shares are included unless (A)  
553 both his existing shares and the shares, obligations or other securities to be acquired by him are  
554 marketable securities; and (B) no director, officer or controlling shareholder has a direct or  
555 indirect material financial interest in the share exchange other than (i) in his capacity as a  
556 shareholder of the corporation whose shares are to be exchanged, (ii) in his capacity as a director,  
557 officer, employee or consultant of either the corporation whose shares are to be exchanged or the  
558 acquiring corporation or of any affiliate of the acquiring corporation if his financial interest is  
559 pursuant to bona fide arrangements with either corporation or any such affiliate, or (iii) in any  
560 other capacity provided that the shareholder does not own shares entitled to cast more than five  
561 percent of all votes entitled to be cast by holders of all classes and series of shares to be  
562 exchanged pursuant to the plan of share exchange;

563 □(3) consummation of a disposition of property pursuant to section 12.02 or a disposition of all,  
564 or substantially all, of the property of a corporation in dissolution, unless:

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

567 □(ii) the disposition is pursuant to court order; or

568 □(iii) in the case of a disposition of all, or substantially all, of the property of the corporation  
569 subject to section 12.02, approval of shareholders for the disposition is conditioned upon the  
570 dissolution of the corporation and the distribution in cash or, if his shares are marketable  
571 securities, in marketable securities and/or cash, of substantially all of its net assets, in excess of a  
572 reasonable amount reserved to meet unknown claims under section 14.07, to the shareholders in  
573 accordance with their respective interests within one year after the disposition and no director,  
574 officer or controlling shareholder has a direct or indirect material financial interest in the  
575 disposition other than (i) in his capacity as a shareholder of the corporation, (ii) in his capacity as  
576 a director, officer, employee or consultant of either the corporation or the acquiring corporation  
577 or of any affiliate of the acquiring corporation if his financial interest is pursuant to bona fide  
578 arrangements with either corporation or any such affiliate, or (iii) in any other capacity provided  
579 that the shareholder does not own shares entitled to cast more than five percent of all votes  
580 entitled to be cast by holders of all classes and series of shares either generally or on the  
581 disposition;

582 □(4) an amendment of the articles of organization that materially and adversely affects rights in



583 respect of a shareholder's shares because it:

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

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

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

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

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

596  (5) an amendment of the articles of organization or of the bylaws that adds restrictions on the  
597 transfer or registration of transfer of any outstanding shares held by the shareholder or amends  
598 any pre-existing restrictions on the transfer or registration of transfer of his shares in a manner  
599 that is materially adverse to the ability of the shareholder to transfer his shares;

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

603  (7) consummation of a domestication pursuant to subdivision A of Part 9 if the shareholder  
604 would have had appraisal rights if the transaction had been effected as a merger;

605  (8) consummation of a conversion of the corporation to nonprofit status pursuant to  
606 subdivision B of Part 9; or

607  (9) consummation of a conversion of the corporation into a form of other entity pursuant to  
608 subdivision E of Part 9.

609

610  SECTION 72. Section 13.02(b) of Chapter 156D is deleted in its entirety and replaced by the  
611 following:

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

616

617  SECTION 73. Section 13.21(b) of chapter 156D is hereby amended by deleting the word  
618 "chapter" and inserting in its place the following word: Part.

619

620  SECTION 74. Section 13.22(b)(3) of chapter 156D is hereby amended by deleting the word  
621 "chapter" and inserting in its place the following word: Part.

622

623 SECTION 75. Section 13.25(d) of chapter 156D is hereby amended as follows:  
624 By deleting the word “if” and inserting in its place the following word: it; and  
625 By deleting the word "deserved" and inserting in its place the following word: described.  
626

627 SECTION 76. Section 13.31(b)(2) of chapter 156D is hereby amended by deleting the word  
628 "chapter" and inserting in its place the following word: Part.  
629

630 SECTION 77. Section 14.06(a) of chapter 156D is hereby amended by deleting the  
631 following quoted phrase: “, subject to paragraph (f),”.  
632

633 SECTION 78. Section 14.09(d) of chapter 156D is hereby amended by deleting the  
634 words “if the procedures described in those sections are followed” and inserting in their place the  
635 following words: if the procedure described in the section applicable to the claim is followed.  
636

637 SECTION 79. Section 14.30(2) of chapter 156D is hereby amended by deleting the  
638 phrase “the shareholders holding not less than 40 per cent of the total combined voting power of  
639 all the shares of the corporation’s stock outstanding and” and inserting in its place the following  
640 phrase: shareholders entitled to cast not less than 40 per cent of the total number of votes entitled  
641 to be cast by all holders of shares entitled to vote.  
642

643 SECTION 80. Section 14.33(b) of chapter 156D is hereby amended by deleting the  
644 phrase “sections 14.06 and 14.07.” and inserting in its place the following phrase: sections 14.06,  
645 14.07 and 14.08.  
646

647 SECTION 81. Section 14.40 of chapter 156D is amended by deleting from both the first  
648 and the second sentences of that section the following words: or other appropriate official of the  
649 commonwealth.  
650

651 SECTION 82. Section 15.01(c)(4) of chapter 156D is hereby amended by deleting the word  
652 “corporations” and inserting in its place the following word: corporation’s.  
653

654 SECTION 83. Section 15.03(a)(5) of chapter 156D is hereby amended by deleting the word  
655 "agents" and inserting in its place the following word: agent’s.  
656

657 SECTION 84. Section 15.04(d) of chapter 156D is hereby amended by inserting after the word  
658 “information" the following word: in.  
659

660 SECTION 85. The first sentence of Section 15.05(c) of chapter 156D is hereby amended as  
661 follows:  
662 By deleting the word "corporation” and inserting in its place the following word: corporation’s;

663 and

664 By deleting the word “stockholders” and inserting in its place the following word:  
665 shareholders.

666

667 SECTION 86. Section 15.07 of Chapter 156D is deleted in its entirety and replaced by the  
668 following:

669 Section 15.07. REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN  
670 CORPORATION

671 Each foreign corporation authorized to transact business in the commonwealth shall  
672 continuously maintain in the commonwealth:

673 

674 

676 

678 

679 

681 

683

684 SECTION 87. Section 15.30 of chapter 156D is hereby amended as follows:

685 By deleting the words “requiring the filing of reports with” and inserting in their

686 place the following words: requiring the submission or delivery of reports to;

687 And by inserting after "or chapter 63" the following words: of the General Laws.

688

689 SECTION 88. Section 15.31(b) of chapter 156D is hereby amended as follows:

690 By deleting the words “that each ground determined by the secretary” and inserting in their  
691 place the following words: that the ground; and

692 By deleting the word "corporations" and inserting in its place the following word:  
693 corporation’s.

694

695 SECTION 89. Section 15.31(d) of chapter 156D is hereby amended by deleting the word  
696 “corporations” and inserting in its place the following word: corporation’s.

697

698 SECTION 90. Section 15.32(a) of chapter 156D is hereby amended as follows:

699 By deleting in the text preceding paragraph (1) the phrase “section 15.30” and inserting in its  
700 place the following quoted phrase: “section 15.31”; and

701 By deleting in subsection (3) the word "corporations" and inserting in its place the following  
702 word: corporation’s.

703

704 SECTION 91. Section 16.20(c) of chapter 156D is deleted in its entirety and replaced by the  
705 following:

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

711

712 SECTION 92. Section 16.21 of chapter 156D is hereby amended by deleting the words “BY-  
713 LAW AMENDMENTS” in the caption and inserting in their place the following words:

714 BYLAW AMENDMENTS.

715