



SPONSOR: Sen. Townsend

DELAWARE STATE SENATE  
149th GENERAL ASSEMBLY

SENATE BILL

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

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

1 Section 1. Amend Section 102(a)(1), Title 8 of the Delaware Code, by making insertions as shown by underline  
2 and deletions as shown by strike through as follows:

3 (a) The certificate of incorporation shall set forth:

4 (1) The name of the corporation, which (i) shall contain 1 of the words "association," "company,"  
5 "corporation," "club," "foundation," "fund," "incorporated," "institute," "society," "union," "syndicate," or  
6 "limited," (or abbreviations thereof, with or without punctuation), or words (or abbreviations thereof, with  
7 or without punctuation) of like import of foreign countries or jurisdictions (provided they are written in  
8 roman characters or letters); provided, however, that the Division of Corporations in the Department of  
9 State may waive such requirement (unless it determines that such name is, or might otherwise appear to  
10 be, that of a natural person) if such corporation executes, acknowledges and files with the Secretary of  
11 State in accordance with § 103 of this title a certificate stating that its total assets, as defined in § 503(i) of  
12 this title, are not less than \$10,000,000, or, in the sole discretion of the Division of Corporations in the  
13 Department of State, if the corporation is both a nonprofit nonstock corporation and an association of  
14 professionals, (ii) shall be such as to distinguish it upon the records in the office of the Division of  
15 Corporations in the Department of State from the names that are reserved on such records and from the  
16 names on such records of each other corporation, partnership, limited partnership, limited liability  
17 company, registered series of a limited liability company or statutory trust organized or registered as a  
18 domestic or foreign corporation, partnership, limited partnership, limited liability company, registered  
19 series of a limited liability company or statutory trust under the laws of this State, except with the written  
20 consent of the person who has reserved such name or such other foreign corporation or domestic or  
21 foreign partnership, limited partnership, limited liability company, registered series of a limited liability  
22 company or statutory trust, executed, acknowledged and filed with the Secretary of State in accordance

23 with § 103 of this title, or except that, without prejudicing any rights of the person who has reserved such  
24 name or such other foreign corporation or domestic or foreign partnership, limited partnership, limited  
25 liability company, registered series of a limited liability company or statutory trust, the Division of  
26 Corporations in the Department of State may waive such requirement if the corporation demonstrates to  
27 the satisfaction of the Secretary of State that the corporation or a predecessor entity previously has made  
28 substantial use of such name or a substantially similar name, that the corporation has made reasonable  
29 efforts to secure such written consent, and that such waiver is in the interest of the State, (iii) except as  
30 permitted by § 395 of this title, shall not contain the word "trust," and (iv) shall not contain the word  
31 "bank," or any variation thereof, except for the name of a bank reporting to and under the supervision of  
32 the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as those terms  
33 are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a corporation  
34 regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the  
35 Home Owners' Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall  
36 not be construed to prevent the use of the word "bank," or any variation thereof, in a context clearly not  
37 purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the  
38 business of the corporation or to lead to a pattern and practice of abuse that might cause harm to the  
39 interests of the public or the State as determined by the Division of Corporations in the Department of  
40 State;

41 Section 2. Amend § 114(b), Title 8 of the Delaware Code, by making insertions as shown by underline and  
42 deletions as shown by strike through as follows:

43 (b) Subsection (a) of this section shall not apply to:

44 (1) Sections 102(a)(4), (b)(1) and (2), 109(a), 114, 141, 154, 215, 228, 230(b), 241, 242, 253, 254, 255,  
45 256, 257, 258, 271, 276, 311, 312, 313, 390, and 503 of this title, which apply to nonstock corporations  
46 by their terms;

47 (2) Sections 102(f), 109(b) (last sentence), 151, 152, 153, 155, 156, 157(d), 158, 161, 162, 163, 164, 165,  
48 166, 167, 168, 203, ~~204, 205~~, 211, 212, 213, 214, 216, 219, 222, 231, 243, 244, 251, 252, 267, 274, 275,  
49 324, 364, 366(a), 391 and 502(a)(5) of this title; and

50 (3) Subchapter XIV and subchapter XVI of this chapter.

51 Section 3. Amend § 114(c), Title 8 of the Delaware Code, by making insertions as shown by underline and  
52 deletions as shown by strike through as follows:

53 (c) In the case of a nonprofit nonstock corporation, subsection (a) of this section shall not apply to:

54 (1) The sections and subchapters listed in subsection (b) of this section;

55 (2) Sections 102(b)(3), 111(a)(2) and (3), 144(a)(2), 217, 218(a) and (b), and 262 of this title; and

56 (3) Subchapter V, subchapter VI (other than Sections 204 and 205) and subchapter XV of this chapter.

57 Section 4. Amend § 204(c), Title 8 of the Delaware Code, by making insertions as shown by underline and  
58 deletions as shown by strike through as follows:

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

61 (1) (A) No other provision of this title, and no provision of the certificate of incorporation or bylaws of  
62 the corporation, or of any plan or agreement to which the corporation is a party, would have required  
63 stockholder approval of such defective corporate act to be ratified, either at the time of such defective  
64 corporate act or at the time the board of directors adopts the resolutions ratifying such defective corporate  
65 act pursuant to paragraph (b)(1) of this section; and ~~(2) Such~~ (B) such defective corporate act did not  
66 result from a failure to comply with § 203 of this title; or

67 (2) As of the record date for determining the stockholders entitled to vote on the ratification of such  
68 defective corporate act, there are no shares of valid stock outstanding and entitled to vote thereon,  
69 regardless of whether there then exist any shares of putative stock.

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

72 (d) If the ratification of a defective corporate act is required to be submitted to stockholders for approval pursuant  
73 to subsection (c) of this section, due notice of the time, place, if any, and purpose of the meeting shall be given at least 20  
74 days before the date of the meeting to each holder of valid stock and putative stock, whether voting or nonvoting, at the  
75 address of such holder as it appears or most recently appeared, as appropriate, on the records of the corporation. The notice  
76 shall also be given to the holders of record of valid stock and putative stock, whether voting or nonvoting, as of the time of  
77 the defective corporate act (or, in the case of any defective corporate act that involved the establishment of a record date for  
78 notice of or voting at any meeting of stockholders, for action by written consent of stockholders in lieu of a meeting, or for  
79 any other purpose, the record date for notice of or voting at such meeting, the record date for action by written consent, or  
80 the record date for such other action, as the case may be), other than holders whose identities or addresses cannot be  
81 determined from the records of the corporation. The notice shall contain a copy of the resolutions adopted by the board of  
82 directors pursuant to paragraph (b)(1) of this section or the information required by paragraph (b)(1)(A) through (E) of this

83 section and a statement that any claim that the defective corporate act or putative stock ratified hereunder is void or  
84 voidable due to the failure of authorization, or that the Court of Chancery should declare in its discretion that a ratification  
85 in accordance with this section not be effective or be effective only on certain conditions must be brought within 120 days  
86 from the applicable validation effective time. At such meeting, the quorum and voting requirements applicable to  
87 ratification of such defective corporate act shall be the quorum and voting requirements applicable to the type of defective  
88 corporate act proposed to be ratified at the time of the approval of the ratification, except that:

89 (1) If the certificate of incorporation or bylaws of the corporation, any plan or agreement to which the  
90 corporation was a party or any provision of this title in effect as of the time of the defective corporate act  
91 would have required a larger number or portion of stock or of any class or series thereof or of specified  
92 stockholders for a quorum to be present or to approve the defective corporate act, the presence or  
93 approval of such larger number or portion of stock or of such class or series thereof or of such specified  
94 stockholders shall be required for a quorum to be present or to approve the ratification of the defective  
95 corporate act, as applicable, except that the presence or approval of shares of any class or series of which  
96 no shares are then outstanding, or of any person that is no longer a stockholder, shall not be required;

97 (2) The approval by stockholders of the ratification of the election of a director shall require the  
98 affirmative vote of the majority of shares present at the meeting and entitled to vote on the election of  
99 such director, except that if the certificate of incorporation or bylaws of the corporation then in effect or  
100 in effect at the time of the defective election require or required a larger number or portion of stock or of  
101 any class or series thereof or of specified stockholders to elect such director, the affirmative vote of such  
102 larger number or portion of stock or of any class or series thereof or of such specified stockholders shall  
103 be required to ratify the election of such director, except that the presence or approval of shares of any  
104 class or series of which no shares are then outstanding, or of any person that is no longer a stockholder,  
105 shall not be required; and

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

109 Shares of putative stock on the record date for determining stockholders entitled to vote on any matter submitted to  
110 stockholders pursuant to subsection (c) of this section (and without giving effect to any ratification that becomes effective  
111 after such record date) shall neither be entitled to vote nor counted for quorum purposes in any vote to ratify any defective  
112 corporate act.

113 Section 6. Amend § 204(g), Title 8 of the Delaware Code, by making insertions as shown by underline and  
114 deletions as shown by strike through as follows:

115 (g) In respect of each defective corporate act ratified by the board of directors pursuant to subsection (b) of this  
116 section, prompt notice of the ratification shall be given to all holders of valid stock and putative stock, whether voting or  
117 nonvoting, as of the date the board of directors adopts the resolutions approving such defective corporate act, or as of a date  
118 within 60 days after such date of adoption, as established by the board of directors, at the address of such holder as it  
119 appears or most recently appeared, as appropriate, on the records of the corporation. The notice shall also be given to the  
120 holders of record of valid stock and putative stock, whether voting or nonvoting, as of the time of the defective corporate  
121 act, other than holders whose identities or addresses cannot be determined from the records of the corporation. The notice  
122 shall contain a copy of the resolutions adopted pursuant to subsection (b) of this section or the information specified in  
123 paragraphs (b)(1)(A) through (E) or paragraphs (b)(2)(A) through (C) of this section, as applicable, and a statement that any  
124 claim that the defective corporate act or putative stock ratified hereunder is void or voidable due to the failure of  
125 authorization, or that the Court of Chancery should declare in its discretion that a ratification in accordance with this section  
126 not be effective or be effective only on certain conditions must be brought within 120 days from the later of the validation  
127 effective time or the time at which the notice required by this subsection is given. Notwithstanding the foregoing, (i) no  
128 such notice shall be required if notice of the ratification of the defective corporate act is to be given in accordance with  
129 subsection (d) of this section, and (ii) in the case of a corporation that has a class of stock listed on a national securities  
130 exchange, the notice required by this subsection and the second sentence of subsection (d) of this section may be deemed  
131 given if disclosed in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant  
132 to §§ 13, 14 or 15(d) [15 U.S.C. §§ 78m, 77n or 78o(d)] of the Securities Exchange Act of 1934, as amended, and the rules  
133 and regulations promulgated thereunder, or the corresponding provisions of any subsequent United States federal securities  
134 laws, rules or regulations. If any defective corporate act has been approved by stockholders acting pursuant to § 228 of this  
135 title, the notice required by this subsection may be included in any notice required to be given pursuant to § 228(e) of this  
136 title and, if so given, shall be sent to the stockholders entitled thereto under § 228(e) and to all holders of valid and putative  
137 stock to whom notice would be required under this subsection if the defective corporate act had been approved at a meeting  
138 other than any stockholder who approved the action by consent in lieu of a meeting pursuant to § 228 of this title or any  
139 holder of putative stock who otherwise consented thereto in writing. Solely for purposes of subsection (d) of this section  
140 and this subsection, notice to holders of putative stock, and notice to holders of valid stock and putative stock as of the time  
141 of the defective corporate act, shall be treated as notice to holders of valid stock for purposes of §§ 222 and 228, 229, 230,  
142 232 and 233 of this title.

143 Section 7. Amend § 204(h)(1), Title 8 of the Delaware Code, by making insertions as shown by underline and  
144 deletions as shown by strike through as follows:

145 (1) "Defective corporate act" means an overissue, an election or appointment of directors that is void or  
146 voidable due to a failure of authorization, or any act or transaction purportedly taken by or on behalf of  
147 the corporation that is, and at the time such act or transaction was purportedly taken would have been,  
148 within the power of a corporation under subchapter II of this chapter (without regard to the failure of  
149 authorization identified in § 204(b)(1)(D) of this title), but is void or voidable due to a failure of  
150 authorization;

151 Section 8. Amend § 204(h)(2), Title 8 of the Delaware Code, by making insertions as shown by underline and  
152 deletions as shown by strike through as follows:

153 (2) "Failure of authorization" means: (i) the failure to authorize or effect an act or transaction in  
154 compliance with (A) the provisions of this title, (B) the certificate of incorporation or bylaws of the  
155 corporation, or (C) any plan or agreement to which the corporation is a party or the disclosure set forth in  
156 any proxy or consent solicitation statement, if and to the extent such failure would render such act or  
157 transaction void or voidable; or (ii) the failure of the board of directors or any officer of the corporation to  
158 authorize or approve any act or transaction taken by or on behalf of the corporation that would have  
159 required for its due authorization the approval of the board of directors or such officer;

160 Section 9. Amend § 262(b), Title 8 of the Delaware Code, by making insertions as shown by underline and  
161 deletions as shown by strike through as follows:

162 (b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a  
163 merger or consolidation to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title ~~and,~~  
164 ~~subject to paragraph (b)(3) of this section, § 251(h) of this title~~), § 252, § 254, § 255, § 256, § 257, § 258, § 263 or § 264 of  
165 this title:

166 (1) Provided, however, that, except as expressly provided in § 363(b) of this title, no appraisal rights  
167 under this section shall be available for the shares of any class or series of stock, which stock, or  
168 depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to  
169 receive notice of the meeting of stockholders to act upon the agreement of merger or consolidation (or, in  
170 the case of a merger pursuant to § 251(h), as of immediately prior  
171 to the execution of the agreement of merger), were either: (i) listed on a national securities exchange or  
172 (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be

173 available for any shares of stock of the constituent corporation surviving a merger if the merger did not  
174 require for its approval the vote of the stockholders of the surviving corporation as provided in § 251(f) of  
175 this title.

176 (2) Notwithstanding paragraph (b)(1) of this section, appraisal rights under this section shall be available  
177 for the shares of any class or series of stock of a constituent corporation if the holders thereof are required  
178 by the terms of an agreement of merger or consolidation pursuant to §§ 251, 252, 254, 255, 256, 257,  
179 258, 263 and 264 of this title to accept for such stock anything except:

180 a. Shares of stock of the corporation surviving or resulting from such merger or consolidation,  
181 or depository receipts in respect thereof;

182 b. Shares of stock of any other corporation, or depository receipts in respect thereof, which  
183 shares of stock (or depository receipts in respect thereof) or depository receipts at the effective  
184 date of the merger or consolidation will be either listed on a national securities exchange or held  
185 of record by more than 2,000 holders;

186 c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing  
187 paragraphs (b)(2)a. and b. of this section; or

188 d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional  
189 shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a., b. and c.  
190 of this section.

191 (3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under §  
192 ~~251(h)~~, § 253 or § 267 of this title is not owned by the parent immediately prior to the merger, appraisal  
193 rights shall be available for the shares of the subsidiary Delaware corporation.

194 (4) In the event of an amendment to a corporation's certificate of incorporation contemplated by § 363(a)  
195 of this title, appraisal rights shall be available as contemplated by § 363(b) of this title, and the procedures  
196 of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as  
197 practicable, with the word "amendment" substituted for the words "merger or consolidation," and the  
198 word "corporation" substituted for the words "constituent corporation" and/or "surviving or resulting  
199 corporation."

200 Section 10. Amend § 262(e), Title 8 of the Delaware Code, by making insertions as shown by underline and  
201 deletions as shown by strike through as follows:

202 (e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation  
203 or any stockholder who has complied with subsections (a) and (d) of this section hereof and who is otherwise entitled to  
204 appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of Chancery demanding a  
205 determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days  
206 after the effective date of the merger or consolidation, any stockholder who has not commenced an appraisal proceeding or  
207 joined that proceeding as a named party shall have the right to withdraw such stockholder's demand for appraisal and to  
208 accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or  
209 consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) of this section hereof,  
210 upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the  
211 consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation  
212 ~~and~~(or, in the case of a merger approved pursuant to § 251(h) of this title, the aggregate number of shares (other than any  
213 excluded stock (as defined in § 251(h)(6)d. of this title)) that were the subject of, and were not tendered into, and accepted  
214 for purchase or exchange in, the offer referred to in § 251(h)(2)), and, in either case, with respect to which demands for  
215 appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to  
216 the stockholder within 10 days after such stockholder's written request for such a statement is received by the surviving or  
217 resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection  
218 (d) of this section hereof, whichever is later. Notwithstanding subsection (a) of this section, a person who is the beneficial  
219 owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person may, in such person's  
220 own name, file a petition or request from the corporation the statement described in this subsection.

221 Section 11. Amend § 284, Title 8 of the Delaware Code, by making insertions as shown by underline and  
222 deletions as shown by strike through as follows:

223 § 284 Revocation or forfeiture of charter; proceedings.

224 (a) ~~The~~Upon motion by the Attorney General, the Court of Chancery shall have jurisdiction to revoke or forfeit the  
225 charter of any corporation for abuse, misuse or nonuse of its corporate powers, privileges or franchises. The Attorney  
226 General shall, ~~upon the Attorney General's own motion or upon the relation of a proper party,~~ proceed for this purpose by  
227 complaint in the ~~county in which the registered office of the corporation is located~~ Court of Chancery.

228 (b) The Court of Chancery shall have power, by appointment of trustees, receivers or otherwise, to administer and  
229 wind up the affairs of any corporation whose charter shall be revoked or forfeited by ~~any court~~the Court of Chancery under  
230 ~~any~~this section ~~of this title or otherwise,~~ and to make such orders and decrees with respect thereto as shall be just and  
231 equitable respecting its affairs and assets and the rights of its stockholders and creditors.



232 (c) No proceeding shall be instituted under this section for nonuse of any corporation's powers, privileges or  
233 franchises during the first 2 years after its incorporation.

234 Section 12. Amend § 313(b), Title 8 of the Delaware Code, by making insertions as shown by underline and  
235 deletions as shown by strike through as follows:

236 (b) Upon the filing by the corporation of the proof of classification as required by subsection (a) of this section,  
237 the filing of the certificate of revival and payment of the required filing fees, ~~the Secretary of State shall issue a certificate~~  
238 ~~that the corporation's certificate of incorporation or charter has been revived as of the date of the certificate and the~~  
239 corporation shall be revived with the same force and effect as provided in § 312(e) of this title for other corporations.

240 Section 13. Amend § 502(a), Title 8 of the Delaware Code, by making insertions as shown by underline and  
241 deletions as shown by strike through as follows:

242 (a) Annually on or before March 1, every corporation now existing or hereafter incorporated under Chapter 1 of  
243 this title or which has accepted the Constitution of this State, shall make an annual franchise tax report to the Secretary of  
244 State. The report shall be made on a form designated by the Secretary of State and shall be signed by the corporation's  
245 president, secretary, treasurer or other proper officer duly authorized so to act, or by any of its directors, or if filing an  
246 initial report by any incorporator in the event its board of directors shall not have been elected. The fact that an individual's  
247 name is signed on the report shall be prima facie evidence that such individual is authorized to certify the report on behalf  
248 of the corporation; however, the official title or position of the individual signing the corporate report shall be designated.  
249 The report shall contain the following information:

250 (1) The location of its registered office in this State, which shall include the street, number, city and  
251 postal code;

252 (2) The name of the agent upon whom service of process against the corporation may be served;

253 (3) The location of the principal place of business of the corporation, which shall include the street,  
254 number, city, state or foreign country;

255 (4) The names and addresses of all the directors as of the filing date of the report and the name and  
256 address of the officer who signs the report; provided, that other than an initial report, all reports shall list a  
257 director or directors excepting any report filed in conjunction with a certificate of dissolution filed by an  
258 incorporator pursuant to § 274 of this title or a certificate of dissolution filed pursuant to § 275(c) of this  
259 title;

260 (5) The number of shares and the par value per share of each class of capital stock having a par value and  
261 the number of shares of each class of stock without par value which the corporation is authorized to issue;  
262 and  
263 ~~(6) If exempt from taxation for any cause, the specific facts entitling the corporation to exemption from~~  
264 ~~taxation; and~~  
265 (7) Such additional information, schedules and attachments as the Secretary shall require to ascertain the  
266 franchise tax due to the State.

267 Section 14. Section 1 shall be effective on August 1, 2019.

268 Section 15. Sections 2 and 3 and Sections 11 through 13 shall be effective on August 1, 2018.

269 Section 16. Sections 4 through 8 shall be effective only with respect to defective corporate acts ratified or to be  
270 ratified pursuant to resolutions adopted by a board of directors on or after August 1, 2018.

271 Section 17. Sections 9 and 10 shall be effective only with respect to a merger or consolidation consummated  
272 pursuant to an agreement entered into on or after August 1, 2018.

273

#### SYNOPSIS

Section 1. Section 1 of this Act amends Section 102(a)(1) to provide that the name of a corporation must be such as to distinguish it from the name of any registered series of a limited liability company.

Section 2. Sections 2 and 3 of this Act amend Section 114. Section 114 translates the provisions of Title 8, to determine which provisions apply to nonstock corporations. As amended, Section 114 allows nonstock corporations to use the provisions of Sections 204 and 205 to ratify defective corporate acts.

Section 3. Sections 4 through 8 of this Act amend Section 204. The addition of new Section 204(c)(2) confirms that Section 204 remains available for use in ratifying defective corporate acts in circumstances where no valid stock is outstanding, consistent with the existing provisions of Section 204 specifying that only valid stock is entitled to vote on the ratification of a defective corporate act that requires or required a vote of stockholders.

The changes to Section 204(d) clarify that, in cases where a vote of stockholders is being sought for the ratification of a defective corporate act at a meeting of stockholders, the notice that is required to be given to holders of valid stock or putative stock as of the time of the defective corporate act may be given to the holders of valid stock or putative stock as of the record date for the defective corporate act if such defective corporate act involved the establishment of a record date. Section 204(g) is also being amended to provide that public companies may give such notice through disclosure in a document publicly filed with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Securities Exchange Act of 1934.

Section 204(h)(1) is being amended to clarify and confirm that any act or transaction that a corporation takes that is within its power under subchapter II of the Delaware General Corporation Law (i.e., any act or transaction other than those that are expressly denied, such as the power of issuing bills, notes, or other evidences of debt for circulation as money, or carrying on the business of receiving deposits of money) may be subject to ratification under Section 204 if such act or transaction was void or voidable due to a "failure of authorization." The amendments to Section 204(h)(1) are intended to eliminate any implication from *Nguyen v. View, Inc.*, C.A. No. 11138-VCS (Del. Ch. June 6, 2017), suggesting that an act or transaction may not be within the power of a corporation—and therefore may not constitute a "defective corporate act" susceptible to cure by ratification—solely on the basis that it was not approved in accordance with the provisions of the Delaware General Corporation Law or the corporation's certificate of incorporation or bylaws. The amendments would not, however, disturb the power of the Court of Chancery to decline to validate a defective corporate act that had been ratified under Section 204, or to declare invalid any defective corporate act, on the basis that the failure of authorization that rendered such act void or voidable involved a deliberate withholding of any consent or approval required under the Delaware General Corporation Law, the certificate of incorporation or bylaws, nor would it limit, eliminate,

modify or qualify any other power expressly granted to the Court of Chancery under Section 205 of the Delaware General Corporation Law.

Section 204(h)(2) is being amended to make clear that the failure of an act or transaction to be approved in compliance with the disclosure set forth in any proxy or consent solicitation statement may constitute a failure of authorization.

Section 4. Sections 9 and 10 of this Act amend Section 262. The amendments to Section 262(b) will apply the "market out" exception to the availability of statutory appraisal rights to "intermediate form" mergers effected pursuant to Section 251(h). As currently drafted, Section 262(b)(3) provides that, if all of the stock of a subsidiary Delaware corporation party to a merger effected pursuant to Section 251(h) are not owned by the parent immediately prior to the merger, appraisal rights will be available for the shares of the subsidiary Delaware corporation, whether or not the market out exception would otherwise apply to an analogous "long form" merger, effectively ensuring that the market out exception will not be available to any exchange offer effected pursuant to Section 251(h). As amended, Section 262(b) will provide that, in the case of a merger pursuant to Section 251(h), appraisal rights will not be available for the shares of any class or series of stock of a target corporation that were listed on a national securities exchange or held of record by more than 2,000 holders as of immediately prior to the execution of the agreement of merger, so long as such holders are not required to accept for their shares anything except (i) stock of the surviving corporation (or depository receipts in respect thereof), (ii) stock of any other corporation (or depository receipts in respect thereof) that at the effective time of the merger will be listed on a national securities exchange or held of record by more than 2,000 holders, (iii) cash in lieu of fractional shares or fractional depository receipts in respect of the foregoing, or (iv) any combination of the foregoing shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts.

The changes to Section 262(e) effect a technical clarifying change with respect to the statement required to be furnished by the surviving corporation thereunder. Currently, Section 262(e) requires the surviving corporation to provide, upon request and subject to specified conditions, a statement to dissenting stockholders setting forth the aggregate number of shares that were not voted in favor of the merger or consolidation and as to which demands for appraisal have been received, and the aggregate number of holders of such shares. The changes to Section 262(e) give recognition to the fact that, in the case of a merger effected pursuant to Section 251(h), no shares are "voted" for the adoption of the agreement of merger. Instead, if a requisite number of shares of a target corporation are tendered for purchase or exchange in a tender offer satisfying the requirements of Section 251(h), the merger of the target corporation may be effected without a vote of its stockholders. The amendment to Section 262(e) thus clarifies that the statement provided pursuant thereto in connection with a merger effected under Section 251(h) must set forth the relevant shares not tendered for exchange or purchase rather than the shares not voted for the merger.

Section 5. Section 11 of this Act amends Section 284 to clarify that the Attorney General has the exclusive authority to move for the revocation or forfeiture of a charter of a corporation pursuant to Section 284. As amended, Section 284 also clarifies that, in light of electronic filing, the Attorney General may file a complaint seeking revocation or forfeiture in the Court of Chancery without regard to county. Section 284 is also amended to provide expressly that the Court of Chancery has the power to appoint a trustee to administer and wind up the affairs of a corporation whose charter has been revoked or forfeited pursuant to Section 284.

Section 6. Section 12 of this Act amends Section 313(b) to reflect the current practice of the Office of the Secretary of State relating to the filing of certificates of revival for exempt corporations. Section 13 of this Act amends Section 502(a) to reflect the current practice of the Office of the Secretary of State relating to the filing of annual reports for exempt corporations.

Section 7. Sections 14 through 17 of this Act relate to the effectiveness of the amendments to Title 8. Section 14 of this Act provides that Section 1 of this Act (relating to the amendments to Section 102(a)(1)) are effective on August 1, 2019. Section 15 of this Act provides that Sections 2 and 3 and Sections 11 through 13 of this Act (relating to the amendments to Sections 114, 284, 313(b) and 502(a)) are effective on August 1, 2018. Section 16 of this Act provides that Sections 4 through 8 of this Act (relating to the amendments to Section 204) are effective only with respect to defective corporate acts ratified or to be ratified pursuant to resolutions adopted by a board of directors on or after August 1, 2018. Section 17 of this Act provides that Sections 9 and 10 of this Act (relating to the amendments to Section 262) are effective only with respect to a merger or consolidation consummated pursuant to an agreement entered into on or after August 1, 2018.

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