

AMENDED IN ASSEMBLY APRIL 22, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2158

Introduced by Assembly Member Hagman

February 18, 2010

An act to amend Sections 154, 202, 203, 204, 300, 418, 602, 902, 1001, 1100, 1152, 1201, 1300, 1800, 1900, 1901, 1902, 1904, 2000, and 25103 of, *to amend and repeal Section 307 of*, to add Chapter 24 (commencing with Section 2400) to Division 1 of Title 1 of, and to repeal Sections 158, 186, 421, and 1111 of, the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2158, as amended, Hagman. ~~Statutory close corporations.~~
Corporations.

Existing

(1) *Existing* law, the General Corporation Law, regulates corporations, including close corporations. Under existing law, a close corporation is a corporation whose articles contain, among other things, a provision that all of the corporation's issued shares of all classes shall be held of record by not more than 35 persons, and a statement describing itself as a close corporation. Existing law authorizes these provisions to be deleted from the articles or for the number of shareholders to be changed by amendment pursuant to specified voting requirements. Existing law prescribes how to determine the number of shareholders for the purposes of these provisions. Under existing law, a corporation ceases to be a close corporation upon the filing of a specified amendment to its articles or under certain circumstances as a result of a specified transfer of shares. Under existing law, any attempted voluntary inter vivos transfer

of the shares of a close corporation resulting in the number of holders of record of its shares exceeding the maximum specified in the articles is void if the certificate contains a specified legend.

More generally, existing law governing corporations, including close corporations, requires that the business and affairs of the corporation be managed and all corporate powers be exercised by or under the direction of a board and authorizes offices to be held by the same person. Existing law also prohibits a shareholders' agreement relating to the affairs of a close corporation from being construed as invalid because it relates to corporate affairs or it is an attempt to treat the corporation as if it were a partnership. Existing law also requires shareholders to have an annual meeting. Existing law authorizes a corporation to voluntarily dissolve by the vote of shareholders representing 50% or more of the voting power. For involuntary dissolution, existing law authorizes a verified complaint to be filed by any shareholder of a close corporation.

This bill would replace the term "close corporation" with "statutory close corporation" and would revise and recast those provisions governing these corporations by consolidating them into a chapter limited exclusively to statutory close corporations. Specifically, the bill would modify the statement required to be included in the articles and share certificates of a statutory close corporation and would set forth a more detailed scheme for determining the number of persons who are shareholders of record. The bill would authorize shareholders to agree in writing pursuant to a shareholders' agreement to dispense with the board, subject to specified requirements. The bill would also authorize the shareholders to dispense with the annual meeting requirement and permit individuals with more than one office to execute, acknowledge, or verify documents in more than one capacity.

The bill would authorize a statutory close corporation to only be terminated by amending its articles in accordance with certain requirements and, if the corporation eliminated or dispensed with the board, would require the amendment to provide for a board, as specified.

The bill would additionally authorize a statutory close corporation's articles to contain a provision authorizing one or more shareholders to elect to dissolve the corporation at will or upon the occurrence of a certain event. The bill would also authorize the articles to require a verified complaint for involuntary dissolution to be filed by more than one shareholder.

The bill would specify that these provisions are applicable to close corporations meeting certain requirements, prior to January 1, 2011, as well as those corporations meeting the requirements for a statutory close corporation. The bill would make other conforming changes.

(2) Existing law, the General Corporation Law, provides that an action required or permitted to be taken by the board of a corporation may be taken without a meeting if all members of the board consent in writing to that action. Existing law, until January 1, 2011, provides that “all members of the board” includes an “interested director” or a “common director” who abstains in writing from providing consent if specified disclosures have been made to certain directors, the disclosures are included in the written consent, and these directors approve the action by a specified vote.

This bill would extend the operation of that provision indefinitely.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 154 of the Corporations Code is amended
2 to read:

3 154. “Articles” includes the articles of incorporation,
4 amendments thereto, amended articles, restated articles, certificate
5 of incorporation and certificates of determination.

6 SEC. 2. Section 158 of the Corporations Code is repealed.

7 SEC. 3. Section 186 of the Corporations Code is repealed.

8 SEC. 4. Section 202 of the Corporations Code is amended to
9 read:

10 202. The articles of incorporation shall set forth:

11 (a) The name of the corporation; provided, however, that in
12 order for the corporation to be a statutory close corporation
13 pursuant to Chapter 24 (commencing with Section 2400), the name
14 of the corporation shall comply with subdivision (b) of Section
15 2404.

16 (b) (1) The applicable one of the following statements:

17 (i) The purpose of the corporation is to engage in any lawful
18 act or activity for which a corporation may be organized under the
19 General Corporation Law of California other than the banking
20 business, the trust company business or the practice of a profession

1 permitted to be incorporated by the California Corporations Code;
2 or

3 (ii) The purpose of the corporation is to engage in the profession
4 of _____ (with the insertion of a profession permitted to be
5 incorporated by the California Corporations Code) and any other
6 lawful activities (other than the banking or trust company business)
7 not prohibited to a corporation engaging in such profession by
8 applicable laws and regulations.

9 (2) In case the corporation is a corporation subject to the
10 Banking Law, the articles shall set forth a statement of purpose
11 which is prescribed in the applicable provision of the Banking
12 Law.

13 (3) In case the corporation is a corporation subject to the
14 Insurance Code as an insurer, the articles shall additionally state
15 that the business of the corporation is to be an insurer.

16 (4) If the corporation is intended to be a “professional
17 corporation” within the meaning of the Moscone-Knox Professional
18 Corporation Act (Part 4 (commencing with Section 13400) of
19 Division 3), the articles shall additionally contain the statement
20 required by Section 13404.

21 The articles shall not set forth any further or additional statement
22 with respect to the purposes or powers of the corporation, except
23 by way of limitation or except as expressly required by any law
24 of this state other than this division or any federal or other statute
25 or regulation (including the Internal Revenue Code and regulations
26 thereunder as a condition of acquiring or maintaining a particular
27 status for tax purposes).

28 (c) The name and address in this state of the corporation’s initial
29 agent for service of process in accordance with subdivision (b) of
30 Section 1502.

31 (d) If the corporation is authorized to issue only one class of
32 shares, the total number of shares which the corporation is
33 authorized to issue.

34 (e) If the corporation is authorized to issue more than one class
35 of shares, or if any class of shares is to have two or more series:

36 (1) The total number of shares of each class the corporation is
37 authorized to issue, and the total number of shares of each series
38 which the corporation is authorized to issue or that the board is
39 authorized to fix the number of shares of any such series;

1 (2) The designation of each class, and the designation of each
2 series or that the board may determine the designation of any such
3 series; and

4 (3) The rights, preferences, privileges and restrictions granted
5 to or imposed upon the respective classes or series of shares or the
6 holders thereof, or that the board, within any limits and restrictions
7 stated, may determine or alter the rights, preferences, privileges
8 and restrictions granted to or imposed upon any wholly unissued
9 class of shares or any wholly unissued series of any class of shares.

10 As to any series the number of shares of which is authorized to be
11 fixed by the board, the articles may also authorize the board, within
12 the limits and restrictions stated therein or stated in any resolution
13 or resolutions of the board originally fixing the number of shares
14 constituting any series, to increase or decrease (but not below the
15 number of shares of such series then outstanding) the number of
16 shares of any such series subsequent to the issue of shares of that
17 series. In case the number of shares of any series shall be so
18 decreased, the shares constituting such decrease shall resume the
19 status which they had prior to the adoption of the resolution
20 originally fixing the number of shares of such series.

21 SEC. 5. Section 203 of the Corporations Code is amended to
22 read:

23 203. Except as specified in the articles or in any shareholders'
24 agreement pursuant to Section 2408, no distinction shall exist
25 between classes or series of shares or the holders thereof.

26 SEC. 6. Section 204 of the Corporations Code is amended to
27 read:

28 204. The articles of incorporation may set forth:

29 (a) Any or all of the following provisions, which shall not be
30 effective unless expressly provided in the articles:

31 (1) Granting, with or without limitations, the power to levy
32 assessments upon the shares or any class of shares.

33 (2) Granting to shareholders preemptive rights to subscribe to
34 any or all issues of shares or securities.

35 (3) Special qualifications of persons who may be shareholders.

36 (4) A provision limiting the duration of the corporation's
37 existence to a specified date.

38 (5) A provision requiring, for any or all corporate actions (except
39 as provided in Section 303, subdivision (b) of Section 402.5,
40 subdivision (c) of Section 708, and Section 1900) the vote of a

1 larger proportion or of all of the shares of any class or series, or
2 the vote or quorum for taking action of a larger proportion or of
3 all of the directors, than is otherwise required by this division.

4 (6) A provision limiting or restricting the business in which the
5 corporation may engage or the powers that the corporation may
6 exercise or both.

7 (7) A provision conferring upon the holders of any evidences
8 of indebtedness, issued or to be issued by the corporation, the right
9 to vote in the election of directors and on any other matters on
10 which shareholders may vote.

11 (8) A provision conferring upon shareholders the right to
12 determine the consideration for which shares shall be issued.

13 (9) A provision requiring the approval of the shareholders
14 (Section 153) or the approval of the outstanding shares (Section
15 152) for any corporate action, even though not otherwise required
16 by this division.

17 (10) Provisions eliminating or limiting the personal liability of
18 a director for monetary damages in an action brought by or in the
19 right of the corporation for breach of a director's duties to the
20 corporation and its shareholders, as set forth in Section 309,
21 provided, however, that (A) such a provision may not eliminate
22 or limit the liability of directors (i) for acts or omissions that
23 involve intentional misconduct or a knowing and culpable violation
24 of law, (ii) for acts or omissions that a director believes to be
25 contrary to the best interests of the corporation or its shareholders
26 or that involve the absence of good faith on the part of the director,
27 (iii) for any transaction from which a director derived an improper
28 personal benefit, (iv) for acts or omissions that show a reckless
29 disregard for the director's duty to the corporation or its
30 shareholders in circumstances in which the director was aware, or
31 should have been aware, in the ordinary course of performing a
32 director's duties, of a risk of serious injury to the corporation or
33 its shareholders, (v) for acts or omissions that constitute an
34 unexcused pattern of inattention that amounts to an abdication of
35 the director's duty to the corporation or its shareholders, (vi) under
36 Section 310, or (vii) under Section 316, (B) no such provision shall
37 eliminate or limit the liability of a director for any act or omission
38 occurring prior to the date when the provision becomes effective,
39 and (C) no such provision shall eliminate or limit the liability of
40 an officer for any act or omission as an officer, notwithstanding

1 that the officer is also a director or that his or her actions, if
2 negligent or improper, have been ratified by the directors.

3 (11) A provision authorizing, whether by bylaw, agreement, or
4 otherwise, the indemnification of agents (as defined in Section
5 317) in excess of that expressly permitted by Section 317 for those
6 agents of the corporation for breach of duty to the corporation and
7 its stockholders, provided, however, that the provision may not
8 provide for indemnification of any agent for any acts or omissions
9 or transactions from which a director may not be relieved of
10 liability as set forth in the exception to paragraph (10) or as to
11 circumstances in which indemnity is expressly prohibited by
12 Section 317.

13 Notwithstanding this subdivision, bylaws may require for all or
14 any actions by the board the affirmative vote of a majority of the
15 authorized number of directors. Nothing contained in this
16 subdivision shall affect the enforceability, as between the parties
17 thereto, of any lawful agreement not otherwise contrary to public
18 policy.

19 (b) Reasonable restrictions upon the right to transfer or
20 hypothecate shares of any class or classes or series, but no
21 restriction shall be binding with respect to shares issued prior to
22 the adoption of the restriction unless the holders of such shares
23 voted in favor of the restriction.

24 (c) The names and addresses of the persons appointed to act as
25 initial directors.

26 (d) Any other provision, not in conflict with law, for the
27 management of the business and for the conduct of the affairs of
28 the corporation, including any provision which is required or
29 permitted by this division to be stated in the bylaws.

30 SEC. 7. Section 300 of the Corporations Code is amended to
31 read:

32 300. Subject to the provisions of this division and any
33 limitations in the articles relating to action required to be approved
34 by the shareholders (Section 153) or by the outstanding shares
35 (Section 152), or by a less than majority vote of a class or series
36 of preferred shares (Section 402.5), the business and affairs of the
37 corporation shall be managed and all corporate powers shall be
38 exercised by or under the direction of the board. The board may
39 delegate the management of the day-to-day operation of the
40 business of the corporation to a management company or other

1 person provided that the business and affairs of the corporation
2 shall be managed and all corporate powers shall be exercised under
3 the ultimate direction of the board. The business and affairs of a
4 statutory close corporation, as described in Section 2404, may be
5 managed as provided in Chapter 24 (commencing with Section
6 2400).

7 *SEC. 8. Section 307 of the Corporations Code, as amended by*
8 *Section 1 of Chapter 102 of the Statutes of 2005, is amended to*
9 *read:*

10 307. (a) Unless otherwise provided in the articles or, subject
11 to paragraph (5) of subdivision (a) of Section 204, in the bylaws,
12 all of the following apply:

13 (1) Meetings of the board may be called by the chair of the
14 board or the president or any vice president or the secretary or any
15 two directors.

16 (2) Regular meetings of the board may be held without notice
17 if the time and place of the meetings are fixed by the bylaws or
18 the board. Special meetings of the board shall be held upon four
19 days' notice by mail or 48 hours' notice delivered personally or
20 by telephone, including a voice messaging system or by electronic
21 transmission by the corporation (Section 20). The articles or bylaws
22 may not dispense with notice of a special meeting. A notice, or
23 waiver of notice, need not specify the purpose of any regular or
24 special meeting of the board.

25 (3) Notice of a meeting need not be given to a director who
26 provides a waiver of notice or a consent to holding the meeting or
27 an approval of the minutes thereof in writing, whether before or
28 after the meeting, or who attends the meeting without protesting,
29 prior thereto or at its commencement, the lack of notice to that
30 director. These waivers, consents and approvals shall be filed with
31 the corporate records or made a part of the minutes of the meeting.

32 (4) A majority of the directors present, whether or not a quorum
33 is present, may adjourn any meeting to another time and place. If
34 the meeting is adjourned for more than 24 hours, notice of an
35 adjournment to another time or place shall be given prior to the
36 time of the adjourned meeting to the directors who were not present
37 at the time of the adjournment.

38 (5) Meetings of the board may be held at a place within or
39 without the state that has been designated in the notice of the

1 meeting or, if not stated in the notice or there is no notice,
2 designated in the bylaws or by resolution of the board.

3 (6) Members of the board may participate in a meeting through
4 use of conference telephone, electronic video screen
5 communication, or electronic transmission by and to the
6 corporation (Sections 20 and 21). Participation in a meeting through
7 use of conference telephone or electronic video screen
8 communication pursuant to this subdivision constitutes presence
9 in person at that meeting as long as all members participating in
10 the meeting are able to hear one another. Participation in a meeting
11 through electronic transmission by and to the corporation (other
12 than conference telephone and electronic video screen
13 communication), pursuant to this subdivision constitutes presence
14 in person at that meeting if both of the following apply:

15 (A) Each member participating in the meeting can communicate
16 with all of the other members concurrently.

17 (B) Each member is provided the means of participating in all
18 matters before the board, including, without limitation, the capacity
19 to propose, or to interpose an objection to, a specific action to be
20 taken by the corporation.

21 (7) A majority of the authorized number of directors constitutes
22 a quorum of the board for the transaction of business. The articles
23 or bylaws may not provide that a quorum shall be less than
24 one-third the authorized number of directors or less than two,
25 whichever is larger, unless the authorized number of directors is
26 one, in which case one director constitutes a quorum.

27 (8) An act or decision done or made by a majority of the
28 directors present at a meeting duly held at which a quorum is
29 present is the act of the board, subject to the provisions of Section
30 310 and subdivision (e) of Section 317. The articles or bylaws may
31 not provide that a lesser vote than a majority of the directors present
32 at a meeting is the act of the board. A meeting at which a quorum
33 is initially present may continue to transact business
34 notwithstanding the withdrawal of directors, if any action taken is
35 approved by at least a majority of the required quorum for that
36 meeting.

37 (b) An action required or permitted to be taken by the board
38 may be taken without a meeting, if all members of the board shall
39 individually or collectively consent in writing to that action and
40 if the number of members of the board serving at the time

1 constitutes a quorum. The written consent or consents shall be
2 filed with the minutes of the proceedings of the board. For purposes
3 of this subdivision only, “all members of the board” shall include
4 an “interested director” as described in subdivision (a) of Section
5 310 or a “common director” as described in subdivision (b) of
6 Section 310 who abstains in writing from providing consent, where
7 the disclosures required by Section 310 have been made to the
8 noninterested or noncommon directors, as applicable, prior to their
9 execution of the written consent or consents, the specified
10 disclosures are conspicuously included in the written consent or
11 consents executed by the noninterested or noncommon directors,
12 and the noninterested or noncommon directors, as applicable,
13 approve the action by a vote that is sufficient without counting the
14 votes of the interested or common directors. If written consent is
15 provided by the directors in accordance with the immediately
16 preceding sentence and the disclosures made regarding the action
17 that is the subject of the consent do not comply with the
18 requirements of Section 310, the action that is the subject of the
19 consent shall be deemed approved, but in any suit brought to
20 challenge the action, the party asserting the validity of the action
21 shall have the burden of proof in establishing that the action was
22 just and reasonable to the corporation at the time it was approved.

23 (c) This section applies also to committees of the board and
24 incorporators and action by those committees and incorporators,
25 *mutatis mutandis*.

26 ~~(d) This section shall remain in effect only until January 1, 2011,~~
27 ~~and as of that date is repealed, unless a later enacted statute, that~~
28 ~~is enacted before January 1, 2011, deletes or extends that date.~~

29 *SEC. 9. Section 307 of the Corporations Code, as added by*
30 *Section 2 of Chapter 102 of the Statutes of 2005, is repealed.*

31 ~~307. (a) Unless otherwise provided in the articles or, subject~~
32 ~~to paragraph (5) of subdivision (a) of Section 204, in the bylaws,~~
33 ~~all of the following apply:~~

34 ~~(1) Meetings of the board may be called by the chair of the~~
35 ~~board or the president or any vice president or the secretary or any~~
36 ~~two directors.~~

37 ~~(2) Regular meetings of the board may be held without notice~~
38 ~~if the time and place of the meetings are fixed by the bylaws or~~
39 ~~the board. Special meetings of the board shall be held upon four~~
40 ~~days' notice by mail or 48 hours' notice delivered personally or~~

1 by telephone, including a voice messaging system or by electronic
2 transmission by the corporation (Section 20). The articles or bylaws
3 may not dispense with notice of a special meeting. A notice, or
4 waiver of notice, need not specify the purpose of any regular or
5 special meeting of the board.

6 ~~(3) Notice of a meeting need not be given to a director who~~
7 ~~provides a waiver of notice or a consent to holding the meeting or~~
8 ~~an approval of the minutes thereof in writing, whether before or~~
9 ~~after the meeting, or who attends the meeting without protesting,~~
10 ~~prior thereto or at its commencement, the lack of notice to that~~
11 ~~director. These waivers, consents and approvals shall be filed with~~
12 ~~the corporate records or made a part of the minutes of the meeting.~~

13 ~~(4) A majority of the directors present, whether or not a quorum~~
14 ~~is present, may adjourn any meeting to another time and place. If~~
15 ~~the meeting is adjourned for more than 24 hours, notice of an~~
16 ~~adjournment to another time or place shall be given prior to the~~
17 ~~time of the adjourned meeting to the directors who were not present~~
18 ~~at the time of the adjournment.~~

19 ~~(5) Meetings of the board may be held at a place within or~~
20 ~~without the state that has been designated in the notice of the~~
21 ~~meeting or, if not stated in the notice or there is no notice,~~
22 ~~designated in the bylaws or by resolution of the board.~~

23 ~~(6) Members of the board may participate in a meeting through~~
24 ~~use of conference telephone, electronic video screen~~
25 ~~communication, or electronic transmission by and to the~~
26 ~~corporation (Sections 20 and 21). Participation in a meeting through~~
27 ~~use of conference telephone or electronic video screen~~
28 ~~communication pursuant to this subdivision constitutes presence~~
29 ~~in person at that meeting as long as all members participating in~~
30 ~~the meeting are able to hear one another. Participation in a meeting~~
31 ~~through electronic transmission by and to the corporation (other~~
32 ~~than conference telephone and electronic video screen~~
33 ~~communication), pursuant to this subdivision constitutes presence~~
34 ~~in person at that meeting if both of the following apply:~~

35 ~~(A) Each member participating in the meeting can communicate~~
36 ~~with all of the other members concurrently.~~

37 ~~(B) Each member is provided the means of participating in all~~
38 ~~matters before the board, including, without limitation, the capacity~~
39 ~~to propose, or to interpose an objection to, a specific action to be~~
40 ~~taken by the corporation.~~

1 ~~(7) A majority of the authorized number of directors constitutes~~
2 ~~a quorum of the board for the transaction of business. The articles~~
3 ~~or bylaws may not provide that a quorum shall be less than~~
4 ~~one-third the authorized number of directors or less than two,~~
5 ~~whichever is larger, unless the authorized number of directors is~~
6 ~~one, in which case one director constitutes a quorum.~~

7 ~~(8) An act or decision done or made by a majority of the~~
8 ~~directors present at a meeting duly held at which a quorum is~~
9 ~~present is the act of the board, subject to the provisions of Section~~
10 ~~310 and subdivision (e) of Section 317. The articles or bylaws may~~
11 ~~not provide that a lesser vote than a majority of the directors present~~
12 ~~at a meeting is the act of the board. A meeting at which a quorum~~
13 ~~is initially present may continue to transact business~~
14 ~~notwithstanding the withdrawal of directors, if any action taken is~~
15 ~~approved by at least a majority of the required quorum for that~~
16 ~~meeting.~~

17 ~~(b) An action required or permitted to be taken by the board~~
18 ~~may be taken without a meeting, if all members of the board shall~~
19 ~~individually or collectively consent in writing to that action. The~~
20 ~~written consent or consents shall be filed with the minutes of the~~
21 ~~proceedings of the board. The action by written consent shall have~~
22 ~~the same force and effect as a unanimous vote of the directors.~~

23 ~~(c) This section applies also to committees of the board and~~
24 ~~incorporators and action by those committees and incorporators,~~
25 ~~mutatis mutandis.~~

26 ~~(d) This section shall become operative on January 1, 2011.~~

27 ~~SEC. 8.~~

28 ~~SEC. 10.~~ Section 418 of the Corporations Code is amended to
29 read:

30 418. (a) There shall also appear on the certificate, the initial
31 transaction statement, and written statements (unless stated or
32 summarized under subdivision (a) or (b) of Section 417) the
33 statements required by all of the following clauses to the extent
34 applicable:

35 (1) The fact that the shares are subject to restrictions upon
36 transfer.

37 (2) If the shares are assessable or are not fully paid, a statement
38 that they are assessable or the statements required by subdivision
39 (d) of Section 409 if they are not fully paid.

1 (3) The fact that the shares are subject to a voting agreement
2 under subdivision (a) of Section 706 or an irrevocable proxy under
3 subdivision (e) of Section 705 or restrictions upon voting rights
4 contractually imposed by the corporation.

5 (4) The fact that the shares are redeemable.

6 (5) The fact that the shares are convertible and the period for
7 conversion.

8 Any such statement or reference thereto (Section 174) on the
9 face of the certificate, the initial transaction statement, and written
10 statements required by paragraph (1) or (2) shall be conspicuous.

11 (b) Unless stated on the certificate, the initial transaction
12 statement, and written statements as required by subdivision (a),
13 no restriction upon transfer, no right of redemption and no voting
14 agreement under subdivision (a) of Section 706, no irrevocable
15 proxy under subdivision (e) of Section 705, and no voting
16 restriction imposed by the corporation shall be enforceable against
17 a transferee of the shares without actual knowledge of such
18 restriction, right, agreement or proxy. With regard only to liability
19 to assessment or for the unpaid portion of the subscription price,
20 unless stated on the certificate as required by subdivision (a), that
21 liability shall not be enforceable against a transferee of the shares.
22 For the purpose of this subdivision, “transferee” includes a
23 purchaser from the corporation.

24 (c) All certificates representing shares of a statutory close
25 corporation shall comply with Section 2406.

26 ~~SEC. 9.~~

27 *SEC. 11.* Section 421 of the Corporations Code is repealed.

28 ~~SEC. 10.~~

29 *SEC. 12.* Section 602 of the Corporations Code is amended to
30 read:

31 602. (a) Unless otherwise provided in the articles, a majority
32 of the shares entitled to vote, represented in person or by proxy,
33 shall constitute a quorum at a meeting of the shareholders, but in
34 no event shall a quorum consist of less than one-third (or, in the
35 case of a mutual water company, 20 percent) of the shares entitled
36 to vote at the meeting or, except in the case of a statutory close
37 corporation, of more than a majority of the shares entitled to vote
38 at the meeting. Except as provided in subdivision (b), the
39 affirmative vote of a majority of the shares represented and voting
40 at a duly held meeting at which a quorum is present (which shares

1 voting affirmatively also constitute at least a majority of the
2 required quorum) shall be the act of the shareholders, unless the
3 vote of a greater number or voting by classes is required by this
4 division or the articles.

5 (b) The shareholders present at a duly called or held meeting at
6 which a quorum is present may continue to transact business until
7 adjournment notwithstanding the withdrawal of enough
8 shareholders to leave less than a quorum, if any action taken (other
9 than adjournment) is approved by at least a majority of the shares
10 required to constitute a quorum or, if required by this division or
11 the articles, the vote of a greater number or voting by classes.

12 (c) In the absence of a quorum, any meeting of shareholders
13 may be adjourned from time to time by the vote of a majority of
14 the shares represented either in person or by proxy, but no other
15 business may be transacted, except as provided in subdivision (b).

16 ~~SEC. 11.~~

17 *SEC. 13.* Section 902 of the Corporations Code is amended to
18 read:

19 902. (a) After any shares have been issued, amendments may
20 be adopted if approved by the board and approved by the
21 outstanding shares (Section 152), either before or after the approval
22 by the board.

23 (b) Notwithstanding subdivision (a), an amendment extending
24 the corporate existence or making the corporate existence perpetual
25 may be adopted by a corporation organized prior to August 14,
26 1929, with approval by the board alone.

27 (c) Notwithstanding subdivision (a), unless the corporation has
28 more than one class of shares outstanding, an amendment effecting
29 only a stock split (including an increase in the authorized number
30 of shares in proportion thereto) may be adopted with approval by
31 the board alone.

32 (d) Notwithstanding subdivision (a), an amendment deleting
33 the names and addresses of the first directors or the name and
34 address of the initial agent may be adopted with approval by the
35 board alone.

36 (e) Whenever the articles require for corporate action the vote
37 of a larger proportion or of all of the shares of any class or series,
38 or of a larger proportion or of all of the directors, than is otherwise
39 required by this division, the provision in the articles requiring

1 such greater vote shall not be altered, amended or repealed except
2 by such greater vote unless otherwise provided in the articles.

3 (f) Notwithstanding subdivision (a), any amendment to the
4 articles of a statutory close corporation, as described in Section
5 2404, terminating its status as a statutory close corporation or
6 reducing the vote required for such an amendment may not be
7 adopted unless approved in accordance with Section 2420.

8 ~~SEC. 12.~~

9 *SEC. 14.* Section 1001 of the Corporations Code is amended
10 to read:

11 1001. (a) A corporation may sell, lease, convey, exchange,
12 transfer, or otherwise dispose of all or substantially all of its assets
13 when the principal terms are approved by the board, and, unless
14 the transaction is in the usual and regular course of its business,
15 approved by the outstanding shares (Section 152), either before
16 or after approval by the board and before or after the transaction.
17 A transaction constituting a reorganization (Section 181) is subject
18 to the provisions of Chapter 12 (commencing with Section 1200)
19 and not this section (other than subdivision (d)). A transaction
20 constituting a conversion (Section 161.9) is subject to the
21 provisions of Chapter 11.5 (commencing with Section 1150) and
22 not this section. Any sale, lease, conveyance, exchange, transfer,
23 or other disposition of all or substantially all of the assets of a
24 statutory close corporation, as described in Section 2404, unless
25 the transaction is in the usual and regular course of business, shall
26 be approved as provided in subdivision (b) of Section 2418.

27 (b) Notwithstanding approval of the outstanding shares (Section
28 152), the board may abandon the proposed transaction without
29 further action by the shareholders, subject to the contractual rights,
30 if any, of third parties.

31 (c) The sale, lease, conveyance, exchange, transfer or other
32 disposition may be made upon those terms and conditions and for
33 that consideration as the board may deem in the best interests of
34 the corporation. The consideration may be money, securities, or
35 other property.

36 (d) If the acquiring party in a transaction pursuant to subdivision
37 (a) of this section or subdivision (g) of Section 2001 is in control
38 of or under common control with the disposing corporation, the
39 principal terms of the sale must be approved by at least 90 percent
40 of the voting power of the disposing corporation unless the

1 disposition is to a domestic or foreign corporation or other business
2 entity in consideration of the nonredeemable common shares or
3 nonredeemable equity securities of the acquiring party or its parent.

4 (e) Subdivision (d) does not apply to any transaction if the
5 Commissioner of Corporations, the Commissioner of Financial
6 Institutions, the Insurance Commissioner or the Public Utilities
7 Commission has approved the terms and conditions of the
8 transaction and the fairness of those terms and conditions pursuant
9 to Section 25142, Section 696.5 of the Financial Code, Section
10 838.5 of the Insurance Code, or Section 822 of the Public Utilities
11 Code.

12 ~~SEC. 13.~~

13 *SEC. 15.* Section 1100 of the Corporations Code is amended
14 to read:

15 1100. Any two or more corporations may be merged into one
16 of those corporations. A corporation may merge with one or more
17 domestic corporations (Section 167), foreign corporations (Section
18 171), or other business entities (Section 174.5) pursuant to this
19 chapter. Mergers in which a foreign corporation but no other
20 business entity is a constituent party are governed by Section 1108,
21 and mergers in which an other business entity is a constituent party
22 are governed by Section 1113. If any disappearing corporation in
23 a merger is a statutory close corporation, as described in Section
24 2404, and the surviving corporation is not a statutory close
25 corporation, the merger shall be approved as provided in
26 subdivision (a) of Section 2418.

27 ~~SEC. 14.~~

28 *SEC. 16.* Section 1111 of the Corporations Code is repealed.

29 ~~SEC. 15.~~

30 *SEC. 17.* Section 1152 of the Corporations Code is amended
31 to read:

32 1152. (a) A corporation that desires to convert to a domestic
33 other business entity shall approve a plan of conversion. The plan
34 of conversion shall state all of the following:

- 35 (1) The terms and conditions of the conversion.
- 36 (2) The jurisdiction of the organization of the converted entity
37 and of the converting corporation and the name of the converted
38 entity after conversion.

1 (3) The manner of converting the shares of each of the
2 shareholders of the converting corporation into securities of, or
3 interests in, the converted entity.

4 (4) The provisions of the governing documents for the converted
5 entity, including the partnership agreement or limited liability
6 company articles of organization and operating agreement, to
7 which the holders of interests in the converted entity are to be
8 bound.

9 (5) Any other details or provisions that are required by the laws
10 under which the converted entity is organized, or that are desired
11 by the converting corporation.

12 (b) The plan of conversion shall be approved by the board of
13 the converting corporation (Section 151), and the principal terms
14 of the plan of the conversion shall be approved by the outstanding
15 shares (Section 152) of each class of the converting corporation.
16 The approval of the outstanding shares may be given before or
17 after approval by the board. Notwithstanding the foregoing, if a
18 converting corporation is a statutory close corporation, as described
19 in Section 2404, the conversion shall be approved as provided in
20 subdivision (d) of Section 2418.

21 (c) If the corporation is converting into a general or limited
22 partnership or into a limited liability company, then in addition to
23 the approval of the shareholders set forth in subdivision (b), the
24 plan of conversion shall be approved by each shareholder who will
25 become a general partner or manager, as applicable, of the
26 converted entity pursuant to the plan of conversion unless the
27 shareholders have dissenters' rights pursuant to Section 1159 and
28 Chapter 13 (commencing with Section 1300).

29 (d) Upon the effectiveness of the conversion, all shareholders
30 of the converting corporation, except those that exercise dissenters'
31 rights as provided in Section 1159 and Chapter 13 (commencing
32 with Section 1300), shall be deemed parties to any agreement or
33 agreements constituting the governing documents for the converted
34 entity adopted as part of the plan of conversion, irrespective of
35 whether or not a shareholder has executed the plan of conversion
36 or those governing documents for the converted entity. Any
37 adoption of governing documents made pursuant thereto shall be
38 effective at the effective time or date of the conversion.

39 (e) Notwithstanding its prior approval by the board and the
40 outstanding shares or either of them, a plan of conversion may be

1 amended before the conversion takes effect if the amendment is
2 approved by the board and, if it changes any of the principal terms
3 of the plan of conversion, by the shareholders of the converting
4 corporation in the same manner and to the same extent as was
5 required for approval of the original plan of conversion.

6 (f) A plan of conversion may be abandoned by the board of a
7 converting corporation, or by the shareholders of a converting
8 corporation if the abandonment is approved by the outstanding
9 shares, in each case in the same manner as required for approval
10 of the plan of conversion, subject to the contractual rights of third
11 parties, at any time before the conversion is effective.

12 (g) The converted entity shall keep the plan of conversion at
13 (1) the principal place of business of the converted entity if the
14 converted entity is a domestic partnership or (2) at the office at
15 which records are to be kept under Section 15614 or 15901.11 if
16 the converted entity is a domestic limited partnership or at the
17 office at which records are to be kept under Section 17057 if the
18 converted entity is a domestic limited liability company. Upon the
19 request of a shareholder of a converting corporation, the authorized
20 person on behalf of the converted entity shall promptly deliver to
21 the shareholder, at the expense of the converted entity, a copy of
22 the plan of conversion. A waiver by a shareholder of the rights
23 provided in this subdivision shall be unenforceable.

24 ~~SEC. 16.~~

25 *SEC. 18.* Section 1201 of the Corporations Code is amended
26 to read:

27 1201. (a) The principal terms of a reorganization shall be
28 approved by the outstanding shares (Section 152) of each class of
29 each corporation the approval of whose board is required under
30 Section 1200, except as provided in subdivision (b) and except
31 that (unless otherwise provided in the articles) no approval of any
32 class of outstanding preferred shares of the surviving or acquiring
33 corporation or parent party shall be required if the rights,
34 preferences, privileges and restrictions granted to or imposed upon
35 that class of shares remain unchanged (subject to the provisions
36 of subdivision (c)). For the purpose of this subdivision, two classes
37 of common shares differing only as to voting rights shall be
38 considered as a single class of shares.

39 (b) No approval of the outstanding shares (Section 152) is
40 required by subdivision (a) in the case of any corporation if that

1 corporation, or its shareholders immediately before the
2 reorganization, or both, shall own (immediately after the
3 reorganization) equity securities, other than any warrant or right
4 to subscribe to or purchase those equity securities, of the surviving
5 or acquiring corporation or a parent party (subdivision (d) of
6 Section 1200) possessing more than five-sixths of the voting power
7 of the surviving or acquiring corporation or parent party. In making
8 the determination of ownership by the shareholders of a
9 corporation, immediately after the reorganization, of equity
10 securities pursuant to the preceding sentence, equity securities
11 which they owned immediately before the reorganization as
12 shareholders of another party to the transaction shall be
13 disregarded. For the purpose of this section only, the voting power
14 of a corporation shall be calculated by assuming the conversion
15 of all equity securities convertible (immediately or at some future
16 time) into shares entitled to vote but not assuming the exercise of
17 any warrant or right to subscribe to or purchase those shares.

18 (c) Notwithstanding subdivision (b), the principal terms of a
19 reorganization shall be approved by the outstanding shares (Section
20 152) of the surviving corporation in a merger reorganization if any
21 amendment is made to its articles which would otherwise require
22 that approval.

23 (d) Notwithstanding subdivision (b), the principal terms of a
24 reorganization shall be approved by the outstanding shares (Section
25 152) of any class of a corporation which is a party to a merger or
26 sale-of-assets reorganization if holders of shares of that class
27 receive shares of the surviving or acquiring corporation or parent
28 party having different rights, preferences, privileges or restrictions
29 than those surrendered. Shares in a foreign corporation received
30 in exchange for shares in a domestic corporation have different
31 rights, preferences, privileges and restrictions within the meaning
32 of the preceding sentence.

33 (e) Notwithstanding subdivisions (a) and (b), the principal terms
34 of a reorganization shall be approved as provided in subdivision
35 (c) of Section 2418 if the reorganization would result in the holders
36 of outstanding shares of a statutory close corporation, as described
37 in Section 2404, receiving shares of a corporation that is not a
38 statutory close corporation.

39 (f) Notwithstanding subdivisions (a) and (b), the principal terms
40 of a reorganization shall be approved by the outstanding shares

1 (Section 152) of any class of a corporation which is a party to a
2 merger reorganization if holders of shares of that class receive
3 interests of a surviving other business entity in the merger.

4 (g) Notwithstanding subdivisions (a) and (b), the principal terms
5 of a reorganization shall be approved by all shareholders of any
6 class or series if, as a result of the reorganization, the holders of
7 that class or series become personally liable for any obligations
8 of a party to the reorganization, unless all holders of that class or
9 series have the dissenters' rights provided in Chapter 13
10 (commencing with Section 1300).

11 (h) Any approval required by this section may be given before
12 or after the approval by the board. Notwithstanding approval
13 required by this section, the board may abandon the proposed
14 reorganization without further action by the shareholders, subject
15 to the contractual rights, if any, of third parties.

16 ~~SEC. 17.~~

17 *SEC. 19.* Section 1300 of the Corporations Code is amended
18 to read:

19 1300. (a) If the approval of the outstanding shares (Section
20 152) of a corporation is required for a reorganization under
21 subdivisions (a) and (b) or subdivision (f) of Section 1201, or if
22 approval by shareholders of a statutory close corporation, as
23 described in Section 2404, is required under subdivision (c) of
24 Section 2418, each shareholder of the corporation entitled to vote
25 on the transaction and each shareholder of a subsidiary corporation
26 in a short-form merger may, by complying with this chapter,
27 require the corporation in which the shareholder holds shares to
28 purchase for cash at their fair market value the shares owned by
29 the shareholder which are dissenting shares as defined in
30 subdivision (b). The fair market value shall be determined as of
31 the day before the first announcement of the terms of the proposed
32 reorganization or short-form merger, excluding any appreciation
33 or depreciation in consequence of the proposed action, but adjusted
34 for any stock split, reverse stock split, or share dividend which
35 becomes effective thereafter.

36 (b) As used in this chapter, "dissenting shares" means shares
37 which come within all of the following descriptions:

38 (1) Which were not immediately prior to the reorganization or
39 short-form merger listed on any national securities exchange
40 certified by the Commissioner of Corporations under subdivision

1 (o) of Section 25100, and the notice of meeting of shareholders to
2 act upon the reorganization summarizes this section and Sections
3 1301, 1302, 1303 and 1304; provided, however, that this provision
4 does not apply to any shares with respect to which there exists any
5 restriction on transfer imposed by the corporation or by any law
6 or regulation; and provided, further, that this provision does not
7 apply to any class of shares if demands for payment are filed with
8 respect to 5 percent or more of the outstanding shares of that class.

9 (2) Which were outstanding on the date for the determination
10 of shareholders entitled to vote on the reorganization and (A) were
11 not voted in favor of the reorganization or, (B) if described in
12 paragraph (1) (without regard to the provisos in that paragraph),
13 were voted against the reorganization, or were held of record on
14 the effective date of a short-form merger; provided, however, that
15 subparagraph (A) rather than subparagraph (B) of this paragraph
16 applies in any case where the approval required by Section 1201
17 is sought by written consent rather than at a meeting.

18 (3) Which the dissenting shareholder has demanded that the
19 corporation purchase at their fair market value, in accordance with
20 Section 1301.

21 (4) Which the dissenting shareholder has submitted for
22 endorsement, in accordance with Section 1302.

23 (c) As used in this chapter, “dissenting shareholder” means the
24 recordholder of dissenting shares and includes a transferee of
25 record.

26 ~~SEC. 18:~~

27 *SEC. 20.* Section 1800 of the Corporations Code is amended
28 to read:

29 1800. (a) A verified complaint for involuntary dissolution of
30 a corporation on any one or more of the grounds specified in
31 subdivision (b) may be filed in the superior court of the proper
32 county by any of the following persons:

33 (1) One-half or more of the directors in office.

34 (2) A shareholder or shareholders who hold shares representing
35 not less than 33 1/3 percent of (i) the total number of outstanding
36 shares (assuming conversion of any preferred shares convertible
37 into common shares) or (ii) the outstanding common shares or (iii)
38 the equity of the corporation, exclusive in each case of shares
39 owned by persons who have personally participated in any of the
40 transactions enumerated in paragraph (4) of subdivision (b), or

1 any shareholder or shareholders of a statutory close corporation,
2 as described in Section 2404, pursuant to Section 2426.

3 (3) Any shareholder if the ground for dissolution is that the
4 period for which the corporation was formed has terminated
5 without extension thereof.

6 (4) Any other person expressly authorized to do so in the articles.

7 (b) The grounds for involuntary dissolution are that:

8 (1) The corporation has abandoned its business for more than
9 one year.

10 (2) The corporation has an even number of directors who are
11 equally divided and cannot agree as to the management of its
12 affairs, so that its business can no longer be conducted to advantage
13 or so that there is danger that its property and business will be
14 impaired or lost, and the holders of the voting shares of the
15 corporation are so divided into factions that they cannot elect a
16 board consisting of an uneven number.

17 (3) There is internal dissension and two or more factions of
18 shareholders in the corporation are so deadlocked that its business
19 can no longer be conducted with advantage to its shareholders or,
20 unless the corporation is a statutory close corporation, as described
21 in Section 2401, and is operating without directors in accordance
22 with subdivision (a) of Section 2410, the shareholders have failed
23 at two consecutive annual meetings at which all voting power was
24 exercised, to elect successors to directors whose terms have expired
25 or would have expired upon election of their successors.

26 (4) Those in control of the corporation have been guilty of or
27 have knowingly countenanced persistent and pervasive fraud,
28 mismanagement or abuse of authority or persistent unfairness
29 toward any shareholders or its property is being misapplied or
30 wasted by its directors or officers.

31 (5) In the case of any corporation with 35 or fewer shareholders
32 (determined as provided in Section 605), liquidation is reasonably
33 necessary for the protection of the rights or interests of the
34 complaining shareholder or shareholders.

35 (6) The period for which the corporation was formed has
36 terminated without extension of such period.

37 (c) At any time prior to the trial of the action any shareholder
38 or creditor may intervene therein.

39 (d) This section does not apply to any corporation subject to the
40 Banking Law (Division 1 (commencing with Section 99) of the

1 Financial Code), the Public Utilities Act (Part 1 (commencing with
2 201) of Division 1 of the Public Utilities Code), the Savings and
3 Loan Association Law (Division 2 (commencing with Section
4 5000) of the Financial Code) or Article 14 (commencing with
5 Section 1010) of Chapter 1 of Part 2 of Division 1 of the Insurance
6 Code.

7 (e) For the purposes of this section, “shareholder” includes a
8 beneficial owner of shares who has entered into an agreement
9 under Section 706 or 2408.

10 ~~SEC. 19.~~

11 *SEC. 21.* Section 1900 of the Corporations Code is amended
12 to read:

13 1900. (a) Any corporation may elect voluntarily to wind up
14 and dissolve by the vote of shareholders holding shares
15 representing 50 percent or more of the voting power; provided,
16 however, that if the corporation is a statutory close corporation,
17 as described in Section 2404, the vote of shareholders required
18 may be as otherwise set forth in the articles pursuant to subdivision
19 (a) of Section 2424.

20 (b) Any corporation that comes within one of the following
21 descriptions may elect by approval by the board to wind up and
22 dissolve:

23 (1) A corporation as to which an order for relief has been entered
24 under Chapter 7 of the federal bankruptcy law.

25 (2) A corporation that has disposed of all of its assets and has
26 not conducted any business for a period of five years immediately
27 preceding the adoption of the resolution electing to dissolve the
28 corporation.

29 (3) A corporation that has issued no shares.

30 ~~SEC. 20.~~

31 *SEC. 22.* Section 1901 of the Corporations Code is amended
32 to read:

33 1901. (a) Whenever a corporation has elected to wind up and
34 dissolve a certificate evidencing such election shall forthwith be
35 filed.

36 (b) The certificate shall be an officers’ certificate or shall be
37 signed and verified by at least a majority of the directors then in
38 office or by one or more shareholders authorized to do so by
39 shareholders holding shares representing 50 percent or more of
40 the voting power or, in the case of a statutory close corporation,

1 as described in Section 2402, such other percentage of the voting
2 power or otherwise having the power to dissolve the corporation
3 as may be set forth in the articles pursuant to subdivision (a) of
4 Section 2424. The certificate shall set forth all of the following:

5 (1) That the corporation has elected to wind up and dissolve.

6 (2) If the election was made by the vote of shareholders, the
7 number of shares voting for the election and that the election was
8 made by shareholders representing at least 50 percent of the voting
9 power or, in the case of a statutory close corporation, such
10 percentage of the voting power or otherwise having the power to
11 dissolve the corporation as may be set forth in the articles.

12 (3) If the certificate is executed by a shareholder or shareholders,
13 that the subscribing shareholder or shareholders were authorized
14 to execute the certificate by shareholders holding shares
15 representing at least 50 percent of the voting power or, in the case
16 of a statutory close corporation, such percentage of the voting
17 power as may be set forth in the articles.

18 (4) If the election was made by the board pursuant to subdivision
19 (b) of Section 1900, the certificate shall also set forth the
20 circumstances showing the corporation to be within one of the
21 categories described in said subdivision.

22 (c) If an election to dissolve made pursuant to subdivision (a)
23 of Section 1900 or subdivision (a) of Section 2414 is made by the
24 vote of all the outstanding shares and a statement to that effect is
25 added to the certificate of dissolution pursuant to Section 1905,
26 the separate filing of the certificate of election pursuant to this
27 section is not required.

28 ~~SEC. 21.~~

29 *SEC. 23.* Section 1902 of the Corporations Code is amended
30 to read:

31 1902. (a) A voluntary election to wind up and dissolve may
32 be revoked prior to distribution of any assets by the vote of
33 shareholders holding shares representing a majority of the voting
34 power, or, in the case of a statutory close corporation, as described
35 in Section 2404, such percentage of the voting power as may be
36 set forth in the articles pursuant to subdivision (a) of Section 1900
37 and subdivision (a) of Section 2424, or by approval by the board
38 if the election was by the board pursuant to subdivision (b) of
39 Section 1900. Thereupon a certificate evidencing the revocation

1 shall be signed, verified and filed in the manner prescribed by
2 Section 1901.

3 (b) The certificate shall set forth all of the following:

4 (1) That the corporation has revoked its election to wind up and
5 dissolve.

6 (2) That no assets have been distributed pursuant to the election.

7 (3) If the revocation was made by the vote of shareholders, the
8 number of shares voting for the revocation and the total number
9 of outstanding shares the holders of which were entitled to vote
10 on the revocation.

11 (4) If the election and revocation was by the board, that shall
12 be stated.

13 ~~SEC. 22.~~

14 *SEC. 24.* Section 1904 of the Corporations Code is amended
15 to read:

16 1904. If a corporation is in the process of voluntary winding
17 up, the superior court of the proper county, upon the petition of
18 (a) the corporation, or (b) a shareholder or shareholders who hold
19 shares representing 5 percent or more of the total number of any
20 class of outstanding shares, or (c) any shareholder or shareholders
21 of a statutory close corporation, as described in Section 2404, or
22 (d) three or more creditors, and upon such notice to the corporation
23 and to other persons interested in the corporation as shareholders
24 and creditors as the court may order, may take jurisdiction over
25 such voluntary winding up proceeding if that appears necessary
26 for the protection of any parties in interest. The court, if it assumes
27 jurisdiction, may make such orders as to any and all matters
28 concerning the winding up of the affairs of the corporation and for
29 the protection of its shareholders and creditors as justice and equity
30 may require. The provisions of Chapter 18 (commencing with
31 Section 1800) (except Sections 1800 and 1801) shall apply to such
32 court proceedings.

33 ~~SEC. 23.~~

34 *SEC. 25.* Section 2000 of the Corporations Code is amended
35 to read:

36 2000. (a) Subject to any contrary provision in the articles, in
37 any suit for involuntary dissolution, or in any proceeding for
38 voluntary dissolution initiated by the vote of shareholders
39 representing only 50 percent of the voting power, or less if
40 permitted pursuant to subdivision (a) of Section 2424, the

1 corporation or, if it does not elect to purchase, the holders of 50
2 percent or more of the voting power of the corporation (the
3 “purchasing parties”) may avoid the dissolution of the corporation
4 and the appointment of any receiver by purchasing for cash the
5 shares owned by the plaintiffs or by the shareholders so initiating
6 the proceeding (the “moving parties”) at their fair value. The fair
7 value shall be determined on the basis of the liquidation value as
8 of the valuation date but taking into account the possibility, if any,
9 of sale of the entire business as a going concern in a liquidation.
10 In fixing the value, the amount of any damages resulting if the
11 initiation of the dissolution is a breach by any moving party or
12 parties of an agreement with the purchasing party or parties may
13 be deducted from the amount payable to such moving party or
14 parties, unless the ground for dissolution is that specified in
15 paragraph (4) of subdivision (b) of Section 1800. The election of
16 the corporation to purchase may be made by the approval of the
17 outstanding shares (Section 152) excluding shares held by the
18 moving parties.

19 (b) If the purchasing parties (1) elect to purchase the shares
20 owned by the moving parties, and (2) are unable to agree with the
21 moving parties upon the fair value of such shares, and (3) give
22 bond with sufficient security to pay the estimated reasonable
23 expenses (including attorneys’ fees) of the moving parties if such
24 expenses are recoverable under subdivision (c), the court upon
25 application of the purchasing parties, either in the pending action
26 or in a proceeding initiated in the superior court of the proper
27 county by the purchasing parties in the case of a voluntary election
28 to wind up and dissolve, shall stay the winding up and dissolution
29 proceeding and shall proceed to ascertain and fix the fair value of
30 the shares owned by the moving parties.

31 (c) The court shall appoint three disinterested appraisers to
32 appraise the fair value of the shares owned by the moving parties,
33 and shall make an order referring the matter to the appraisers so
34 appointed for the purpose of ascertaining such value. The order
35 shall prescribe the time and manner of producing evidence, if
36 evidence is required. The award of the appraisers or of a majority
37 of them, when confirmed by the court, shall be final and conclusive
38 upon all parties. The court shall enter a decree which shall provide
39 in the alternative for winding up and dissolution of the corporation
40 unless payment is made for the shares within the time specified

1 by the decree. If the purchasing parties do not make payment for
2 the shares within the time specified, judgment shall be entered
3 against them and the surety or sureties on the bond for the amount
4 of the expenses (including attorneys' fees) of the moving parties.
5 Any shareholder aggrieved by the action of the court may appeal
6 therefrom.

7 (d) If the purchasing parties desire to prevent the winding up
8 and dissolution, they shall pay to the moving parties the value of
9 their shares ascertained and decreed within the time specified
10 pursuant to this section, or, in case of an appeal, as fixed on appeal.
11 On receiving such payment or the tender thereof, the moving
12 parties shall transfer their shares to the purchasing parties.

13 (e) For the purposes of this section, "shareholder" includes a
14 beneficial owner of shares who has entered into an agreement
15 under Section 706 or 2408.

16 (f) For the purposes of this section, the valuation date shall be
17 (1) in the case of a suit for involuntary dissolution under Section
18 1800, the date upon which that action was commenced, or (2) in
19 the case of a proceeding for voluntary dissolution initiated by the
20 vote of shareholders representing only 50 percent of the voting
21 power, or less if permitted pursuant to subdivision (a) of Section
22 2424, the date upon which that proceeding was initiated. However,
23 in either case the court may, upon the hearing of a motion by any
24 party, and for good cause shown, designate some other date as the
25 valuation date.

26 ~~SEC. 24.~~

27 *SEC. 26.* Chapter 24 (commencing with Section 2400) is added
28 to Division 1 of Title 1 of the Corporations Code, to read:

29

30 CHAPTER 24. STATUTORY CLOSE CORPORATIONS

31

32 2400. (a) Except to the extent otherwise governed by the
33 provisions of this chapter, the other chapters of this division shall
34 apply to statutory close corporations organized under this chapter.

35 (b) This chapter shall apply to professional corporations
36 organized under the Moscone-Knox Professional Corporation Act
37 (Part 4 (commencing with Section 13400) of Division 3) whose
38 articles conform to the requirements of subdivision (a) of Section
39 2404.

1 2404. (a) “Statutory close corporation” means a corporation
2 whose articles contain, in addition to the statements required by
3 Section 202, the following special statements:

4 (1) That all of the corporation’s issued shares of all classes shall
5 be held of record by not more than a specified number of persons,
6 not exceeding 35.

7 (2) “This corporation is a statutory close corporation. The rights
8 and obligations of shareholders of this statutory close corporation
9 may differ materially from the rights and obligations of
10 shareholders in other corporations, and transfer of shares in this
11 statutory close corporation may be restricted. This statutory close
12 corporation does not have the power to issue shares or to register
13 a transfer of shares that would cause the number of persons who
14 are shareholders of record to exceed the specified number set forth
15 in these articles. Refer to Chapter 24 (commencing with Section
16 2400) of Division 1 of Title 1 of the Corporations Code, these
17 articles, and any bylaws and shareholders’ agreement for
18 restrictions.”

19 (b) The name of the statutory close corporation, as set forth in
20 its articles, shall contain either the word “corporation,”
21 “incorporated” or “limited,” or an abbreviation of one of those
22 words.

23 (c) No statutory close corporation shall issue shares or register
24 a transfer of shares, whether that transfer was made voluntarily or
25 involuntarily, by operation of law or otherwise, that would cause
26 the number of persons who are shareholders of record to exceed
27 the specified number set forth in the articles pursuant to subdivision
28 (a).

29 (d) The shares issued by the statutory close corporation and
30 outstanding shall be represented by certificates subject to the
31 requirements of Section 2406.

32 (e) The special statements referred to in subdivision (a) may be
33 included in the articles by amendment, but if that amendment is
34 adopted after the issuance of shares, it may be adopted only by the
35 affirmative vote of all of the issued and outstanding shares of all
36 classes.

37 (f) In determining the number of persons who are shareholders
38 of record for the purposes of subdivision (a), the following shall
39 apply:

1 (1) Spouses shall be counted as one person regardless of how
2 many shares may be held by either or both of them, and registered
3 domestic partners shall be counted as one person regardless of
4 how many shares may be held by either or both of them.

5 (2) All members of a family shall be counted as one person
6 regardless of how many shares may be held by them.

7 (3) A trust shall be counted as one person regardless of the
8 number of trustees or beneficiaries, except that any trust whose
9 beneficial interests were offered for sale or sold shall be counted
10 according to the number of holders of beneficial interests therein.

11 (4) A partnership, limited liability company, corporation, or
12 other form of business entity or association holding shares shall
13 be counted as one, except that any entity or association whose
14 interests or shares were offered for sale or sold shall be counted
15 according to the number of holders of beneficial interests therein.

16 (g) For the purposes of this section, the term “members of a
17 family” shall mean all common ancestors, any lineal descendant
18 of each common ancestor, and any spouse, adopted child, or
19 registered domestic partner, or former spouse, or former registered
20 domestic partner, of each common ancestor or any such lineal
21 descendant, and the estates of each of them. An individual shall
22 not be considered to be a common ancestor if the individual is
23 more than six generations removed from the youngest generation
24 of shareholders who would otherwise be members of a family. A
25 spouse or registered domestic partner, or former spouse or former
26 registered domestic partner, shall each be treated as being of the
27 same generation as the individual to whom the individual is or was
28 married or registered as domestic partners.

29 (h) Any of the provisions of subdivision (f) may be eliminated,
30 and the definition in subdivision (g) may be restricted, but only if
31 the elimination or restriction is set forth in the articles or, if the
32 articles so permit, in the bylaws, or in a shareholders’ agreement
33 pursuant to Section 2408.

34 2406. (a) All certificates issued pursuant to subdivision (d) of
35 Section 2404 shall contain, in addition to any other statements
36 required by this section and Sections 409, 417, and 418, the
37 following conspicuous legend on the certificate, as defined in
38 Section 174: “This corporation is a statutory close corporation.
39 The rights and obligations of shareholders of this corporation may
40 differ materially from the rights and obligations of shareholders

1 in other corporations, and transfer of shares in this corporation
2 may be restricted. This corporation does not have the power to
3 issue shares or to register a transfer of shares that would cause the
4 number of persons who are shareholders of record to exceed the
5 specified number set forth in its articles. Refer to Chapter 24
6 (commencing with Section 2400) of Division 1 of Title 1 of the
7 Corporations Code, the articles, and any bylaws and shareholders'
8 agreement for restrictions.”

9 (b) A transferee of shares covered by a shareholders' agreement
10 authorized by Section 2408, who has actual knowledge or notice
11 thereof, or notice thereof by a legend on the certificate representing
12 those shares pursuant to subdivision (a), is bound by its provisions
13 and may be subject to liability under subdivision (c) of Section
14 2408.

15 (c) A statutory close corporation shall provide without charge
16 to any shareholder, upon the shareholder's written request, copies
17 of the articles, bylaws, and any shareholders' agreement on file
18 with the secretary of the statutory close corporation.

19 2408. (a) All shareholders of a statutory close corporation may
20 agree, in writing, to regulate any phase of the affairs of the
21 corporation, including, but not limited to, the exercise of its
22 corporate powers, the management of its business and affairs, the
23 division of its profits or losses, the distribution of its assets on
24 liquidation, and the relationship among the shareholders, pursuant
25 to a shareholders' agreement made in accordance with and subject
26 to this section.

27 (1) If the corporation has only one shareholder, the shareholders'
28 agreement authorized by this section may be entered into by the
29 shareholder and the corporation.

30 (2) A copy of the shareholders' agreement shall be filed with
31 the secretary of the corporation.

32 (3) Any of the optional provisions that may be included in the
33 articles as described in Section 204 may be included in a
34 shareholders' agreement authorized by this section rather than in
35 the articles.

36 (4) All references in this division to a vote required or permitted
37 by the articles includes any vote required by a shareholders'
38 agreement authorized by this section.

1 (b) Notwithstanding Section 300 or any other provision of this
2 division, in a shareholders' agreement authorized by this section,
3 the shareholders may agree to any of the following:

4 (1) To eliminate or dispense with the board, subject to
5 subdivision (d).

6 (2) To interfere with or restrict the discretion or powers of the
7 board or to grant unequal voting rights to the board or shareholders.

8 (3) To conduct the affairs of the corporation in an attempt to
9 treat the corporation as if it were a partnership.

10 (4) To create a relationship among the shareholders or between
11 the shareholders and the corporation that would otherwise be
12 appropriate only among partners.

13 (c) To the extent and so long as the discretion or powers of the
14 board in its management of corporate affairs is controlled by a
15 shareholders' agreement, each shareholder shall have liability for
16 managerial acts performed or omitted by the shareholder pursuant
17 thereto that is otherwise imposed by this division upon directors,
18 and the directors shall be relieved to that extent from that liability.

19 (d) A provision in a shareholders' agreement authorized by this
20 section agreeing to eliminate or dispense with the board is not
21 effective unless the articles contain a statement to that effect as
22 required by Section 2410.

23 (e) Any amendment, extension, or other modification to a
24 shareholders' agreement authorized by this section shall be
25 approved in writing by all shareholders who are parties, unless the
26 shareholders' agreement provides otherwise.

27 (f) A shareholder who receives an original issuance of shares
28 by a statutory close corporation, who has actual knowledge or
29 notice of a shareholders' agreement authorized by this section, or
30 notice by a legend on the certificate representing those shares
31 pursuant to subdivision (a) of Section 2406, is bound by its
32 provisions and may be subject to liability under subdivision (c).
33 The statutory close corporation shall provide without charge to
34 any prospective recipient of an original issuance of shares, upon
35 request, copies of the articles, bylaws, and any shareholders'
36 agreements on file with the secretary of the corporation.

37 (g) A shareholders' agreement authorized by this section shall
38 terminate when the corporation ceases to be a statutory close
39 corporation, except that if the shareholders' agreement so provides
40 it shall continue to the extent it is enforceable apart from this

1 section. No provision of this section is applicable to an agreement
2 authorized by subdivision (a) of Section 706.

3 (h) No shareholders' agreement entered into pursuant to this
4 section may alter or waive the provisions of this chapter, or
5 Sections 417, 418, 500, 501, 506, 2009, 2010, and 2011, or Chapter
6 15 (commencing with Section 1500), Chapter 16 (commencing
7 with Section 1600), Chapter 18 (commencing with Section 1800),
8 or Chapter 22 (commencing with Section 2200). All other
9 provisions of this division may be altered or waived as between
10 the parties thereto in a shareholders' agreement authorized by this
11 section, including, but not limited to, any other provision in this
12 division for a vote required or permitted by the articles, except the
13 required filing of any document with the Secretary of State.

14 (i) Nothing in this section invalidates or otherwise affects any
15 agreement that is not authorized by this section, by or among
16 shareholders of any corporation, whether or not the corporation is
17 a statutory close corporation.

18 2410. (a) A statutory close corporation may eliminate or
19 dispense with the board as defined in Section 155 if its articles
20 contain a statement to that effect.

21 (b) An amendment to the articles to eliminate or dispense with
22 the board shall be approved by all outstanding shares, whether or
23 not otherwise entitled to vote or, before shares have been issued,
24 by all the incorporators if directors were not named in the original
25 articles and have not been elected, or, if directors were named in
26 the original articles or have been elected, by all the directors.

27 (c) While the statutory close corporation is operating without a
28 board as authorized by subdivision (a), the following shall apply:

29 (1) All corporate powers shall be exercised by or under the
30 authority of, and the business and affairs of the corporation
31 managed under the direction of, the shareholders.

32 (2) Each shareholder shall have liability for managerial acts
33 performed or omitted by the shareholder that is otherwise imposed
34 by this division upon directors.

35 (3) The corporation is not required to comply with subdivision
36 (a) of Section 212.

37 (4) Action requiring approval by the board or both the board
38 and shareholders is authorized if approved by the shareholders, as
39 defined in Section 153, or as otherwise required by a shareholders'
40 agreement.

1 (5) If a document delivered for filing is required to contain a
2 statement that specified action has been taken by the board, that
3 requirement shall be satisfied by a statement that the corporation
4 is a statutory close corporation without a board and that the action
5 was approved by the shareholders, as defined in Section 153, or
6 as otherwise required by a shareholders' agreement pursuant to
7 Section 2408.

8 (6) When the board has been eliminated or dispensed with
9 pursuant to this section, the shareholders, by resolution, may
10 appoint one or more shareholders or other persons to sign
11 documents as "signing agent" of the statutory close corporation
12 or with a similar designation.

13 (d) An amendment to the articles deleting the statement,
14 described in subdivision (a), to eliminate or dispense with the board
15 shall be approved by the affirmative vote of at least two-thirds of
16 each class and series of outstanding shares, whether or not
17 otherwise entitled to vote.

18 2412. Notwithstanding Section 600, pursuant to a provision in
19 the articles, bylaws, or a shareholders' agreement authorized by
20 Section 2408, the shareholders may dispense with an annual
21 meeting.

22 2414. Subject to any contrary provision contained in the
23 articles, bylaws, shareholders' agreement authorized by Section
24 2408, or a resolution adopted by the board or shareholders, an
25 individual who holds more than one office in a statutory close
26 corporation may execute, acknowledge, or verify in more than one
27 capacity, and in the capacities held, any document required to be
28 executed, acknowledged, or verified by the holders of two or more
29 offices.

30 2416. The failure of a statutory close corporation to observe
31 corporate formalities relating to meetings of the board or
32 shareholders in connection with the management of its affairs,
33 pursuant to a shareholders' agreement authorized by Section 2408,
34 shall not be considered a factor tending to establish that the
35 shareholders have personal liability for corporate obligations.

36 2418. (a) If any disappearing corporation in a merger is a
37 statutory close corporation and the surviving corporation is not a
38 statutory close corporation, the merger shall be approved by the
39 affirmative vote of at least two-thirds of each class and series of
40 the outstanding shares of the disappearing corporation; provided,

1 however, that the articles or a shareholders' agreement authorized
2 by Section 2408 may provide for a greater or lesser vote, but not
3 less than a majority of the outstanding shares of each class and
4 series.

5 (b) Any sale, lease, conveyance, exchange, transfer, or other
6 disposition of all or substantially all of the assets of a statutory
7 close corporation, unless the transaction is in the usual and regular
8 course of business, shall be approved by the affirmative vote of at
9 least two-thirds of each class and series of the outstanding shares
10 of the statutory close corporation; provided, however, that the
11 articles or a shareholders' agreement authorized by Section 2408
12 may provide for a greater or lesser vote, but not less than a majority
13 of the outstanding shares of each class and series, and provided
14 that subdivision (d) of Section 1001 is not applicable.

15 (c) The principal terms of a reorganization, as defined in Section
16 181, shall be approved by the affirmative vote of at least two-thirds
17 of each class and series of the outstanding shares of a statutory
18 close corporation if the reorganization would result in the holders
19 receiving shares of a corporation that is not a statutory close
20 corporation; provided, however, that the articles or a shareholders'
21 agreement authorized by Section 2408 may provide for a greater
22 or lesser vote, but not less than a majority of the outstanding shares
23 of each class and series.

24 (d) If a converting corporation, as defined in subdivision (c) of
25 Section 1150, is a statutory close corporation, the conversion shall
26 be approved by the affirmative vote of at least two-thirds of each
27 class and series of the outstanding shares of that converting
28 corporation; provided, however, that the articles or a shareholders'
29 agreement authorized by Section 2408 may provide for a greater
30 or lesser vote, but not less than a majority of the outstanding shares
31 of each class and series.

32 2420. (a) The status of a corporation as a statutory close
33 corporation may be terminated only by amending its articles in
34 accordance with this section.

35 (1) The amendment shall delete the statements required by
36 subdivision (a) of Section 2404 and any other provision not
37 permissible for a corporation that is not a statutory close
38 corporation, including, but not limited to, any statement to
39 eliminate or dispense with the board as authorized by Section 2410.

1 (2) If, before the amendment, the corporation eliminated or
2 dispensed with the board pursuant to Section 2410, the amendment
3 shall fix the number of directors for the board of the corporation,
4 or state that the number of directors shall be not less than a stated
5 minimum nor more than a stated maximum, which in no case shall
6 be greater than two times the stated minimum minus one, with the
7 exact number of directors to be fixed within the limits specified
8 by approval of the shareholders, as defined in Section 153, in a
9 manner provided, or, if there is then in effect a bylaw setting forth
10 such provision, state that there is a bylaw then in effect, and the
11 corporation shall otherwise comply with Sections 212 and 300.

12 (3) The corporation shall cease to be a statutory close
13 corporation upon the filing of the amendment to its articles.

14 (b) An amendment terminating the status of a corporation as a
15 statutory close corporation shall be approved by the affirmative
16 vote of at least two-thirds of each class and series of the outstanding
17 shares, whether or not otherwise entitled to vote; provided,
18 however, that the articles may provide for a greater or lesser vote,
19 but not less than a majority of the outstanding shares of each class
20 and series, whether or not otherwise entitled to vote.

21 (c) Nothing contained in this section invalidates any agreement
22 among shareholders to vote for amending the articles to delete the
23 special statements referred to in subdivision (a) of Section 2404
24 at the time or upon the occurrence of an event specified or
25 otherwise.

26 2422. Termination of the status of a corporation as a statutory
27 close corporation does not affect any right of a shareholder or of
28 the corporation under any agreement or the articles or bylaws
29 unless otherwise prohibited by applicable law.

30 2424. (a) The articles of a statutory close corporation may
31 contain a provision authorizing one or more shareholders, or the
32 shareholders of a specified number or percentage of shares of any
33 class or series, to elect to dissolve the corporation at will or upon
34 the occurrence of a specified event or contingency, provided that
35 this authorization shall not abridge the right of a shareholder or
36 shareholders to elect voluntarily to wind up and dissolve pursuant
37 to subdivision (a) of Section 1900.

38 (1) The shareholder or shareholders electing to dissolve the
39 corporation pursuant to this section shall give written notice of the
40 election to dissolve to all the other shareholders.

1 (2) Thirty-one days after the effective date of the written notice,
2 the corporation shall begin to wind up and liquidate its business
3 and affairs and dissolve pursuant to Chapter 19 (commencing with
4 Section 1900) and Chapter 20 (commencing with Section 2000).

5 (b) Unless the articles expressly authorize the amendment by a
6 vote that is not less than two-thirds of all the outstanding shares,
7 whether or not otherwise entitled to vote, an amendment to the
8 articles to add, change, or delete a provision in the articles
9 authorizing dissolution pursuant to subdivision (a) shall be
10 approved by the affirmative vote of all the outstanding shares,
11 whether or not otherwise entitled to vote, or, if no shares have been
12 issued, by all the incorporators if directors were not named in the
13 original articles and have not been elected, or, if directors were
14 named in the original articles or have been elected, by all the
15 directors.

16 2426. (a) A verified complaint for involuntary dissolution of
17 a statutory close corporation on any one or more of the grounds
18 specified in subdivision (b) of Section 1800 may be filed by any
19 shareholder of the corporation, unless the articles of the corporation
20 require more than one shareholder to do so pursuant to subdivision
21 (b).

22 (b) The articles of a statutory close corporation may contain a
23 provision requiring more than one shareholder to file a verified
24 complaint for involuntary dissolution, however, this provision
25 shall state that it does not abridge the right of a shareholder or
26 shareholders entitled under paragraph (2) or (3) of subdivision (a)
27 of Section 1800 to do so.

28 (c) Unless the articles expressly authorize the amendment by a
29 vote that is not less than two-thirds of all the outstanding shares,
30 whether or not otherwise entitled to vote, an amendment to the
31 articles to add, change, or delete a provision in the articles requiring
32 more than one shareholder to file a verified complaint for
33 involuntary dissolution of a statutory close corporation shall be
34 approved by the affirmative vote of all the outstanding shares,
35 whether or not otherwise entitled to vote, or, if no shares have been
36 issued, by all the incorporators if directors were not named in the
37 original articles and have not been elected, or, if directors were
38 named in the original articles or have been elected, by all the
39 directors.

1 (d) Any right of a shareholder to commence an involuntary
2 dissolution proceeding under this section is in addition to any other
3 right or remedy the shareholder may have under applicable law.

4 2428. (a) This chapter shall apply to (1) all close corporations
5 whose articles, prior to January 1, 2011, contain a provision that
6 all of the corporation's issued shares of all classes shall be held of
7 record by not more than a specified number of persons, not
8 exceeding 35, and the provision "This corporation is a close
9 corporation," and (2) all corporations satisfying the requirements
10 of a statutory close corporation pursuant to Section 2404.

11 (b) Corporations described in paragraph (1) of subdivision (a)
12 shall be deemed statutory close corporations subject to this chapter.
13 However, these statutory close corporations shall be subject to the
14 following:

15 (1) Use of the word "statutory" in front of "close corporation"
16 shall not be required in the articles.

17 (2) Shares issued prior to January 1, 2011, need not be
18 represented by certificates.

19 (3) The legend on share certificates issued prior to January 1,
20 2011, need not comply with Section 2406, provided that the
21 certificate contains the legend required by subdivision (c) of
22 Section 418 as it read on December 31, 2010.

23 ~~SEC. 25.~~

24 *SEC. 27.* Section 25103 of the Corporations Code is amended
25 to read:

26 25103. The following transactions are exempted from the
27 provisions of Section 25110 and Section 25120:

28 (a) Any negotiations or agreements prior to general solicitation
29 of approval by the holders of equity securities, and subject to that
30 approval, of (1) a change in the rights, preferences, privileges, or
31 restrictions of or on outstanding securities, (2) a merger,
32 consolidation, or sale of assets in consideration of the issuance of
33 securities, or (3) an entity conversion transaction.

34 (b) Any change in the rights, preferences, privileges, or
35 restrictions of or on outstanding securities or any entity conversion
36 transaction, unless the holders of at least 25 percent of the
37 outstanding shares or units of any class of securities that will be
38 directly or indirectly affected substantially and adversely by that
39 change or transaction have addresses in this state according to the
40 records of the issuer.

1 (c) Any exchange incident to a merger, consolidation, or sale
2 of assets in consideration of the issuance of securities of another
3 issuer, unless at least 25 percent of the outstanding securities of
4 any class, any holders of which are to receive securities in the
5 exchange, are held by persons who have addresses in this state
6 according to the records of the issuer of which they are holders.
7 This exemption is not available for a rollup transaction as defined
8 by Section 25014.6. The exemption is also not available for a
9 transaction excluded from the definition of rollup transaction by
10 virtue of paragraph (5) or (6) of subdivision (b) of Section 25014.6
11 if the transaction is one of a series of transactions that directly or
12 indirectly through acquisition or otherwise involves the
13 combination or reorganization of one or more rollup participants.

14 (d) For the purposes of subdivision (b) and subdivision (c) of
15 this section, (1) any securities held to the knowledge of the issuer
16 in the names of broker-dealers or nominees of broker-dealers and
17 (2) any securities controlled by any one person who controls
18 directly or indirectly 50 percent or more of the outstanding
19 securities of that class shall not be considered outstanding. The
20 determination of whether 25 percent of the outstanding securities
21 are held by persons having addresses in this state, for the purposes
22 of subdivision (b) and subdivision (c) of this section, shall be made
23 as of the record date for the determination of the security holders
24 entitled to vote on or consent to the action, if approval of those
25 holders is required, or, if not, as of the date of directors' approval
26 of that action.

27 (e) Any change, other than a stock split or reverse stock split,
28 in the rights, preferences, privileges, or restrictions of or on
29 outstanding equity securities, except the following if they
30 materially and adversely affect any class of equity securities: (1)
31 to add, change, or delete assessment provisions; (2) to change the
32 rights to dividends thereon; (3) to change the redemption
33 provisions; (4) to make them redeemable; (5) to change the amount
34 payable on liquidation; (6) to change, add, or delete conversion
35 rights; (7) to change, add, or delete voting rights; (8) to change,
36 add, or delete preemptive rights; (9) to change, add, or delete
37 sinking fund provisions; (10) to rearrange the relative priorities of
38 outstanding equity securities; (11) to impose, change, or delete
39 restrictions upon the transfer of equity securities in the
40 organizational documents for the entity; (12) to change the right

1 of holders of equity securities with respect to the calling of special
2 meetings of holders of equity securities; and (13) to change, add,
3 or delete any rights, preferences, privileges, or restrictions of, or
4 on, the outstanding shares or memberships of a mutual water
5 company or other corporation or entity organized primarily to
6 provide services or facilities to its shareholders or members.
7 Changes in the rights, preferences, privileges, or restrictions of or
8 on outstanding equity securities do not materially and adversely
9 affect any class of holders of equity securities within the meaning
10 of this subdivision if they arise from (A) the addition to articles
11 of the provisions described or referred to in subdivision (a) of
12 Section 2404 upon the conversion of an existing corporation to a
13 statutory close corporation as described in Section 2404, pursuant
14 to subdivision (e) of Section 2404, (B) the deletion from the articles
15 of the provisions described or referred to in subdivision (a) of
16 Section 2404 upon the voluntary termination of statutory close
17 corporation status pursuant to subdivision (e) of Section 2404 and
18 Section 2420, or (C) the termination of a shareholders' agreement,
19 as described in Section 2408, pursuant to subdivision (g) of that
20 section.

21 (f) Any stock split or reverse stock split, except the following:
22 (1) any stock split or reverse stock split if the corporation has more
23 than one class of shares outstanding and the split would have a
24 material effect on the proportionate interests of the respective
25 classes as to voting, dividends, or distributions; (2) any stock split
26 of a stock that is traded in the market and its market price as of
27 the date of directors' approval of the stock split adjusted to give
28 effect to the split was less than two dollars (\$2) per share; and (3)
29 any reverse stock split if the corporation has the option of paying
30 cash for any fractional shares created by the reverse split and as a
31 result of that action the proportionate interests of the shareholders
32 would be substantially altered. Any shares issued upon a stock
33 split or reverse stock split exempted by this subdivision shall be
34 subject to any conditions previously imposed by the commissioner
35 applicable to the shares with respect to which they are issued.

36 (g) Any change in the rights of outstanding debt securities,
37 except the following if they substantially and adversely affect any
38 class of securities: (1) to change the rights to interest thereon; (2)
39 to change their redemption provisions; (3) to make them
40 redeemable; (4) to extend the maturity thereof or to change the

1 amount payable thereon at maturity; (5) to change their voting
2 rights; (6) to change their conversion rights; (7) to change sinking
3 fund provisions; and (8) to make them subordinate to other
4 indebtedness.

5 (h) Any exchange incident to a merger, consolidation, or sale
6 of assets, other than a rollup transaction (as defined in Section
7 25014.6), in consideration of the issuance of equity securities of
8 another entity or any entity conversion transaction that meets the
9 following conditions:

10 (1) The exchange incident to a merger, consolidation, or sale
11 of assets or the entity conversion transaction, had the exchange
12 transaction involved the issuance of a security in a transaction
13 subject to the provisions of Section 25110, would have been
14 exempt from qualification by subdivision (f) of Section 25102,
15 without giving effect to paragraph (3) thereof, and either of the
16 following is applicable:

17 (A) (i) Not less than 75 percent of the outstanding equity
18 securities of each constituent or converting entity entitled to vote
19 on the proposed transaction voted in favor of the transaction, (ii)
20 not more than 10 percent of the outstanding equity securities of
21 each constituent or converting entity entitled to vote on the
22 proposed transaction voted against the transaction, and (iii) each
23 constituent or converting entity whose security holders are entitled
24 to vote on the proposed transaction is subject to a state statute that
25 has provisions for dissenters' rights for holders of equity securities
26 entitled to vote on the proposed transaction that do not vote in
27 favor of or voted against the transaction.

28 (B) (i) The transaction is solely for the purposes of changing
29 the issuer's state of incorporation or organization, or form of
30 organization, (ii) all the securities of the same class or series, unless
31 all the security holders of the class or series consent, are treated
32 equally, and (iii) the holders of nonredeemable voting equity
33 securities receive nonredeemable voting equity securities.

34 (2) The commissioner may, by rule, require the acquiring or
35 surviving entity to file a notice of transaction under this section.
36 However, the failure to file the notice or the failure to file the notice
37 within the time specified by the rule of the commissioner shall not
38 affect the availability of this exemption. An acquiring or surviving
39 entity that fails to file the notice as provided by rule of the
40 commissioner shall, within 15 business days after demand by the

1 commissioner, file the notice and pay to the commissioner a fee
2 equal to the fee payable had the transaction been qualified under
3 Section 25110 or 25120.

4 (i) Any exchange of securities in connection with any merger
5 or consolidation or sale of corporate assets in consideration wholly
6 or in part of the issuance of securities or any entity conversion
7 transaction under, or pursuant to, a plan of reorganization that
8 pursuant to the provisions of the United States Bankruptcy Code
9 (Title 11 of the United States Code) has been confirmed or is
10 subject to confirmation by the decree or order of a court of
11 competent jurisdiction.

O