

Introduced by Senator DeSaulnierFebruary 8, 2011

An act to amend Sections 102, 107, 174.5, 1100, 1113, 1152, 1155, and 1201 of, to add Sections 171.08 and 1112.5 to, and to add Division 1.5 (commencing with Section 2500) to Title 1 of, the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 201, as introduced, DeSaulnier. Flexible purpose corporations: corporate mergers.

Existing law authorizes and regulates the formation and operation of corporations and nonprofit corporations and specifies the respective purposes for which they may lawfully be formed. Existing law specifies the duties of corporate directors and the rights of shareholders.

This bill would enact the Corporate Flexibility Act of 2011 and would authorize and regulate the formation and operation of a new form of corporate entity known as a flexible purpose corporation. The bill would authorize existing corporations and other forms of business entities to merge into or convert into a flexible purpose corporation upon completion of specified requirements, including approval of the transaction by a supermajority $\frac{2}{3}$ vote of shareholders, or a greater vote if required in the articles, as specified. The bill would also authorize a flexible purpose corporation to convert into a nonprofit corporation, a corporation, or a domestic other business entity, upon satisfaction of equivalent conditions. The bill would also provide dissenters' rights of appraisal for shareholders voting against certain transactions, as specified. The bill would specify the required and permitted contents of articles of incorporation that a flexible purpose corporation would be required to file with the Secretary of State, including the special

purposes, in addition to any other lawful purpose, that the corporation shall engage in, that may include, but not be limited to, charitable and public purpose activities that could be carried out by a nonprofit public benefit corporation. The bill would also require management and directors to specify objectives for measuring the impact of the flexible purpose corporation's efforts relating to its special purpose, and to include an analysis of those efforts in annual reports, together with specified financial statements, to shareholders and would require specified information to be made publicly available, as specified. The bill would also specify that a flexible purpose corporation is subject to many existing provisions of the Corporations Code. The bill would also make conforming changes.

Existing law imposes specified requirements with respect to the merger of one or more corporations and other business entities, including, but not limited to, a requirement that the surviving entity shall file a specified agreement of merger or certificate of merger with the Secretary of State.

This bill would prohibit the filing of an agreement of merger or certificate of merger until a certification of satisfaction of the Franchise Tax Board has been filed certifying that all taxes of the party to be terminated by the merger have been paid or secured.

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

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

1 SECTION 1. Section 102 of the Corporations Code is amended
 2 to read:
 3 102. (a) Subject to Chapter 23 (commencing with Section
 4 2300) (transition provisions), this division applies to corporations
 5 organized under this division and to domestic corporations ~~which~~
 6 *that* are not subject to *Division 1.5 (commencing with Section*
 7 *2500)*, *and to domestic corporations that are not subject to*
 8 *Division 2 (commencing with Section 5000) or Part 1 (commencing*
 9 *with Section 12000), 2 (commencing with Section 12200), 3*
 10 *(commencing with Section 13200), or 5 (commencing with Section*
 11 *14000) of Division 3 on December 31, 1976, and ~~which~~ that* are
 12 not organized or existing under any statute of this state other than
 13 this code; this division applies to any other corporation only to the
 14 extent expressly included in a particular provision of this division.

1 (b) The existence of corporations formed or existing on the date
2 of enactment or reenactment of this division shall not be affected
3 by the enactment or reenactment of this division nor by any change
4 in the requirements for the formation of corporations nor by the
5 amendment or repeal of the laws under which they were formed
6 or created.

7 (c) Neither the repeals effected by the enactment or reenactment
8 of this division nor the enactment of this title nor the amendment
9 thereof shall impair or take away any existing liability or cause of
10 action against any corporation, its shareholders, directors, or
11 officers incurred prior to the time of the enactment, reenactment,
12 or amendment.

13 SEC. 2. Section 107 of the Corporations Code is amended to
14 read:

15 107. No corporation, *flexible purpose corporation*, association
16 or individual shall issue or put in circulation, as money, anything
17 but the lawful money of the United States.

18 SEC. 3. Section 171.08 is added to the Corporations Code, to
19 read:

20 171.08. “Flexible purpose corporation” means any flexible
21 purpose corporation formed under Division 1.5 (commencing with
22 Section 2500).

23 SEC. 4. Section 174.5 of the Corporations Code is amended
24 to read:

25 174.5. “Other business entity” means a domestic or foreign
26 *flexible purpose corporation*, limited liability company, limited
27 partnership, general partnership, business trust, real estate
28 investment trust, unincorporated association (other than a nonprofit
29 association), or a domestic reciprocal insurer organized after 1974
30 to provide medical malpractice insurance as set forth in Article 16
31 (commencing with Section 1550) of Chapter 3 of Part 2 of Division
32 1 of the Insurance Code. As used herein, “general partnership”
33 means a “partnership” as defined in subdivision (7) of Section
34 16101; “business trust” means a business organization formed as
35 a trust; “real estate investment trust” means a “real estate
36 investment trust” as defined in subsection (a) of Section 856 of
37 the Internal Revenue Code of 1986, as amended; and
38 “unincorporated association” has the meaning set forth in Section
39 18035.

1 SEC. 5. Section 1100 of the Corporations Code is amended to
2 read:

3 1100. Any two or more corporations may be merged into one
4 of those corporations. A corporation may merge with one or more
5 domestic corporations (Section 167), *flexible purpose corporations*
6 (*Section 171.08*), foreign corporations (Section 171), or other
7 business entities (Section 174.5) pursuant to this chapter. Mergers
8 in which a foreign corporation but no other business entity is a
9 constituent party are governed by Section 1108, *mergers in which*
10 *a flexible purpose corporation but no other business entity is a*
11 *constituent party are governed by Section 1112.5*, and mergers in
12 which an other business entity is a constituent party are governed
13 by Section 1113.

14 SEC. 6. Section 1112.5 is added to the Corporations Code, to
15 read:

16 1112.5. If a disappearing corporation in a merger is a
17 corporation governed by this division and the surviving corporation
18 is a flexible purpose corporation, both of the following shall apply:

19 (a) The merger shall be approved by the affirmative vote of at
20 least two-thirds of each class, or a greater vote if required in the
21 articles, of the outstanding shares (Section 152) of the disappearing
22 corporation, notwithstanding any provision of Chapter 12
23 (commencing with Section 1200).

24 (b) The shareholders of the disappearing corporation shall have
25 all of the rights under Chapter 13 (commencing with Section 1300)
26 of the shareholders of a corporation involved in a reorganization
27 requiring the approval of its outstanding shares (Section 152), and
28 the disappearing corporation shall have all of the obligations under
29 Chapter 13 (commencing with Section 1300) of a corporation
30 involved in the reorganization.

31 SEC. 7. Section 1113 of the Corporations Code is amended to
32 read:

33 1113. (a) Any one or more corporations may merge with one
34 or more other business entities (Section 174.5). One or more
35 domestic corporations (Section 167) not organized under this
36 division and one or more foreign corporations (Section 171) may
37 be parties to the merger. Notwithstanding the provisions of this
38 section, the merger of any number of corporations with any number
39 of other business entities may be effected only if:

1 (1) In a merger in which a domestic corporation not organized
2 under this division or a domestic other business entity is a party,
3 it is authorized by the laws under which it is organized to effect
4 the merger.

5 (2) In a merger in which a foreign corporation is a party, it is
6 authorized by the laws under which it is organized to effect the
7 merger.

8 (3) In a merger in which a foreign other business entity is a
9 party, it is authorized by the laws under which it is organized to
10 effect the merger.

11 (b) Each corporation and each other party ~~which~~ *that* desires to
12 merge shall approve, and shall be a party to, an agreement of
13 merger. Other persons, including a parent party (Section 1200),
14 may be parties to the agreement of merger. The board of each
15 corporation ~~which~~ *that* desires to merge; and, if required, the
16 shareholders; shall approve the agreement of merger. The
17 agreement of merger shall be approved on behalf of each party by
18 those persons required to approve the merger by the laws under
19 which it is organized. The agreement of merger shall state:

20 (1) The terms and conditions of the merger.

21 (2) The name and place of incorporation or organization of each
22 party to the merger and the identity of the surviving party.

23 (3) The amendments, if any, subject to Sections 900 and 907,
24 to the articles of the surviving corporation, if applicable, to be
25 effected by the merger. If any amendment changes the name of
26 the surviving corporation, if applicable, the new name may be,
27 subject to subdivision (b) of Section 201, the same as or similar
28 to the name of a disappearing party to the merger.

29 (4) The manner of converting the shares of each constituent
30 corporation into shares, interests, or other securities of the surviving
31 party. If any shares of any constituent corporation are not to be
32 converted solely into shares, interests or other securities of the
33 surviving party, the agreement of merger shall state (i) the cash,
34 rights, securities, or other property which the holders of those
35 shares are to receive in exchange for the shares, which cash, rights,
36 securities, or other property may be in addition to or in lieu of
37 shares, interests or other securities of the surviving party, or (ii)
38 that the shares are canceled without consideration.

39 (5) Any other details or provisions required by the laws under
40 which any party to the merger is organized, including, if a public

1 benefit corporation or a religious corporation is a party to the
2 merger, Section 6019.1, or, if a mutual benefit corporation is a
3 party to the merger, Section 8019.1, or, if a consumer cooperative
4 corporation is a party to the merger, Section 12540.1, or, if a
5 domestic limited partnership is a party to the merger, Section
6 15678.2-~~or 15911.12~~, or, if a domestic partnership is a party to the
7 merger, Section 16911, or, if a domestic limited liability company
8 is a party to the merger, Section 17551.

9 (6) Any other details or provisions as are desired, including,
10 without limitation, a provision for the payment of cash in lieu of
11 fractional shares or for any other arrangement with respect thereto
12 consistent with the provisions of Section 407.

13 (c) Each share of the same class or series of any constituent
14 corporation (other than the cancellation of shares held by a party
15 to the merger or its parent, or a wholly owned subsidiary of either,
16 in another constituent corporation) shall, unless all shareholders
17 of the class or series consent and except as provided in Section
18 407, be treated equally with respect to any distribution of cash,
19 rights, securities, or other property. Notwithstanding paragraph
20 (4) of subdivision (b), the unredeemable common shares of a
21 constituent corporation may be converted only into unredeemable
22 common shares of a surviving corporation or a parent party
23 (Section 1200) or unredeemable equity securities of a surviving
24 party other than a corporation if another party to the merger or its
25 parent owns, directly or indirectly, prior to the merger shares of
26 that corporation representing more than 50 percent of the voting
27 power of that corporation, unless all of the shareholders of the
28 class consent and except as provided in Section 407.

29 (d) Notwithstanding its prior approval, an agreement of merger
30 may be amended prior to the filing of the agreement of merger or
31 the certificate of merger, as is applicable, if the amendment is
32 approved by the board of each constituent corporation and, if the
33 amendment changes any of the principal terms of the agreement,
34 by the outstanding shares (Section 152), if required by Chapter 12
35 (commencing with Section 1200), in the same manner as the
36 original agreement of merger. If the agreement of merger as so
37 amended and approved is also approved by each of the other parties
38 to the agreement of merger, the agreement of merger as so amended
39 shall then constitute the agreement of merger.

1 (e) The board of a constituent corporation may, in its discretion,
2 abandon a merger, subject to the contractual rights, if any, of third
3 parties, including other parties to the agreement of merger, without
4 further approval by the outstanding shares (Section 152), at any
5 time before the merger is effective.

6 (f) Each constituent corporation shall sign the agreement of
7 merger by its chairperson of the board, president or a vice president
8 and also by its secretary or an assistant secretary acting on behalf
9 of their respective corporations.

10 (g) (1) If the surviving party is a corporation or a foreign
11 corporation, or if a *flexible purpose corporation* (Section 2509),
12 a public benefit corporation (Section 5060), a mutual benefit
13 corporation (Section 5059), a religious corporation (Section 5061),
14 or a corporation organized under the Consumer Cooperative
15 Corporation Law (Section 12200) is a party to the merger, after
16 required approvals of the merger by each constituent corporation
17 through approval of the board (Section 151) and any approval of
18 the outstanding shares (Section 152) required by Chapter 12
19 (commencing with Section 1200) and by the other parties to the
20 merger, the surviving party shall file a copy of the agreement of
21 merger with an officers' certificate of each constituent domestic
22 and foreign corporation attached stating the total number of
23 outstanding shares or membership interests of each class entitled
24 to vote on the merger (and identifying any other person or persons
25 whose approval is required), that the agreement of merger in the
26 form attached or its principal terms, as required, were approved
27 by that corporation by a vote of a number of shares or membership
28 interests of each class that equaled or exceeded the vote required,
29 specifying each class entitled to vote and the percentage vote
30 required of each class and, if applicable, by that other person or
31 persons whose approval is required, or that the merger agreement
32 was entitled to be and was approved by the board alone (as
33 provided in Section 1201, in the case of corporations subject to
34 that section). If equity securities of a parent party (Section 1200)
35 are to be issued in the merger, the officers' certificate of that
36 controlled party shall state either that no vote of the shareholders
37 of the parent party was required or that the required vote was
38 obtained. In lieu of an officers' certificate, a certificate of merger,
39 on a form prescribed by the Secretary of State, shall be filed for
40 each constituent other business entity. The certificate of merger

1 shall be executed and acknowledged by each domestic constituent
2 limited liability company by all managers of the limited liability
3 company (unless a lesser number is specified in its articles of
4 organization or operating agreement) and by each domestic
5 constituent limited partnership by all general partners (unless a
6 lesser number is provided in its certificate of limited partnership
7 or partnership agreement) and by each domestic constituent general
8 partnership by two partners (unless a lesser number is provided in
9 its partnership agreement) and by each foreign constituent limited
10 liability company by one or more managers and by each foreign
11 constituent general partnership or foreign constituent limited
12 partnership by one or more general partners, and by each
13 constituent reciprocal insurer by the chairperson of the board,
14 president, or vice president, and by the secretary or assistant
15 secretary, or, if a constituent reciprocal insurer has not appointed
16 those officers, by the chairperson of the board, president, or vice
17 president, and by the secretary or assistant secretary of the
18 constituent reciprocal insurer's attorney-in-fact, and by each other
19 party to the merger by those persons required or authorized to
20 execute the certificate of merger by the laws under which that party
21 is organized, specifying for that party the provision of law or other
22 basis for the authority of the signing persons. The certificate of
23 merger shall set forth, if a vote of the shareholders, members,
24 partners, or other holders of interests of the constituent other
25 business entity was required, a statement setting forth the total
26 number of outstanding interests of each class entitled to vote on
27 the merger and that the agreement of merger in the form attached
28 or its principal terms, as required, were approved by a vote of the
29 number of interests of each class that equaled or exceeded the vote
30 required, specifying each class entitled to vote and the percentage
31 vote required of each class, and any other information required to
32 be set forth under the laws under which the constituent other
33 business entity is organized, including, if a domestic limited
34 partnership is a party to the merger, subdivision (a) of Section
35 ~~15678.4 or subdivision (a) of Section 15911.14~~, if a domestic
36 partnership is a party to the merger, subdivision (b) of Section
37 16915, and, if a domestic limited liability company is a party to
38 the merger, subdivision (a) of Section 17552. The certificate of
39 merger for each constituent foreign other business entity, if any,
40 shall also set forth the statutory or other basis under which that

1 foreign other business entity is authorized by the laws under which
2 it is organized to effect the merger. The merger and any amendment
3 of the articles of the surviving corporation, if applicable, contained
4 in the agreement of merger shall be effective upon filing of the
5 agreement of merger with an officer's certificate of each constituent
6 domestic and foreign corporation and a certificate of merger for
7 each constituent other business entity, subject to subdivision (c)
8 of Section 110 and subject to the provisions of subdivision (j), and
9 the several parties thereto shall be one entity. *The agreement of*
10 *merger shall not be filed, however, until there has been filed by*
11 *or on behalf of each party to the merger taxed under the*
12 *Corporation Tax Law, the existence of which is terminated by the*
13 *merger, the certificate of satisfaction of the Franchise Tax Board*
14 *certifying that all taxes imposed by that law have been paid or*
15 *secured.* If a domestic reciprocal insurer organized after 1974 to
16 provide medical malpractice insurance is a party to the merger,
17 the agreement of merger or certificate of merger shall not be filed
18 until there has been filed the certificate issued by the Insurance
19 Commissioner approving the merger pursuant to Section 1555 of
20 the Insurance Code. The Secretary of State may certify a copy of
21 the agreement of merger separate from the officers' certificates
22 and certificates of merger attached thereto.

23 (2) If the surviving entity is an other business entity, and no
24 public benefit corporation (Section 5060), mutual benefit
25 corporation (Section 5059), religious corporation (Section 5061),
26 or corporation organized under the Consumer Cooperative
27 Corporation Law (Section 12200) is a party to the merger, after
28 required approvals of the merger by each constituent corporation
29 through approval of the board (Section 151) and any approval of
30 the outstanding shares (Section 152) required by Chapter 12
31 (commencing with Section 1200) and by the other parties to the
32 merger, the parties to the merger shall file a certificate of merger
33 in the office of, and on a form prescribed by, the Secretary of State.
34 The certificate of merger shall be executed and acknowledged by
35 each constituent domestic and foreign corporation by its
36 chairperson of the board, president or a vice president and also by
37 its secretary or an assistant secretary and by each domestic
38 constituent limited liability company by all managers of the limited
39 liability company (unless a lesser number is specified in its articles
40 of organization or operating agreement) and by each domestic

1 constituent limited partnership by all general partners (unless a
2 lesser number is provided in its certificate of limited partnership
3 or partnership agreement) and by each domestic constituent general
4 partnership by two partners (unless a lesser number is provided in
5 its partnership agreement) and by each foreign constituent limited
6 liability company by one or more managers and by each foreign
7 constituent general partnership or foreign constituent limited
8 partnership by one or more general partners, and by each
9 constituent reciprocal insurer by the chairperson of the board,
10 president, or vice president, and by the secretary or assistant
11 secretary, or, if a constituent reciprocal insurer has not appointed
12 those officers, by the chairperson of the board, president, or vice
13 president, and by the secretary or assistant secretary of the
14 constituent reciprocal insurer's attorney-in-fact. The certificate of
15 merger shall be signed by each other party to the merger by those
16 persons required or authorized to execute the certificate of merger
17 by the laws under which that party is organized, specifying for
18 that party the provision of law or other basis for the authority of
19 the signing persons. The certificate of merger shall set forth all of
20 the following:

21 (A) The name, place of incorporation or organization, and the
22 Secretary of State's file number, if any, of each party to the merger,
23 separately identifying the disappearing parties and the surviving
24 party.

25 (B) If the approval of the outstanding shares of a constituent
26 corporation was required by Chapter 12 (commencing with Section
27 1200), a statement setting forth the total number of outstanding
28 shares of each class entitled to vote on the merger and that the
29 principal terms of the agreement of merger were approved by a
30 vote of the number of shares of each class entitled to vote and the
31 percentage vote required of each class.

32 (C) The future effective date or time, not more than 90 days
33 subsequent to the date of filing of the merger, if the merger is not
34 to be effective upon the filing of the certificate of merger with the
35 office of the Secretary of State.

36 (D) A statement, by each party to the merger which is a domestic
37 corporation not organized under this division, a foreign corporation,
38 or an other business entity, of the statutory or other basis under
39 which that party is authorized by the laws under which it is
40 organized to effect the merger.

1 (E) Any other information required to be stated in the certificate
2 of merger by the laws under which each party to the merger is
3 organized, including, if a domestic limited liability company is a
4 party to the merger, subdivision (a) of Section 17552, if a domestic
5 partnership is a party to the merger, subdivision (b) of Section
6 16915, and, if a domestic limited partnership is a party to the
7 merger, subdivision (a) of Section 15678.4 ~~or subdivision (a) of~~
8 ~~Section 15911.14.~~

9 (F) Any other details or provisions that may be desired.

10 Unless a future effective date or time is provided in a certificate
11 of merger, in which event the merger shall be effective at that
12 future effective date or time, a merger shall be effective upon the
13 filing of the certificate of merger in the office of the Secretary of
14 State and the several parties thereto shall be one entity. *The*
15 *certificate of merger shall not be filed, however, until there has*
16 *been filed by or on behalf of each party to the merger that is taxed*
17 *under the Corporation Tax Law, the existence of which is*
18 *terminated by the merger; the certificate of satisfaction of the*
19 *Franchise Tax Board certifying that all taxes imposed by that law*
20 *have been paid or secured.* The surviving other business entity
21 shall keep a copy of the agreement of merger at its principal place
22 of business which, for purposes of this subdivision, shall be the
23 office referred to in Section 17057 if a domestic limited liability
24 company, at the business address specified in paragraph (5) of
25 subdivision (a) of Section 17552 if a foreign limited liability
26 company, at the office referred to in subdivision (a) of Section
27 16403 if a domestic general partnership, at the business address
28 specified in subdivision (f) of Section 16911 if a foreign
29 partnership, at the office referred to in subdivision (a) of Section
30 15614 ~~or in subdivision (a) of Section 15901.14~~ if a domestic
31 limited partnership, or at the business address specified in
32 paragraph (5) of subdivision (a) of Section 15678.4 ~~or paragraph~~
33 ~~(3) of subdivision (a) of Section 15909.02~~ if a foreign limited
34 partnership. Upon the request of a holder of equity securities of a
35 party to the merger, a person with authority to do so on behalf of
36 the surviving other business entity shall promptly deliver to that
37 holder, a copy of the agreement of merger. A waiver by that holder
38 of the rights provided in the foregoing sentence shall be
39 unenforceable. If a domestic reciprocal insurer organized after
40 1974 to provide medical malpractice insurance is a party to the

1 merger the agreement of merger or certificate of merger shall not
2 be filed until there has been filed the certificate issued by the
3 Insurance Commissioner approving the merger in accordance with
4 Section 1555 of the Insurance Code.

5 (h) (1) A copy of an agreement of merger certified on or after
6 the effective date by an official having custody thereof has the
7 same force in evidence as the original and, except as against the
8 state, is conclusive evidence of the performance of all conditions
9 precedent to the merger, the existence on the effective date of the
10 surviving party to the merger and the performance of the conditions
11 necessary to the adoption of any amendment to the articles, if
12 applicable, contained in the agreement of merger.

13 (2) For all purposes for a merger in which the surviving entity
14 is a domestic other business entity and the filing of a certificate of
15 merger is required by paragraph (2) of subdivision (g), a copy of
16 the certificate of merger duly certified by the Secretary of State is
17 conclusive evidence of the merger of the constituent corporations,
18 either by themselves or together with the other parties to the
19 merger, into the surviving other business entity.

20 (i) (1) Upon a merger pursuant to this section, the separate
21 existences of the disappearing parties to the merger cease and the
22 surviving party to the merger shall succeed, without other transfer,
23 to all the rights and property of each of the disappearing parties to
24 the merger and shall be subject to all the debts and liabilities of
25 each in the same manner as if the surviving party to the merger
26 had itself incurred them.

27 (2) All rights of creditors and all liens upon the property of each
28 of the constituent corporations and other parties to the merger shall
29 be preserved unimpaired, provided that those liens upon property
30 of a disappearing party shall be limited to the property affected
31 thereby immediately prior to the time the merger is effective.

32 (3) Any action or proceeding pending by or against any
33 disappearing corporation or disappearing party to the merger may
34 be prosecuted to judgment, which shall bind the surviving party,
35 or the surviving party may be proceeded against or substituted in
36 its place.

37 (4) If a limited partnership or a general partnership is a party to
38 the merger, nothing in this section is intended to affect the liability
39 a general partner of a disappearing limited partnership or general
40 partnership may have in connection with the debts and liabilities

1 of the disappearing limited partnership or general partnership
2 existing prior to the time the merger is effective.

3 (j) (1) The merger of domestic corporations with foreign
4 corporations or foreign other business entities in a merger in which
5 one or more other business entities is a party shall comply with
6 subdivision (a) and this subdivision.

7 (2) If the surviving party is a domestic corporation or domestic
8 other business entity, the merger proceedings with respect to that
9 party and any domestic disappearing corporation shall conform to
10 the provisions of this section. If the surviving party is a foreign
11 corporation or foreign other business entity, then, subject to the
12 requirements of subdivision (c), and of Section 407 and Chapter
13 12 (commencing with Section 1200) and Chapter 13 (commencing
14 with Section 1300), and, if applicable, corresponding provisions
15 of the Nonprofit Corporation Law or the Consumer Cooperative
16 Corporation Law, with respect to any domestic constituent
17 corporations, Chapter 13 (commencing with Section 17600) of
18 Title 2.5 with respect to any domestic constituent limited liability
19 companies, Article 6 (commencing with Section 16601) of Chapter
20 5 of Title 2 with respect to any domestic constituent general
21 partnerships, and Article 7.6 (commencing with Section 15679.1)
22 of Chapter 3, ~~and Article 11.5 (commencing with Section~~
23 ~~15911.20) of Chapter 5.5~~ of Title 2 with respect to any domestic
24 constituent limited partnerships, the merger proceedings may be
25 in accordance with the laws of the state or place of incorporation
26 or organization of the surviving party.

27 (3) If the surviving party is a domestic corporation or domestic
28 other business entity, the certificate of merger or the agreement of
29 merger with attachments shall be filed as provided in subdivision
30 (g) and thereupon, subject to subdivision (c) of Section 110 or
31 paragraph (2) of subdivision (g), as is applicable, the merger shall
32 be effective as to each domestic constituent corporation and
33 domestic constituent other business entity.

34 (4) If the surviving party is a foreign corporation or foreign
35 other business entity, the merger shall become effective in
36 accordance with the law of the jurisdiction in which the surviving
37 party is organized, but, except as provided in paragraph (5), the
38 merger shall be effective as to any domestic disappearing
39 corporation as of the time of effectiveness in the foreign jurisdiction
40 upon the filing in this state of a copy of the agreement of merger

1 with an officers' certificate of each constituent foreign and
2 domestic corporation and a certificate of merger of each constituent
3 other business entity attached, which officers' certificates and
4 certificates of merger shall conform to the requirements of
5 paragraph (1) of subdivision (g). If one or more domestic other
6 business entities is a disappearing party in a merger pursuant to
7 this subdivision in which a foreign other business entity is the
8 surviving entity, a certificate of merger required by the laws under
9 which that domestic other business entity is organized, including
10 subdivision (a) of Section 15678.4, ~~subdivision (a) of Section~~
11 ~~15911.14~~, subdivision (b) of Section 16915, or subdivision (a) of
12 Section 17552, as is applicable, shall also be filed at the same time
13 as the filing of the agreement of merger.

14 (5) If the date of the filing in this state pursuant to this
15 subdivision is more than six months after the time of the
16 effectiveness in the foreign jurisdiction, or if the powers of a
17 domestic disappearing corporation are suspended at the time of
18 effectiveness in the foreign jurisdiction, the merger shall be
19 effective as to the domestic disappearing corporation as of the date
20 of filing in this state.

21 (6) In a merger described in paragraph (3) or (4), each foreign
22 disappearing corporation that is qualified for the transaction of
23 intrastate business shall by virtue of the filing pursuant to this
24 subdivision, subject to subdivision (c) of Section 110, automatically
25 surrender its right to transact intrastate business in this state. The
26 filing of the agreement of merger or certificate of merger, as is
27 applicable, pursuant to this subdivision, by a disappearing foreign
28 other business entity registered for the transaction of intrastate
29 business in this state shall, by virtue of that filing, subject to
30 subdivision (c) of Section 110, automatically cancels the
31 registration for that foreign other business entity, without the
32 necessity of the filing of a certificate of cancellation.

33 (7) *A certificate of satisfaction of the Franchise Tax Board for*
34 *each disappearing party to the merger shall be filed when required*
35 *by subdivision (g) or when required by Section 23334 of the*
36 *Revenue and Taxation Code.*

37 SEC. 8. Section 1152 of the Corporations Code is amended to
38 read:

1 1152. (a) A corporation that desires to convert to a domestic
2 other business entity shall approve a plan of conversion. The plan
3 of conversion shall state all of the following:

4 (1) The terms and conditions of the conversion.

5 (2) The jurisdiction of the organization of the converted entity
6 and of the converting corporation and the name of the converted
7 entity after conversion.

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

11 (4) The provisions of the governing documents for the converted
12 entity, including the partnership agreement or limited liability
13 company articles of organization and operating agreement, to
14 which the holders of interests in the converted entity are to be
15 bound.

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

19 (b) The plan of conversion shall be approved by the board of
20 the converting corporation (Section 151), and the principal terms
21 of the plan of the conversion shall be approved by the outstanding
22 shares (Section 152) of each class of the converting corporation.
23 The approval of the outstanding shares may be given before or
24 after approval by the board. Notwithstanding the foregoing, if a
25 converting corporation is a close corporation, the conversion shall
26 be approved by the affirmative vote of at least two-thirds of each
27 class, *or a greater vote if required in the articles*, of outstanding
28 shares (*Section 152*) of that converting corporation; provided,
29 however, that the articles may provide for a lesser vote, but not
30 less than a majority of the outstanding shares of each class.

31 (c) If the corporation is converting into a general or limited
32 partnership or into a limited liability company, then in addition to
33 the approval of the shareholders set forth in subdivision (b), the
34 plan of conversion shall be approved by each shareholder who will
35 become a general partner or manager, as applicable, of the
36 converted entity pursuant to the plan of conversion unless the
37 shareholders have dissenters' rights pursuant to Section 1159 and
38 Chapter 13 (commencing with Section 1300).

39 (d) *If the corporation is converting into a flexible purpose*
40 *corporation, both of the following shall apply:*

1 (1) Notwithstanding subdivision (b), the plan of conversion shall
2 be approved by the affirmative vote of at least two-thirds of each
3 class, or a greater vote if required in the articles, of outstanding
4 shares (Section 152) of that converting corporation.

5 (2) The shareholders of the converting corporation shall have
6 all of the rights under Chapter 13 (commencing with Section 1300)
7 of the shareholders of a corporation involved in a reorganization
8 requiring the approval of its outstanding shares (Section 152),
9 and the converting corporation shall have all of the obligations
10 under Chapter 13 (commencing with Section 1300) of a
11 corporation involved in a reorganization, without regard to
12 whether the conversion constitutes a reorganization requiring a
13 shareholder vote under Chapter 12 (commencing with Section
14 1200).

15 ~~(d)~~

16 (e) Upon the effectiveness of the conversion, all shareholders
17 of the converting corporation, except those that exercise dissenters'
18 rights as provided in Section 1159 and Chapter 13 (commencing
19 with Section 1300), shall be deemed parties to any agreement or
20 agreements constituting the governing documents for the converted
21 entity adopted as part of the plan of conversion, irrespective of
22 whether or not a shareholder has executed the plan of conversion
23 or those governing documents for the converted entity. Any
24 adoption of governing documents made pursuant thereto shall be
25 effective at the effective time or date of the conversion.

26 ~~(e)~~

27 (f) Notwithstanding its prior approval by the board and the
28 outstanding shares or either of them, a plan of conversion may be
29 amended before the conversion takes effect if the amendment is
30 approved by the board and, if it changes any of the principal terms
31 of the plan of conversion, by the shareholders of the converting
32 corporation in the same manner and to the same extent as was
33 required for approval of the original plan of conversion.

34 ~~(f)~~

35 (g) A plan of conversion may be abandoned by the board of a
36 converting corporation, or by the shareholders of a converting
37 corporation if the abandonment is approved by the outstanding
38 shares, in each case in the same manner as required for approval
39 of the plan of conversion, subject to the contractual rights of third
40 parties, at any time before the conversion is effective.

1 ~~(g)~~

2 (h) The converted entity shall keep the plan of conversion at
3 (1) the principal place of business of the converted entity if the
4 converted entity is a domestic partnership or (2) at the office at
5 which records are to be kept under Section 15614 or 15901.11 if
6 the converted entity is a domestic limited partnership or at the
7 office at which records are to be kept under Section 17057 if the
8 converted entity is a domestic limited liability company. Upon the
9 request of a shareholder of a converting corporation, the authorized
10 person on behalf of the converted entity shall promptly deliver to
11 the shareholder, at the expense of the converted entity, a copy of
12 the plan of conversion. A waiver by a shareholder of the rights
13 provided in this subdivision shall be unenforceable.

14 SEC. 9. Section 1155 of the Corporations Code is amended to
15 read:

16 1155. (a) To convert a corporation:

17 (1) If the corporation is converting into a domestic limited
18 partnership, a statement of conversion shall be completed on the
19 certificate of limited partnership for the converted entity.

20 (2) If the corporation is converting into a domestic partnership,
21 a statement of conversion shall be completed on the statement of
22 partnership authority for the converted entity, or if no statement
23 of partnership authority is filed then a certificate of conversion
24 shall be filed separately.

25 (3) If the corporation is converting into a domestic limited
26 liability company, a statement of conversion shall be completed
27 on the articles of organization for the converted entity.

28 (4) *If the corporation is converting into a flexible purpose*
29 *corporation, a statement of conversion shall be completed on the*
30 *articles of incorporation for the converted entity.*

31 (b) Any statement or certificate of conversion of a converting
32 corporation shall be executed and acknowledged by those officers
33 of the converting corporation as would be required to sign an
34 officers' certificate (Section 173), and shall set forth all of the
35 following:

36 (1) The name and the Secretary of State's file number of the
37 converting corporation.

38 (2) A statement of the total number of outstanding shares of
39 each class entitled to vote on the conversion, that the principal
40 terms of the plan of conversion were approved by a vote of the

1 number of shares of each class which equaled or exceeded the vote
2 required under Section 1152, specifying each class entitled to vote
3 and the percentage vote required of each class.

4 (3) The name, form, and jurisdiction of organization of the
5 converted entity.

6 (c) For the purposes of this chapter, the certificate of conversion
7 shall be on a form prescribed by the Secretary of State.

8 (d) The filing with the Secretary of State of a statement of
9 conversion on an organizational document or a certificate of
10 conversion as set forth in subdivision (a) shall have the effect of
11 the filing of a certificate of dissolution by the converting
12 corporation and no converting corporation that has made the filing
13 is required to file a certificate of election under Section 1901 or a
14 certificate of dissolution under Section 1905 as a result of that
15 conversion.

16 (e) ~~The Secretary of State shall notify~~ *No statement or certificate*
17 *of conversion shall be filed with the Secretary of State until there*
18 *has been filed by or on behalf of the converting corporation the*
19 *certificate of satisfaction of the Franchise Tax Board certifying*
20 *that all taxes imposed by the Corporation Tax Law (Part 11*
21 *(commencing with Section 23001) of Division 2 of the Revenue*
22 *and Taxation Code) have been paid or secured. Notwithstanding*
23 *the foregoing, if the converted entity is a flexible purpose*
24 *corporation, domestic partnership, domestic limited partnership,*
25 *or domestic limited liability company, the Secretary of State shall*
26 *file the statement or certificate of conversion without the certificate*
27 *of satisfaction of the Franchise Tax Board and shall notify the*
28 *Franchise Tax Board of the conversion. Upon the effectiveness of*
29 *a conversion pursuant to this chapter, a converted entity that is a*
30 *flexible purpose corporation, domestic partnership, domestic*
31 *limited partnership or domestic limited liability company shall be*
32 *deemed to have assumed the liability of the converting corporation*
33 *(1) to prepare and file or cause to be prepared and filed all tax and*
34 *information returns otherwise required of the converting*
35 *corporation under the ~~Bank and~~ Corporation Tax Law (Part 11*
36 *(commencing with Section 23001) of Division 2 of the Revenue*
37 *and Taxation Code) and (2) to pay any tax liability determined to*
38 *be due pursuant to that law.*

39 SEC. 10. Section 1201 of the Corporations Code is amended
40 to read:

1 1201. (a) The principal terms of a reorganization shall be
2 approved by the outstanding shares (Section 152) of each class of
3 each corporation the approval of whose board is required under
4 Section 1200, except as provided in subdivision (b) and except
5 that (unless otherwise provided in the articles) no approval of any
6 class of outstanding preferred shares of the surviving or acquiring
7 corporation or parent party shall be required if the rights,
8 preferences, privileges and restrictions granted to or imposed upon
9 that class of shares remain unchanged (subject to the provisions
10 of subdivision (c)). For the purpose of this subdivision, two classes
11 of common shares differing only as to voting rights shall be
12 considered as a single class of shares.

13 (b) No approval of the outstanding shares (Section 152) is
14 required by subdivision (a) in the case of any corporation if that
15 corporation, or its shareholders immediately before the
16 reorganization, or both, shall own (immediately after the
17 reorganization) equity securities, other than any warrant or right
18 to subscribe to or purchase those equity securities, of the surviving
19 or acquiring corporation or a parent party (subdivision (d) of
20 Section 1200) possessing more than five-sixths of the voting power
21 of the surviving or acquiring corporation or parent party. In making
22 the determination of ownership by the shareholders of a
23 corporation, immediately after the reorganization, of equity
24 securities pursuant to the preceding sentence, equity securities
25 which they owned immediately before the reorganization as
26 shareholders of another party to the transaction shall be
27 disregarded. For the purpose of this section only, the voting power
28 of a corporation shall be calculated by assuming the conversion
29 of all equity securities convertible (immediately or at some future
30 time) into shares entitled to vote but not assuming the exercise of
31 any warrant or right to subscribe to or purchase those shares.

32 (c) Notwithstanding subdivision (b), the principal terms of a
33 reorganization shall be approved by the outstanding shares (Section
34 152) of the surviving corporation in a merger reorganization if any
35 amendment is made to its articles ~~which~~ *that* would otherwise
36 require that approval.

37 (d) Notwithstanding subdivision (b), the principal terms of a
38 reorganization shall be approved by the outstanding shares (Section
39 152) of any class of a corporation ~~which~~ *that* is a party to a merger
40 or sale-of-assets reorganization if holders of shares of that class

1 receive shares of the surviving or acquiring corporation or parent
2 party having different rights, preferences, privileges or restrictions
3 than those surrendered. Shares in a foreign corporation received
4 in exchange for shares in a domestic corporation have different
5 rights, preferences, privileges and restrictions within the meaning
6 of the preceding sentence.

7 (e) Notwithstanding subdivisions (a) and (b), the principal terms
8 of a reorganization shall be approved by the affirmative vote of at
9 least two-thirds of each class, *or a greater vote if required in the*
10 *articles*, of the outstanding shares (*Section 152*) of any close
11 corporation if the reorganization would result in their receiving
12 shares of a corporation—~~which~~ *that* is not a close corporation.
13 However, the articles may provide for a lesser vote, but not less
14 than a majority of the outstanding shares of each class.

15 (f) Notwithstanding subdivisions (a) and (b), *the principal terms*
16 *of a reorganization shall be approved by at least two-thirds of*
17 *each class, or a greater vote if required in the articles, of the*
18 *outstanding shares (Section 152) of a corporation that is a party*
19 *to a merger reorganization if holders of shares receive shares of*
20 *a surviving flexible purpose corporation in the merger.*

21 (g) Notwithstanding subdivisions (a) and (b), the principal terms
22 of a reorganization shall be approved by the outstanding shares
23 (Section 152) of any class of a corporation—~~which~~ *that* is a party
24 to a merger reorganization if holders of shares of that class receive
25 interests of a surviving other business entity in the merger.

26 ~~(g)~~

27 (h) Notwithstanding subdivisions (a) and (b), the principal terms
28 of a reorganization shall be approved by all shareholders of any
29 class or series if, as a result of the reorganization, the holders of
30 that class or series become personally liable for any obligations
31 of a party to the reorganization, unless all holders of that class or
32 series have the dissenters' rights provided in Chapter 13
33 (commencing with Section 1300).

34 ~~(h)~~

35 (i) Any approval required by this section may be given before
36 or after the approval by the board. Notwithstanding approval
37 required by this section, the board may abandon the proposed
38 reorganization without further action by the shareholders, subject
39 to the contractual rights, if any, of third parties.

1 SEC. 11. Division 1.5 (commencing with Section 2500) is
2 added to Title 1 of the Corporations Code, to read:

3
4 DIVISION 1.5. CORPORATE FLEXIBILITY ACT OF 2011

5
6 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

7
8 2500. This division shall be known and may be cited as the
9 Corporate Flexibility Act of 2011.

10 2501. Except as otherwise expressly stated, the provisions of
11 Division 1 (commencing with Section 100) shall apply to
12 corporations organized under this division, and references in that
13 division to the terms “close corporation,” “constituent corporation,”
14 “corporation,” “disappearing corporation,” “domestic corporation,”
15 “foreign corporation,” “surviving corporation,” and similar terms
16 shall be read to apply, in the same manner, to include the similar
17 “flexible purpose corporation” organized under this division.

18 2502. This division applies only to flexible purpose
19 corporations organized expressly under this division whether
20 organized or existing under this division or merged or converted
21 into a flexible purpose corporation in accordance with Chapter 11
22 (commencing with Section 1100) of Division 1 or Chapter 11.5
23 (commencing with Section 1150) of Division 1.

24 2502.01. Every flexible purpose corporation organized under
25 the laws of this state or similar foreign flexible purpose corporation,
26 all of the capital stock of which is beneficially owned by the United
27 States, an agency or instrumentality of the United States or any
28 flexible purpose corporation or similar foreign flexible purpose
29 corporation the whole of the capital stock of which is owned by
30 the United States or by an agency or instrumentality of the United
31 States, is conclusively presumed to be an agency and
32 instrumentality of the United States and is entitled to all privileges
33 and immunities to which the holders of all of its stock are entitled
34 as agencies of the United States.

35 2502.02. Unless otherwise expressly provided, whenever
36 reference is made in this division to any other state or federal
37 statute, that reference is to that statute as it may be amended from
38 time to time, whether before or after the enactment of this division.

1 2502.03. A flexible purpose corporation may be sued in the
2 same manner as a corporation as provided in the Code of Civil
3 Procedure.

4 2502.04. A flexible purpose corporation formed under this
5 division shall, in respect of its property, as a condition of its
6 existence as a flexible purpose corporation, be subject, in the same
7 manner as a corporation, to the provisions of the Code of Civil
8 Procedure authorizing the attachment of corporate property.

9 2502.05. The fees of the Secretary of State for filing
10 instruments by or on behalf of flexible purpose corporations shall
11 be the same fees prescribed for corporations in Article 3
12 (commencing with Section 12180) of Chapter 3 of Part 2 of
13 Division 3 of Title 2 of the Government Code.

14 2502.06. (a) Provisions of the articles described in paragraph
15 (3) of subdivision (e) of Section 2602 and subdivisions (a) and (b)
16 of Section 2603 may be made dependent upon facts ascertainable
17 outside of the articles, if the manner in which those facts shall
18 operate upon those provisions is clearly and expressly set forth in
19 the articles. Similarly, any of the terms of an agreement of merger
20 pursuant to Section 1101 may be made dependent upon facts
21 ascertainable outside of that agreement, if the manner in which
22 those facts shall operate upon the terms of the agreement is clearly
23 and expressly set forth in the agreement of merger.

24 (b) Notwithstanding subdivision (a), when any provisions or
25 terms of articles or an agreement of merger are made dependent
26 upon facts ascertainable outside of the filed instrument through a
27 reference to an agreement or similar document, the flexible purpose
28 corporation filing that instrument shall maintain at its principal
29 executive office a copy of that referenced agreement or document
30 and all amendments, and shall provide to its shareholders, in the
31 case of articles, or to shareholders of any constituent corporation
32 or other business entity, in the case of an agreement of merger, a
33 copy of them upon written request and without charge.

34 (c) For the purposes of this section, “referenced agreement”
35 means an agreement or contract to which the flexible purpose
36 corporation is a party. An amendment or revision of a referenced
37 agreement shall require shareholder approval, in addition to any
38 other required approvals, upon any of the following circumstances:

39 (1) If the amendment or revision of the referenced agreement
40 would result in a material change in the rights, preferences,

1 privileges, or restrictions of a class or series of shares, the
2 amendment or revision shall be approved by the outstanding shares,
3 as defined in Section 152, of that class or series.

4 (2) If the amendment or revision of the referenced agreement
5 would result in a material change in the rights or liabilities of any
6 class or series of shares with respect to the subject matter of
7 paragraph (1), (2), (3), (5), or (9) of subdivision (a) of Section
8 2603, the amendment or revision shall be approved by the
9 outstanding shares, as defined in Section 152, of that class or series.

10 (3) If the amendment or revision of the referenced agreement
11 would result in a material change in the restrictions on transfer or
12 hypothecation of any class or series of shares, the amendment or
13 revision shall be approved by the outstanding shares, as defined
14 in Section 152, of that class or series.

15 (4) If the amendment or revision of the referenced agreement
16 would result in a change of any of the principal terms of an
17 agreement of merger, the amendment or revision shall be approved
18 in the same manner as required by Section 3504 for a change in
19 the principal terms of an agreement of merger.

20 2502.07. Nothing contained in this division shall be construed
21 to modify the provisions of subdivision (h) of Section 25102.

22 2503. “Annual report” means the report required by subdivision
23 (a) of Section 3500, including the information specified in
24 subdivision (b) of Section 3500.

25 2504. “Constituent flexible purpose corporation” means a
26 flexible purpose corporation that is merged with or into one or
27 more corporations or one or more other business entities and
28 includes a surviving flexible purpose corporation.

29 2505. “Conversion” means a conversion pursuant to Chapter
30 11.5 (commencing with Section 1150) of Division 1 and Chapter
31 9 (commencing with Section 3300) of this division.

32 2506. “Disappearing flexible purpose corporation” means a
33 constituent flexible purpose corporation that is not the surviving
34 entity.

35 2507. “Domestic flexible purpose corporation” means a
36 corporation organized under this division.

37 2509. “Flexible purpose corporation,” unless otherwise
38 expressly provided, refers only to a corporation organized under
39 this division.

1 2510. “Flexible purpose corporation subject to the Banking
2 Law” means any of the following:

3 (a) A flexible purpose corporation that, with the approval of the
4 Commissioner of Financial Institutions, is incorporated for the
5 purpose of engaging in, or that is authorized by the Commissioner
6 of Financial Institutions to engage in, the commercial banking
7 business under the Banking Law (Division 1 (commencing with
8 Section 99) of the Financial Code).

9 (b) Any flexible purpose corporation that, with the approval of
10 the Commissioner of Financial Institutions, is incorporated for the
11 purpose of engaging in, or that is authorized by the Commissioner
12 of Financial Institutions to engage in, the industrial banking
13 business under the Banking Law (Division 1 (commencing with
14 Section 99) of the Financial Code).

15 (c) Any flexible purpose corporation, other than a flexible
16 purpose corporation described in subdivision (d), that, with the
17 approval of the Commissioner of Financial Institutions, is
18 incorporated for the purpose of engaging in, or that is authorized
19 by the Commissioner of Financial Institutions to engage in, the
20 trust business under the Banking Law (Division 1 (commencing
21 with Section 99) of the Financial Code).

22 (d) Any flexible purpose corporation that is authorized by the
23 Commissioner of Financial Institutions and the Commissioner of
24 Insurance to maintain a title insurance department to engage in
25 title insurance business and a trust department to engage in trust
26 business.

27 (e) Any flexible purpose corporation that, with the approval of
28 the Commissioner of Financial Institutions, is incorporated for the
29 purpose of engaging in, or that is authorized by the Commissioner
30 of Financial Institutions to engage in, business under Article 1
31 (commencing with Section 3500) of Chapter 19 of Division 1 of
32 the Financial Code.

33 2511. “Reorganization” means a merger reorganization, an
34 exchange reorganization, or a sale of assets reorganization.

35 (a) “Merger reorganization” means a merger pursuant to Chapter
36 11 (commencing with Section 1100) of Division 1 and Chapter 8
37 (commencing with Section 3200), of this division, other than a
38 short-form merger.

39 (b) “Exchange reorganization” means the acquisition by one
40 domestic flexible purpose corporation, foreign flexible purpose

1 corporation, or other business entity in exchange, in whole or in
2 part, for its equity securities, or the equity securities of a domestic
3 flexible purpose corporation, a foreign flexible purpose corporation,
4 or an other business entity that is in control of the acquiring entity,
5 of equity securities of another domestic flexible purpose
6 corporation, foreign flexible purpose corporation, or other business
7 entity if, immediately after the acquisition, the acquiring entity
8 has control of the other entity.

9 (c) “Sale-of-assets reorganization” means the acquisition by
10 one domestic flexible purpose corporation, foreign flexible purpose
11 corporation, or other business entity in exchange in whole or in
12 part for its equity securities, or the equity securities of a domestic
13 flexible purpose corporation, a foreign flexible purpose corporation,
14 or an other business entity that is in control of the acquiring entity,
15 or for its debt securities, or debt securities of a domestic flexible
16 purpose corporation, foreign flexible purpose corporation, or other
17 business entity that is in control of the acquiring entity, that are
18 not adequately secured and that have a maturity date in excess of
19 five years after the consummation of the reorganization, or both,
20 of all or substantially all of the assets of another domestic flexible
21 purpose corporation, foreign flexible purpose corporation, or other
22 business entity.

23 2512. “Share exchange tender offer” means any acquisition by
24 one flexible purpose corporation in exchange in whole or in part
25 for its equity securities, or the equity securities of a corporation
26 or a flexible purpose corporation that is in control of the acquiring
27 flexible purpose corporation, of shares of another corporation or
28 flexible purpose corporation, other than an exchange reorganization
29 (subdivision (b) of Section 2511).

30 2513. “Special purpose” means the special purpose set forth
31 in a flexible purpose corporation’s articles pursuant to subdivision
32 (b) of Section 2602.

33 2514. “Special purpose current report” means the report
34 required of a flexible purpose corporation pursuant to Section
35 3501.

36 2515. “Special purpose MD&A” means the management
37 discussion and analysis required of a flexible purpose corporation
38 pursuant to subdivision (b) of Section 3500.

39 2516. “Special purpose objectives” means those objectives set
40 forth by management and the directors of a flexible purpose

1 corporation for purposes of measuring the impact of the flexible
2 purpose corporation's efforts relating to its special purpose in
3 accordance with Section 3500.

4 2517. "Surviving flexible purpose corporation" means a flexible
5 purpose corporation into which one or more other corporations or
6 one or more other business entities is merged.

7
8
9

CHAPTER 2. ORGANIZATION AND BYLAWS

10 2600. (a) One or more natural persons, partnerships,
11 associations, flexible purpose corporations, or corporations,
12 domestic or foreign, may form a flexible purpose corporation under
13 this division by executing and filing articles of incorporation.

14 (b) If initial directors are named in the articles, each director
15 named in the articles shall sign and acknowledge the articles. If
16 initial directors are not named in the articles, the articles shall be
17 signed by one or more incorporators who shall be persons described
18 in subdivision (a).

19 (c) The corporate existence begins upon the filing of the articles
20 and continues perpetually, unless otherwise expressly provided by
21 law or in the articles.

22 2600.5. (a) An existing business association organized as a
23 trust under the laws of this state or of a foreign jurisdiction may
24 incorporate under this division upon approval by its board of
25 trustees or similar governing body and approval by the affirmative
26 vote of a majority of the outstanding voting shares of beneficial
27 interest, or a greater proportion of the outstanding shares of
28 beneficial interest or the vote of those other classes of shares of
29 beneficial interest as may be specifically required by its declaration
30 of trust or bylaws, and the filing of articles with a certificate
31 attached pursuant to this chapter.

32 (b) In addition to the matters required to be set forth in the
33 articles pursuant to Section 2602, the articles filed pursuant to this
34 section shall state that an existing unincorporated association,
35 stating its name, is being incorporated by the filing of the articles.

36 (c) The articles filed pursuant to this section shall be signed by
37 the president, or any vice president, and the secretary, or any
38 assistant secretary, of the existing association and shall be
39 accompanied by a certificate signed and verified by those officers
40 signing the articles and stating that the incorporation of the

1 association has been approved by the trustees and by the required
2 vote of holders of shares of beneficial interest in accordance with
3 subdivision (a).

4 (d) Upon the filing of articles pursuant to this section, the
5 flexible purpose corporation shall succeed automatically to all of
6 the rights and property of the association being incorporated and
7 shall be subject to all of its debts and liabilities in the same manner
8 as if the flexible purpose corporation had itself incurred them. The
9 incumbent trustees of the association shall constitute the initial
10 directors of the flexible purpose corporation and shall continue in
11 office until the next annual meeting of the shareholders or their
12 earlier death, resignation, or removal. All rights of creditors and
13 all liens upon the property of the association shall be preserved
14 unimpaired. Any action or proceeding pending by or against the
15 association may be prosecuted to judgment, which shall bind the
16 flexible purpose corporation, or the flexible purpose corporation
17 may be proceeded against or substituted in its place.

18 (e) The filing for record in the office of the county recorder of
19 any county in this state in which any of the real property of the
20 association is located of a copy of the articles filed pursuant to this
21 section, certified by the Secretary of State, shall evidence record
22 ownership in the flexible purpose corporation of all interests of
23 the association in and to the real property located in that county.

24 2601. (a) The Secretary of State shall not file articles setting
25 forth a name in which “bank,” “trust,” “trustee” or related words
26 appear, unless the certificate of approval of the Commissioner of
27 Financial Institutions is attached to the articles. This subdivision
28 does not apply to the articles of any flexible purpose corporation
29 subject to the Banking Law on which is endorsed the approval of
30 the Commissioner of Financial Institutions.

31 (b) The Secretary of State shall not file articles that set forth a
32 name that is likely to mislead the public or that is the same as, or
33 resembles so closely as to tend to deceive, the name of a domestic
34 corporation, the name of a domestic flexible purpose corporation,
35 or the name of a foreign corporation that is authorized to transact
36 intrastate business or has registered its name pursuant to Section
37 2101, a name that a foreign corporation has assumed under
38 subdivision (b) of Section 2106, a name that will become the record
39 name of a corporation or flexible purpose corporation or a foreign
40 corporation upon the effective date of a filed corporate instrument

1 where there is a delayed effective date pursuant to subdivision (c)
2 of Section 110 or subdivision (c) of Section 5008, or a name that
3 is under reservation for another corporation or flexible purpose
4 corporation pursuant to this section, Section 5122, 7122, or 9122,
5 except that a flexible purpose corporation may adopt a name that
6 is substantially the same as an existing corporation or flexible
7 purpose corporation, foreign or domestic, which is authorized to
8 transact intrastate business or has registered its name pursuant to
9 Section 2101, upon proof of consent by the domestic or foreign
10 corporation or flexible purpose corporation and a finding by the
11 Secretary of State that under the circumstances the public is not
12 likely to be misled. The use by a flexible purpose corporation of
13 a name in violation of this section may be enjoined notwithstanding
14 the filing of its articles by the Secretary of State.

15 (c) Any applicant may, upon payment of the fee prescribed in
16 the Government Code, obtain from the Secretary of State a
17 certificate of reservation of any name not prohibited by subdivision
18 (b), and upon the issuance of the certificate the name stated in the
19 certificate shall be reserved for a period of 60 days. The Secretary
20 of State shall not, however, issue certificates reserving the same
21 name for two or more consecutive 60-day periods to the same
22 applicant or for the use or benefit of the same person, partnership,
23 firm, corporation, or flexible purpose corporation. No consecutive
24 reservations shall be made by or for the use or benefit of the same
25 person, partnership, firm, corporation or flexible purpose
26 corporation of names so similar as to fall within the prohibitions
27 of subdivision (b).

28 2602. The articles of incorporation shall set forth:

29 (a) The name of the flexible purpose corporation that shall
30 contain the words “flexible purpose corporation” or an abbreviation
31 of those words.

32 (b) (1) Either of the following statements, as applicable:

33 (A) “The purpose of this flexible purpose corporation is to
34 engage in any lawful act or activity for which a flexible purpose
35 corporation may be organized under Division 1.5 of the California
36 Corporations Code, other than the banking business, the trust
37 company business or the practice of a profession permitted to be
38 incorporated by the California Corporations Code, for the benefit
39 of the long-term and the short-term interests of the flexible purpose

1 corporation and its shareholders and in furtherance of the following
2 enumerated purposes ____.”

3 (B) “The purpose of this flexible purpose corporation is to
4 engage in the profession of ____ (with the insertion of a profession
5 permitted to be incorporated by the California Corporations Code)
6 and any other lawful activities, other than the banking or trust
7 company business, not prohibited to a flexible purpose corporation
8 engaging in that profession by applicable laws and regulations,
9 for the benefit of the long-term and the short-term interests of the
10 flexible purpose corporation and its shareholders.”

11 (2) A statement that a purpose of the flexible purpose
12 corporation is to engage in one or more of the following purposes,
13 in addition to the purpose stated pursuant to paragraph (1):

14 (A) One or more charitable or public purpose activities that a
15 nonprofit public benefit corporation is authorized to carry out.

16 (B) The purpose of promoting positive short-term or long-term
17 effects of, or minimizing adverse short-term or long-term effects
18 of, the flexible purpose corporation’s activities upon any of the
19 following:

20 (i) The flexible purpose corporation’s employees, suppliers,
21 customers, and creditors.

22 (ii) The community and society.

23 (iii) The environment.

24 (3) A statement that the flexible purpose corporation is organized
25 as a flexible purpose corporation under the Corporate Flexibility
26 Act of 2011.

27 (4) If the flexible purpose corporation is a flexible purpose
28 corporation subject to the Banking Law (Division 1 (commencing
29 with Section 99) of the Financial Code), the articles shall set forth
30 a statement of purpose that is prescribed by the applicable provision
31 of the Banking Law (Division 1 (commencing with Section 99)
32 of the Financial Code).

33 (5) If the flexible purpose corporation is a flexible purpose
34 corporation subject to the Insurance Code as an insurer, the articles
35 shall additionally state that the business of the flexible purpose
36 corporation is to be an insurer.

37 (6) If the flexible purpose corporation is intended to be a
38 professional corporation within the meaning of the Moscone-Knox
39 Professional Corporation Act (Part 4 (commencing with Section
40 13400) of Division 3), the articles shall additionally contain the

1 statement required by Section 13404. The articles shall not set
2 forth any further or additional statement with respect to the
3 purposes or powers of the flexible purpose corporation, except by
4 way of limitation or except as expressly required by any law of
5 this state, other than this division, or any federal or other statute
6 or regulation, including the Internal Revenue Code and regulations
7 thereunder as a condition of acquiring or maintaining a particular
8 status for tax purposes.

9 (c) The name and address in this state of the flexible purpose
10 corporation's initial agent for service of process.

11 (d) If the flexible purpose corporation is authorized to issue
12 only one class of shares, the total number of shares that the flexible
13 purpose corporation is authorized to issue.

14 (e) If the flexible purpose corporation is authorized to issue
15 more than one class of shares, or if any class of shares is to have
16 two or more series, the articles shall state:

17 (1) The total number of shares of each class that the flexible
18 purpose corporation is authorized to issue and the total number of
19 shares of each series that the flexible purpose corporation is
20 authorized to issue or that the board is authorized to fix the number
21 of shares of any such series.

22 (2) The designation of each class and the designation of each
23 series or that the board may determine the designation of any such
24 series.

25 (3) The rights, preferences, privileges, and restrictions granted
26 to or imposed upon the respective classes or series of shares or the
27 holders thereof, or that the board, within any limits and restrictions
28 stated, may determine or alter the rights, preferences, privileges,
29 and restrictions granted to or imposed upon any wholly unissued
30 class of shares or any wholly unissued series of any class of shares.
31 As to any series the number of shares of which is authorized to be
32 fixed by the board, the articles may also authorize the board, within
33 the limits and restrictions stated in the article or in any resolution
34 or resolutions of the board originally fixing the number of shares
35 constituting any series, to increase or decrease, but not below the
36 number of shares of such series then outstanding, the number of
37 shares of any series subsequent to the issue of shares of that series.
38 If the number of shares of any series shall be so decreased, the
39 shares constituting that decrease shall resume the status which they

1 had prior to the adoption of the resolution originally fixing the
2 number of shares of that series.

3 2603. The articles of incorporation may set forth:

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

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

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

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

11 (4) A provision limiting the duration of the flexible purpose
12 corporation's existence to a specified date.

13 (5) A provision requiring, for any or all corporate actions, except
14 as provided in Section 303, subdivision (b) of Section 402.5,
15 subdivision (c) of Section 708, and Section 1900, the vote of a
16 larger proportion or of all of the shares of any class or series, or
17 the vote or quorum for taking action of a larger proportion or of
18 all of the directors, than is otherwise required by Division 1
19 (commencing with Section 100) or this division.

20 (6) So long as consistent with the purpose of the flexible purpose
21 corporation as set forth in the articles in accordance with
22 subdivision (b) of Section 2602, a provision limiting or restricting
23 the business in which the flexible purpose corporation may engage
24 or the powers which the flexible purpose corporation may exercise,
25 or both.

26 (7) A provision conferring upon the holders of any evidences
27 of indebtedness, issued or to be issued by the flexible purpose
28 corporation, the right to vote in the election of the directors and
29 on any other matters on which shareholders may vote.

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

32 (9) A provision requiring the approval of the shareholders
33 (Section 153) or the approval of the outstanding shares (Section
34 152) for any corporate action, even though not otherwise required
35 by Division 1 (commencing with Section 100) or this division.

36 (10) Provisions eliminating or limiting the personal liability of
37 a director for monetary damages in an action brought by or in the
38 right of the flexible purpose corporation for breach of a director's
39 duties to the flexible purpose corporation and its shareholders, as
40 set forth in Section 2700, subject to the following:

1 (A) The provision may not eliminate or limit the liability of
2 directors (i) for acts or omissions that involve intentional
3 misconduct or a knowing and culpable violation of law, (ii) for
4 acts or omissions that a director believes to be contrary to the best
5 interests of the flexible purpose corporation or its shareholders
6 and its corporate purposes as expressed in its articles, or that
7 involve the absence of good faith on the part of the director, (iii)
8 for any transaction from which a director derived an improper
9 personal benefit, (iv) for acts or omissions that show a reckless
10 disregard for the director's duty to the flexible purpose corporation
11 or its shareholders in circumstances in which the director was
12 aware, or should have been aware, in the ordinary course of
13 performing a director's duties, of a risk of serious injury to the
14 flexible purpose corporation, its shareholders, or its corporate
15 purposes as expressed in its articles, (v) for acts or omissions that
16 constitute an unexcused pattern of inattention that amounts to an
17 abdication of the director's duty to the flexible purpose corporation,
18 its shareholders, or its corporate purposes as expressed in its articles
19 pursuant to Section 2602, or (vi) under Section 310 or 2701.

20 (B) The provision shall not eliminate or limit the liability of a
21 director for any act or omission occurring prior to the date on which
22 the provision becomes effective.

23 (C) The provision shall not eliminate or limit the liability of an
24 officer for any act or omission as an officer, notwithstanding that
25 the officer is also a director or that his or her actions, if negligent
26 or improper, have been ratified by the directors.

27 (11) A provision authorizing, whether by bylaw, agreement, or
28 otherwise, the indemnification of agents of the flexible purpose
29 corporation for breach of duty to the flexible purpose corporation
30 and its shareholders, provided, however, that the provision may
31 not provide for indemnification of any agent for any acts or
32 omissions or transactions from which a director may not be relieved
33 of liability as described in subparagraphs (A), (B), and (C) of
34 paragraph (10).

35 Notwithstanding this subdivision, bylaws may require, for all
36 or any actions by the board, the affirmative vote of a majority of
37 the authorized number of directors. Nothing contained in this
38 subdivision shall affect the enforceability, as between the parties
39 thereto, of any lawful agreement not otherwise contrary to public
40 policy.

1 (b) Reasonable restrictions upon the right to transfer or
2 hypothecate shares of any class or classes or series, except that no
3 restriction shall be binding with respect to shares issued prior to
4 the adoption of the restriction unless the holders of those shares
5 voted in favor of the restriction.

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

8 (d) Any other provision, not in conflict with law, for the
9 management of the business and for the conduct of the affairs of
10 the flexible purpose corporation, including any provision that is
11 required or permitted by this division to be stated in the bylaws.

12 2604. Subject to any limitation contained in the articles, to
13 compliance with any other applicable laws, and to consistency
14 with the special purpose of the flexible purpose corporation, any
15 flexible purpose corporation other than a flexible purpose
16 corporation subject to the Banking Law or a professional flexible
17 purpose corporation may engage in any business activity. A flexible
18 purpose corporation subject to the Banking Law or a professional
19 flexible purpose corporation may engage in any business activity
20 not prohibited by the respective statutes and regulations to which
21 it is subject.

22 2605. Subject to any limitations contained in the articles, to
23 compliance with other provisions of this division and any other
24 applicable laws, and to consistency with the special purpose of the
25 flexible purpose corporation, a flexible purpose corporation shall
26 have all the powers of a natural person in carrying out its business
27 activities, including, without limitation, the power to:

28 (a) Adopt, use, and at will alter a corporate seal. Failure to affix
29 a seal does not affect the validity of any instrument.

30 (b) Adopt, amend, and repeal bylaws.

31 (c) Qualify to do business in any other state, territory,
32 dependency, or foreign country.

33 (d) Subject to the provisions of Section 510, issue, purchase,
34 redeem, receive, take or otherwise acquire, own, hold, sell, lend,
35 exchange, transfer or otherwise dispose of, pledge, use, and
36 otherwise deal in and with its own shares, bonds, debentures, and
37 other securities.

38 (e) Make donations, regardless of specific corporate benefit, for
39 the public welfare or for a community fund, hospital, charitable,
40 educational, scientific, civic, or similar purposes.

1 (f) Pay pensions, and establish and carry out pension,
2 profit-sharing, share bonus, share purchase, share option, savings,
3 thrift, and other retirement, incentive, and benefit plans, trusts and
4 provisions for any or all of the directors, officers, and employees
5 of the flexible purpose corporation or any of its subsidiaries or
6 affiliates, and to indemnify and purchase and maintain insurance
7 on behalf of any fiduciary of these plans, trusts, or provisions.

8 (g) Subject to the provisions of Section 315, assume obligations,
9 enter into contracts, including contracts of guaranty or suretyship,
10 incur liabilities, borrow and lend money and otherwise use its
11 credit, and secure any of its obligations, contracts, or liabilities by
12 mortgage, pledge, or other encumbrance of all or any part of its
13 property, franchises and income.

14 (h) Participate with others in any partnership, joint venture, or
15 other association, transaction, or arrangement of any kind, whether
16 or not that participation involves sharing or delegation of control
17 with or to others.

18
19 CHAPTER 3. DIRECTORS AND MANAGEMENT
20

21 2700. (a) A director shall perform the duties of a director,
22 including duties as a member of any committee of the board upon
23 which the director may serve, in good faith, in a manner the director
24 believes to be in the best interests of the flexible purpose
25 corporation and its shareholders, and with that care, including
26 reasonable inquiry, as an ordinarily prudent person in a like
27 position would use under similar circumstances.

28 (b) In performing the duties of a director, a director shall be
29 entitled to rely upon information, opinions, reports, or statements,
30 including financial statements and other financial data, in each
31 case prepared or presented by any of the following:

32 (1) An officer or employee of the flexible purpose corporation
33 whom the director believes to be reliable and competent in the
34 matters presented.

35 (2) Counsel, independent accountants, or other persons as to
36 matters which the director believes to be within that person's
37 professional or expert competence.

38 (3) A committee of the board upon which the director does not
39 serve, as to matters within its designated authority, which
40 committee the director believes to merit confidence, so long as the

1 director acts in good faith, after reasonable inquiry when the need
2 therefor is indicated by the circumstances and without knowledge
3 that would cause that reliance to be unwarranted.

4 (c) In discharging his or her duties, a director may consider
5 those factors, and give weight to those factors, as the director
6 deems relevant, including the short-term and long-term prospects
7 of the flexible purpose corporation, the best interests of the flexible
8 purpose corporation and its shareholders, and the purposes of the
9 flexible purpose corporation as set forth in its articles.

10 (d) A person who performs the duties of a director in accordance
11 with subdivisions (a), (b), and (c) shall have no liability based
12 upon any alleged failure to discharge the person's obligations as
13 a director. The liability of a director for monetary damages may
14 be eliminated or limited by a flexible purpose corporation's articles
15 to the extent provided in paragraph (10) of subdivision (a) of
16 Section 2603.

17 (e) Notwithstanding any of the purposes set forth in its articles,
18 a flexible purpose corporation shall not be deemed to hold any of
19 its assets in charitable trust or for the benefit of any party other
20 than its shareholders.

21 (f) Nothing in this section, express or implied, is intended to
22 create or grant or shall create or grant any right in or for any person
23 or any cause of action by or for any person, and a director shall
24 not be responsible to any party other than the flexible purpose
25 corporation and its shareholders.

26 2701. (a) Subject to Section 2700, directors of a flexible
27 purpose corporation who approve any of the following corporate
28 actions shall be jointly and severally liable to the flexible purpose
29 corporation for the benefit of all of the creditors or shareholders
30 entitled to institute an action under subdivision (c):

31 (1) The making of any distribution to its shareholders to the
32 extent that it is contrary to the provisions of Sections 500 to 503,
33 inclusive.

34 (2) The distribution of assets to shareholders after institution of
35 dissolution proceedings of the flexible purpose corporation, without
36 paying or adequately providing for all known liabilities of the
37 flexible purpose corporation, excluding any claims not filed by
38 creditors within the time limit set by the court in a notice given to
39 creditors under Chapter 18 (commencing with Section 1800),

1 Chapter 20 (commencing with Section 1900), and Chapter 20
2 (commencing with Section 2000).

3 (3) The making of any loan or guaranty contrary to Section
4 2715.

5 (b) A director who is present at a meeting of the board, or any
6 committee of the board, at which an action specified in subdivision
7 (a) is taken and who abstains from voting, shall be deemed to have
8 approved the action.

9 (c) Suit may be brought in the name of the flexible purpose
10 corporation to enforce the liability as follows:

11 (1) Under paragraph (1) of subdivision (a) against any or all
12 directors liable, by the persons entitled to sue under subdivision
13 (b) of Section 506.

14 (2) Under paragraph (2) or (3) of subdivision (a) against any or
15 all directors liable, by any one or more creditor of the flexible
16 purpose corporation whose debts or claims arose prior to the time
17 of any of the corporate actions specified in paragraph (2) or (3) of
18 subdivision (a) and who have not consented to the corporate action,
19 regardless of whether they have reduced their claims to judgment.

20 (3) Under paragraph (3) of subdivision (a) against any or all
21 directors liable, by any one or more holders of shares outstanding
22 at the time of any corporate action specified in paragraph (3) of
23 subdivision (a) who have not consented to the corporate action,
24 without regard to the provisions of Section 2900.

25 (d) The damages recoverable from a director under this section
26 shall be the amount of the illegal distribution, or if the illegal
27 distribution consists of property, the fair market value of that
28 property at the time of the illegal distribution, plus interest thereon
29 from the date of the distribution at the legal rate on judgments until
30 paid, together with all reasonably incurred costs of appraisal or
31 other valuation, if any, of that property or loss suffered by the
32 flexible purpose corporation as a result of the illegal loan or
33 guaranty, respectively, but not exceeding the liabilities of the
34 flexible purpose corporation owed to nonconsenting creditors at
35 the time of the violation and the injury suffered by nonconsenting
36 shareholders.

37 (e) Any director sued under this section may implead all other
38 directors liable and may compel contribution, either in that action
39 or in an independent action against directors not joined in that
40 action.

1 (f) Directors liable under this section shall also be entitled to
2 be subrogated to the rights of the flexible purpose corporation:

3 (1) With respect to paragraph (1) of subdivision (a), against
4 shareholders who received the distribution.

5 (2) With respect to paragraph (2) of subdivision (a), against
6 shareholders who received the distribution of assets.

7 (3) With respect to paragraph (3) of subdivision (a), against the
8 person who received the loan or guaranty.

9 Any director sued under this section may file a cross-complaint
10 against the person or persons who are liable to the director as a
11 result of the subrogation provided for in this subdivision or may
12 proceed against them in an independent action.

13 2702. (a) For the purposes of this section:

14 (1) “Agent” means any person who is or was a director, officer,
15 employee, or other agent of the flexible purpose corporation, or is
16 or was serving at the request of the flexible purpose corporation
17 as a director, officer, employee or agent of another foreign or
18 domestic corporation, partnership, joint venture, trust, or other
19 enterprise, or was a director, officer, employee, or agent of a
20 foreign or domestic corporation which was a predecessor
21 corporation of the flexible purpose corporation or of another
22 enterprise at the request of the predecessor corporation.

23 (2) “Proceeding” means any threatened, pending, or completed
24 action or proceeding, whether civil, criminal, administrative, or
25 investigative.

26 (3) “Expenses” includes without limitation attorneys’ fees and
27 any expenses of establishing a right to indemnification under
28 subdivision (b).

29 (b) Subject to the standards and restrictions, if any, set forth in
30 its articles or bylaws, and subject to the limitations required by
31 paragraph (11) of subdivision (a) of Section 2603, a flexible
32 purpose corporation may indemnify and hold harmless any agent
33 or any other person from and against any and all claims and
34 demands whatsoever.

35 (c) Expenses incurred in defending any proceeding may be
36 advanced by the flexible purpose corporation prior to the final
37 disposition of the proceeding. The provisions of subdivision (a)
38 of Section 315 do not apply to advances made pursuant to this
39 subdivision.

1 (d) A flexible purpose corporation may purchase and maintain
2 insurance on behalf of any of its agents against any liability
3 asserted against or incurred by the agent in that capacity or arising
4 out of the agent's status as an agent regardless of whether the
5 flexible purpose corporation would have the power to indemnify
6 the agent against that liability under this section. The fact that a
7 flexible purpose corporation owns all or a portion of the shares of
8 the company issuing a policy of insurance shall not render this
9 subdivision inapplicable if either of the following conditions are
10 satisfied:

11 (1) The insurance provided by this subdivision is limited as
12 indemnification is required to be limited by paragraph (11) of
13 subdivision (a) of Section 2603.

14 (2) (A) The company issuing the insurance policy is organized,
15 licensed, and operated in a manner that complies with the insurance
16 laws and regulations applicable to its jurisdiction of organization.

17 (B) The company issuing the policy provides procedures for
18 processing claims that do not permit that company to be subject
19 to the direct control of the flexible purpose corporation that
20 purchased that policy.

21 (C) The policy issued provides for some manner of risk sharing
22 between the issuer and purchaser of the policy, on one hand, and
23 some unaffiliated person or persons, on the other, such as by
24 providing for more than one unaffiliated owner of the company
25 issuing the policy or by providing that a portion of the coverage
26 furnished will be obtained from some unaffiliated insurer or
27 reinsurer.

28 (e) This section does not apply to any proceeding against any
29 trustee, investment manager, or other fiduciary of an employee
30 benefit plan in that person's capacity as such, even though the
31 person may also be an agent as defined in subdivision (a) of the
32 employer flexible purpose corporation. A flexible purpose
33 corporation shall have power to indemnify a trustee, investment
34 manager, or other fiduciary to the extent permitted by subdivision
35 (f) of Section 2605.

36

37 CHAPTER 4. SHARES AND SHARE CERTIFICATES

38

39 2800. (a) All certificates representing shares of a flexible
40 purpose corporation shall contain, in addition to any other

1 statements required by this section, the following conspicuous
2 language on the face of the certificate.

3
4 “This entity is a flexible purpose corporation organized under
5 Division 1.5 of the California Corporations Code. The articles of
6 this corporation state one or more purposes required by law. Refer
7 to the articles on file with the Secretary of State, and the bylaws
8 and any agreements on file with the secretary of the corporation,
9 for further information.”

10

11 (b) There shall also appear on the certificate, the initial
12 transaction statement, and written statements, unless stated or
13 summarized under subdivision (a) or (b) of Section 417, the
14 statements required by all of the following, to the extent applicable:

15 (1) The fact that the shares are subject to restrictions upon
16 transfer.

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

20 (3) The fact that the shares are subject to a voting agreement
21 under subdivision (a) of Section 706 or an irrevocable proxy under
22 subdivision (e) of Section 705 or restrictions upon voting rights
23 contractually imposed by the flexible purpose corporation.

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

25 (5) The fact that the shares are convertible and the period for
26 conversion.

27 Statements or references to statements on the face of the
28 certificate, the initial transaction statement, and written statements
29 required by paragraph (1) or (2) shall be conspicuous.

30 (c) Unless stated on the certificate, the initial transaction
31 statement, and written statements as required by subdivision (a),
32 no restriction upon transfer, no right of redemption and no voting
33 agreement under subdivision (a) of Section 706, no irrevocable
34 proxy under subdivision (e) of Section 705, and no voting
35 restriction imposed by the flexible purpose corporation shall be
36 enforceable against a transferee of the shares without actual
37 knowledge of the restriction, right, agreement, or proxy. With
38 regard only to liability to assessment or for the unpaid portion of
39 the subscription price, unless stated on the certificate as required
40 by subdivision (a), that liability shall not be enforceable against a

1 transferee of the shares. For the purpose of this subdivision,
2 “transferee” includes a purchaser from the flexible purpose
3 corporation.

4 (d) All certificates representing shares of a close flexible purpose
5 corporation shall contain, in addition to any other statements
6 required by this section, the following conspicuous legend on the
7 face thereof:

8
9 “This flexible purpose corporation is a close flexible purpose
10 corporation. The number of holders of record of its shares of all
11 classes cannot exceed ____ (a number not in excess of 35). Any
12 attempted voluntary inter vivos transfer which would violate this
13 requirement is void. Refer to the articles, bylaws and any
14 agreements on file with the secretary of the flexible purpose
15 corporation for further restrictions.”

16
17 (e) Any attempted voluntary inter vivos transfer of the shares
18 of a close flexible purpose corporation that would result in the
19 number of holders of record of its shares exceeding the maximum
20 number specified in its articles is void if the certificate contains
21 the legend required by subdivision (c).

22

23 CHAPTER 5. SHAREHOLDER DERIVATIVE ACTIONS

24

25 2900. (a) As used in this section:

26 (1) “Flexible purpose corporation” includes an unincorporated
27 association.

28 (2) “Board” includes the managing body of an unincorporated
29 association.

30 (3) “Shareholder” includes a member of an unincorporated
31 association.

32 (4) “Shares” includes memberships in an unincorporated
33 association.

34 (b) No action may be instituted or maintained in right of any
35 domestic or foreign flexible purpose corporation under this section
36 by any party other than a shareholder of the flexible purpose
37 corporation.

38 (c) No action may be instituted or maintained in right of any
39 domestic or foreign flexible purpose corporation by any holder of

1 shares or of voting trust certificates of the flexible purpose
2 corporation unless both of the following conditions exist:

3 (1) The plaintiff alleges in the complaint that plaintiff was a
4 shareholder, of record or beneficially, or the holder of voting trust
5 certificates at the time of the transaction or any part thereof of
6 which plaintiff complains or that plaintiff's shares or voting trust
7 certificates thereafter devolved upon plaintiff by operation of law
8 from a holder who was a holder at the time of the transaction or
9 any part thereof complained of. Any shareholder who does not
10 meet these requirements may nevertheless be allowed, in the
11 discretion of the court, to maintain the action on a preliminary
12 showing to and determination by the court, by motion and after a
13 hearing, at which the court shall consider the evidence by affidavit
14 or testimony, as it deems material, of all of the following:

15 (i) There is a strong prima facie case in favor of the claim
16 asserted on behalf of the flexible purpose corporation.

17 (ii) No other similar action has been or is likely to be instituted.

18 (iii) The plaintiff acquired the shares before there was disclosure
19 to the public or to the plaintiff of the wrongdoing of which plaintiff
20 complains.

21 (iv) Unless the action can be maintained the defendant may
22 retain a gain derived from defendant's willful breach of a fiduciary
23 duty.

24 (v) The requested relief will not result in unjust enrichment of
25 the flexible purpose corporation or any shareholder of the flexible
26 purpose corporation.

27 (2) The plaintiff alleges in the complaint with particularity
28 plaintiff's efforts to secure from the board the action as plaintiff
29 desires, or the reasons for not making that effort, and alleges further
30 that plaintiff has either informed the flexible purpose corporation
31 or the board in writing of the ultimate facts of each cause of action
32 against each defendant or delivered to the flexible purpose
33 corporation or the board a true copy of the complaint which
34 plaintiff proposes to file.

35 (d) In any action referred to in subdivision (b), at any time within
36 30 days after service of summons upon the flexible purpose
37 corporation or upon any defendant who is an officer or director of
38 the flexible purpose corporation, or held that office at the time of
39 the acts complained of, the flexible purpose corporation or the
40 defendant may move the court for an order, upon notice and

1 hearing, requiring the plaintiff to furnish a bond as hereinafter
2 provided. The motion shall be based upon one or both of the
3 following grounds:

4 (1) There is no reasonable possibility that the prosecution of
5 the cause of action alleged in the complaint against the moving
6 party will benefit the flexible purpose corporation or its
7 shareholders.

8 (2) The moving party, if other than the flexible purpose
9 corporation, did not participate in the transaction complained of
10 in any capacity.

11 The court on application of the flexible purpose corporation or
12 any defendant may, for good cause shown, extend the 30-day
13 period for an additional period or periods not exceeding 60 days.

14 (e) At the hearing upon any motion pursuant to subdivision (c),
15 the court shall consider the evidence, written or oral, by witnesses
16 or affidavit, as may be material to the ground or grounds upon
17 which the motion is based, or to a determination of the probable
18 reasonable expenses, including attorneys' fees, of the flexible
19 purpose corporation and the moving party that will be incurred in
20 the defense of the action. If the court determines, after hearing the
21 evidence adduced by the parties, that the moving party has
22 established a probability in support of any of the grounds upon
23 which the motion is based, the court shall fix the amount of the
24 bond, not to exceed fifty thousand dollars (\$50,000), to be
25 furnished by the plaintiff for reasonable expenses, including
26 attorneys' fees, which may be incurred by the moving party and
27 the flexible purpose corporation in connection with the action,
28 including expenses for which the flexible purpose corporation may
29 become liable pursuant to Section 2702. A ruling by the court on
30 the motion shall not be a determination of any issue in the action
31 or of the merits thereof. If the court, upon the motion, makes a
32 determination that a bond shall be furnished by the plaintiff as to
33 any one or more defendants, the action shall be dismissed as to
34 the defendant or defendants, unless the bond required by the court
35 has been furnished within such reasonable time as may be fixed
36 by the court.

37 (f) If the plaintiff shall, either before or after a motion is made
38 pursuant to subdivision (c), or any order or determination pursuant
39 to the motion, furnish a bond in the aggregate amount of fifty
40 thousand dollars (\$50,000) to secure the reasonable expenses of

1 the parties entitled to make the motion, the plaintiff has complied
2 with the requirements of this section and with any order for a bond
3 theretofore made, and any motion then pending shall be dismissed
4 and no further or additional bond shall be required.

5 (g) If a motion is filed pursuant to subdivision (c), no pleadings
6 need be filed by the flexible purpose corporation or any other
7 defendant and the prosecution of the action shall be stayed until
8 10 days after the motion has been disposed of.

9

10 CHAPTER 6. AMENDMENT OF ARTICLES

11

12 3000. (a) A proposed amendment to the articles of a flexible
13 purpose corporation shall be approved by the outstanding shares
14 of a class, regardless of whether that class is entitled to vote thereon
15 by the provisions of the articles, if the amendment would:

16 (1) Increase or decrease the aggregate number of authorized
17 shares of that class, other than an increase as provided in either
18 subdivision (b) of Section 405 or subdivision (b) of Section 902.

19 (2) Effect an exchange, reclassification, or cancellation of all
20 or part of the shares of that class, including a reverse stock split
21 but excluding a stock split.

22 (3) Effect an exchange, or create a right of exchange, of all or
23 part of the shares of another class into the shares of that class.

24 (4) Change the rights, preferences, privileges or restrictions of
25 the shares of that class.

26 (5) Create a new class of shares having rights, preferences, or
27 privileges prior to the shares of that class, or increase the rights,
28 preferences, or privileges or the number of authorized shares of
29 any class having rights, preferences, or privileges prior to the shares
30 of that class.

31 (6) In the case of preferred shares, divide the shares of any class
32 into series having different rights, preferences, privileges, or
33 restrictions or authorize the board to do so.

34 (7) Cancel or otherwise affect dividends on the shares of that
35 class that have accrued but have not been paid.

36 (b) A proposed amendment shall be approved by an affirmative
37 vote of at least two-thirds of the outstanding shares of each class,
38 or a greater vote if required in the articles, regardless of whether
39 that class is entitled to vote thereon by the provisions of the articles,
40 if the amendment would materially alter any special purpose of

1 the flexible purpose corporation stated in the articles pursuant to
2 paragraph (2) of subdivision (b) of Section 2602, regardless of
3 whether that purpose, as amended, would comply with the
4 provisions of that paragraph.

5 (c) Different series of the same class shall not constitute different
6 classes for the purpose of voting by classes except when a series
7 is adversely affected by an amendment in a different manner than
8 other shares of the same class.

9 (d) In addition to approval by a class as provided in subdivisions
10 (a) and (b), a proposed amendment shall also be approved by the
11 outstanding voting shares (Section 152).

12 3001. (a) A flexible purpose corporation may, by amendment
13 of its articles pursuant to this section, convert to a nonprofit public
14 benefit corporation, nonprofit mutual benefit corporation, nonprofit
15 religious corporation, or cooperative corporation.

16 (b) The amendment of the articles to convert to a nonprofit
17 corporation shall revise the statement of purpose, delete the
18 authorization for shares and any other provisions relating to
19 authorized or issued shares, make other changes as may be
20 necessary or desired, and, if any shares have been issued, provide
21 either for the cancellation of those shares or for the conversion of
22 those shares to memberships of the nonprofit corporation. The
23 amendment of the articles to convert to a cooperative corporation
24 shall revise the statement of purpose, make other changes as may
25 be necessary or desired, and, if any shares have been issued,
26 provide for the cancellation of those shares or for the conversion
27 of those shares to memberships of the cooperative corporation, if
28 necessary.

29 (c) If shares have been issued, an amendment to convert to a
30 nonprofit corporation shall be approved by all of the outstanding
31 shares of all classes regardless of limitations or restrictions on their
32 voting rights and an amendment to convert to a cooperative
33 corporation shall be approved by the outstanding shares of each
34 class regardless of limitations or restrictions on their voting rights.

35 (d) If an amendment pursuant to this section is included in a
36 merger agreement, the provisions of this section shall apply, except
37 that any provision for cancellation or conversion of shares shall
38 be in the merger agreement rather than in the amendment of the
39 articles.

1 (e) Notwithstanding subdivision (c), if a flexible purpose
2 corporation is a mutual water company within the meaning of
3 Section 2705 of the Public Utilities Code and under the terms of
4 the conversion each outstanding share is converted to a membership
5 of a nonprofit mutual benefit corporation, an amendment to convert
6 to a nonprofit mutual benefit corporation shall be approved by the
7 outstanding shares of each class regardless of limitations or
8 restrictions on their voting rights.

9 3002. (a) A flexible purpose corporation may, by amendment
10 of its articles pursuant to this section, convert to a domestic
11 corporation.

12 (b) The amendment of the articles to convert to a domestic
13 corporation shall revise the statement of purpose to delete any
14 provisions in the articles that are permitted by Section 2602, but
15 that are not permitted to be in the articles of a domestic corporation.

16 (c) If shares have been issued, an amendment to convert to a
17 domestic corporation shall be approved by an affirmative vote of
18 at least two-thirds of the outstanding shares of each class, or a
19 greater vote if required in the articles, regardless of whether that
20 class is entitled to vote thereon by the provisions of the articles.

21 (d) If an amendment pursuant to this section is included in a
22 merger agreement, the provisions of this section shall apply, except
23 that any provision for cancellation or conversion of shares shall
24 be in the merger agreement rather than in the amendment of the
25 articles.

26
27 CHAPTER 7. SALES OF ASSETS
28

29 3100. (a) A flexible purpose corporation may sell, lease,
30 convey, exchange, transfer, or otherwise dispose of all or
31 substantially all of its assets when the principal terms of the
32 transaction are approved by the board and are approved by an
33 affirmative vote of at least two-thirds of the outstanding shares of
34 each class, or a greater vote if required in the articles, regardless
35 of whether that class is entitled to vote thereon by the provisions
36 of the articles, either before or after approval by the board and
37 before the transaction. A transaction constituting a reorganization
38 shall be subject to Chapter 12 (commencing with Section 1200)
39 of Division 1 and Chapter 10 (commencing with Section 3400) of
40 this division and shall not be subject to this section, other than

1 subdivision (d). A transaction constituting a conversion shall be
2 subject to Chapter 11.5 (commencing with Section 1150) of
3 Division 1 and Chapter 9 (commencing with Section 3300) of this
4 division and shall not be subject to this section.

5 (b) Notwithstanding approval of the outstanding shares, the
6 board may abandon the proposed transaction without further action
7 by the shareholders, subject to the contractual rights, if any, of
8 third parties.

9 (c) The sale, lease, conveyance, exchange, transfer, or other
10 disposition may be made upon those terms and conditions and for
11 that consideration as the board may deem in the best interests of
12 the flexible purpose corporation. The consideration may be money,
13 securities, or other property.

14 (d) If the acquiring party in a transaction pursuant to subdivision
15 (a) or subdivision (g) of Section 2001 is in control of or under
16 common control with the disposing flexible purpose corporation,
17 the principal terms of the sale shall be approved by at least 90
18 percent of the voting power of the disposing flexible purpose
19 corporation unless the disposition is to a domestic or foreign other
20 business entity or flexible purpose corporation, the articles of
21 incorporation of which specify materially the same purposes, in
22 consideration of the nonredeemable common shares or
23 nonredeemable equity securities of the acquiring party or its parent.

24 (e) Subdivision (d) shall not apply to a transaction if the
25 Commissioner of Corporations, the Commissioner of Financial
26 Institutions, the Insurance Commissioner, or the Public Utilities
27 Commission has approved the terms and conditions of the
28 transaction and the fairness of those terms and conditions pursuant
29 to Section 25142, Section 696.5 of the Financial Code, Section
30 838.5 of the Insurance Code, or Section 822 of the Public Utilities
31 Code.

32

33

CHAPTER 8. MERGER

34

35 3200. If any disappearing flexible purpose corporation in a
36 merger is a close flexible purpose corporation and the surviving
37 flexible purpose corporation is not a close flexible purpose
38 corporation, the merger shall be approved by an affirmative vote
39 of at least two-thirds of the outstanding shares of each class, or a
40 greater vote if required in the articles, regardless of whether that

1 class is entitled to vote thereon by the provisions of the articles,
2 of the disappearing flexible purpose corporation. The articles may
3 provide for a lesser vote, but not less than a majority of the
4 outstanding shares of each class.

5 3201. If any disappearing corporation in a merger is a flexible
6 purpose corporation and the surviving entity is not a flexible
7 purpose corporation, or is a flexible purpose corporation the articles
8 of incorporation of which set forth materially different purposes,
9 the merger shall be approved by an affirmative vote of at least
10 two-thirds of the outstanding shares of each class, or a greater vote
11 if required in the articles, regardless of whether that class is entitled
12 to vote thereon by the provisions of the articles, of the disappearing
13 flexible purpose corporation.

14 3202. If a disappearing flexible purpose corporation in a merger
15 is a flexible purpose corporation governed by this division and the
16 surviving corporation is a nonprofit public benefit corporation, a
17 nonprofit mutual benefit corporation, or a nonprofit religious
18 corporation, the merger shall be approved by all of the outstanding
19 shares of all classes of the disappearing flexible purpose
20 corporation, regardless of limitations or restrictions on their voting
21 rights, notwithstanding any provision of Chapter 10 (commencing
22 with Section 3400).

23 3203. (a) Any one or more flexible purpose corporations may
24 merge with one or more other business entities. One or more
25 domestic flexible purpose corporations not organized under this
26 division and one or more foreign corporations may be parties to
27 the merger. Notwithstanding this section, the merger of any number
28 of flexible purpose corporations with any number of other business
29 entities may be effected only if:

30 (1) In a merger in which a domestic flexible purpose corporation
31 not organized under this division or a domestic other business
32 entity is a party, it is authorized by the laws under which it is
33 organized to effect the merger.

34 (2) In a merger in which a foreign corporation is a party, it is
35 authorized by the laws under which it is organized to effect the
36 merger.

37 (3) In a merger in which a foreign other business entity is a
38 party, it is authorized by the laws under which it is organized to
39 effect the merger.

1 (b) Each flexible purpose corporation and each other party that
2 desires to merge shall approve, and shall be a party to, an
3 agreement of merger. Other persons, including a parent party, may
4 be parties to the agreement of merger. The board of each flexible
5 purpose corporation that desires to merge, and, if required, the
6 shareholders, shall approve the agreement of merger. The
7 agreement of merger shall be approved on behalf of each party by
8 those persons required to approve the merger by the laws under
9 which it is organized. The agreement of merger shall state:

10 (1) The terms and conditions of the merger.

11 (2) The name and place of incorporation or organization of each
12 party to the merger and the identity of the surviving party.

13 (3) The amendments, if any, subject to Sections 900, 902, 907,
14 and 3002 to the articles of the surviving flexible purpose
15 corporation, if applicable, to be effected by the merger. If any
16 amendment changes the name of the surviving flexible purpose
17 corporation, if applicable, the new name may be, subject to
18 subdivision (b) of Section 2601, the same as or similar to the name
19 of a disappearing party to the merger.

20 (4) The manner of converting the shares of each constituent
21 flexible purpose corporation into shares, interests, or other
22 securities of the surviving party. If any shares of any constituent
23 flexible purpose corporation are not to be converted solely into
24 shares, interests, or other securities of the surviving party, the
25 agreement of merger shall state (A) the cash, rights, securities, or
26 other property that the holders of those shares are to receive in
27 exchange for the shares, which cash, rights, securities, or other
28 property may be in addition to or in lieu of shares, interests, or
29 other securities of the surviving party, or (B) that the shares are
30 canceled without consideration.

31 (5) Any other details or provisions required by the laws under
32 which any party to the merger is organized, including, if a domestic
33 corporation is a party to the merger, Section 3203, if a public
34 benefit corporation or a religious corporation is a party to the
35 merger, Section 6019.1, if a mutual benefit corporation is a party
36 to the merger, Section 8019.1, if a consumer cooperative
37 corporation is a party to the merger, Section 12540.1, if a domestic
38 limited partnership is a party to the merger, Section 15678.2, if a
39 domestic partnership is a party to the merger, Section 16911, and

1 if a domestic limited liability company is a party to the merger,
2 Section 17551.

3 (6) Any other details or provisions as are desired, including,
4 without limitation, a provision for the payment of cash in lieu of
5 fractional shares or for any other arrangement with respect thereto
6 consistent with the provisions of Section 407.

7 (c) Each share of the same class or series of any constituent
8 flexible purpose corporation, other than the cancellation of shares
9 held by a party to the merger or its parent, or a wholly owned
10 subsidiary of either, in another constituent flexible purpose
11 corporation, shall, unless all shareholders of the class or series
12 consent and except as provided in Section 407, be treated equally
13 with respect to any distribution of cash, rights, securities, or other
14 property. Notwithstanding paragraph (4) of subdivision (b), the
15 nonredeemable common shares of a constituent flexible purpose
16 corporation may be converted only into nonredeemable common
17 shares of a surviving flexible purpose corporation or a parent party
18 or nonredeemable equity securities of a surviving party other than
19 a flexible purpose corporation if another party to the merger or its
20 parent owns, directly or indirectly, prior to the merger shares of
21 that corporation representing more than 50 percent of the voting
22 power of that flexible purpose corporation, unless all of the
23 shareholders of the class consent and except as provided in Section
24 407.

25 (d) Notwithstanding its prior approval, an agreement of merger
26 may be amended prior to the filing of the agreement of merger or
27 the certificate of merger, as is applicable, if the amendment is
28 approved by the board of each constituent flexible purpose
29 corporation and, if the amendment changes any of the principal
30 terms of the agreement, by the outstanding shares, if required by
31 Chapter 10 (commencing with Section 3400), in the same manner
32 as the original agreement of merger. If the agreement of merger
33 as so amended and approved is also approved by each of the other
34 parties to the agreement of merger, the agreement of merger as so
35 amended shall then constitute the agreement of merger.

36 (e) The board of a constituent flexible purpose corporation may,
37 in its discretion, abandon a merger, subject to the contractual rights,
38 if any, of third parties, including other parties to the agreement of
39 merger, without further approval by the outstanding shares, at any
40 time before the merger is effective.

1 (f) Each constituent flexible purpose corporation shall sign the
2 agreement of merger by its chairperson of the board, president, or
3 a vice president and also by its secretary or an assistant secretary
4 acting on behalf of their respective corporations.

5 (g) (1) If the surviving party is a domestic flexible purpose
6 corporation, or if a domestic corporation or a foreign corporation,
7 a public benefit corporation, a mutual benefit corporation, a
8 religious corporation, or a corporation organized under the
9 Consumer Cooperative Corporation Law (Part 2 (commencing
10 with Section 12200) of Division 3) is a party to the merger, after
11 required approvals of the merger by each constituent flexible
12 purpose corporation through approval of the board and any
13 approval of the outstanding shares required by Chapter 13
14 (commencing with Section 3400) and by the other parties to the
15 merger, the surviving party shall file a copy of the agreement of
16 merger with an officers' certificate of each constituent domestic
17 flexible purpose corporation and foreign flexible purpose
18 corporation attached stating the total number of outstanding shares
19 or membership interests of each class entitled to vote on the merger,
20 and identifying any other person or persons whose approval is
21 required, that the agreement of merger in the form attached or its
22 principal terms, as required, were approved by that flexible purpose
23 corporation by a vote of a number of shares or membership
24 interests of each class that equaled or exceeded the vote required,
25 specifying each class entitled to vote and the percentage vote
26 required of each class and, if applicable, by that other person or
27 persons whose approval is required, or that the merger agreement
28 was entitled to be and was approved by the board alone, as
29 provided in Section 3401, in the case of a flexible purpose
30 corporation subject to that section. If equity securities of a parent
31 party are to be issued in the merger, the officers' certificate of that
32 controlled party shall state either that no vote of the shareholders
33 of the parent party was required or that the required vote was
34 obtained. In lieu of an officers' certificate, a certificate of merger,
35 on a form prescribed by the Secretary of State, shall be filed for
36 each constituent other business entity. The certificate of merger
37 shall be executed and acknowledged by each domestic constituent
38 limited liability company by all managers of the limited liability
39 company, unless a lesser number is specified in its articles or
40 organization or operating agreement, and by each domestic

1 constituent limited partnership by all general partners, unless a
2 lesser number is provided in its certificate of limited partnership
3 or partnership agreement, and by each domestic constituent general
4 partnership by two partners, unless a lesser number is provided in
5 its partnership agreement, and by each foreign constituent limited
6 liability company by one or more managers and by each foreign
7 constituent general partnership or foreign constituent limited
8 partnership by one or more general partners, and by each
9 constituent reciprocal insurer by the chairperson of the board,
10 president, or vice president, and by the secretary or assistant
11 secretary, or, if a constituent reciprocal insurer has not appointed
12 those officers, by the chairperson of the board, president, or vice
13 president, and by the secretary or assistant secretary of the
14 constituent reciprocal insurer's attorney-in-fact, and by each other
15 party to the merger by those persons required or authorized to
16 execute the certificate of merger by the laws under which that party
17 is organized, specifying for that party the provision of law or other
18 basis for the authority of the signing persons. The certificate of
19 merger shall set forth, if a vote of the shareholders, members,
20 partners, or other holders of interests of the constituent other
21 business entity was required, a statement setting forth the total
22 number of outstanding interests of each class entitled to vote on
23 the merger and that the agreement of merger in the form attached
24 or its principal terms, as required, were approved by a vote of the
25 number of interests of each class that equaled or exceeded the vote
26 required, specifying each class entitled to vote and the percentage
27 vote required of each class, and any other information required to
28 be set forth under the laws under which the constituent other
29 business entity is organized, including, if a domestic limited
30 partnership is a party to the merger, subdivision (a) of Section
31 15678.4, if a domestic partnership is a party to the merger,
32 subdivision (b) of Section 16915, and, if a domestic limited liability
33 company is a party to the merger, subdivision (a) of Section 17552.
34 The certificate of merger for each constituent foreign other business
35 entity, if any, shall also set forth the statutory or other basis under
36 which that foreign other business entity is authorized by the laws
37 under which it is organized to effect the merger. The merger and
38 any amendment of the articles of the surviving flexible purpose
39 corporation, if applicable, contained in the agreement of merger
40 shall be effective upon filing of the agreement of merger with an

1 officer's certificate of each constituent domestic corporation and
2 foreign corporation and a certificate of merger for each constituent
3 other business entity, subject to subdivision (c) of Section 153 and
4 subject to the provisions of subdivision (j), and the several parties
5 thereto shall be one entity. If a domestic reciprocal insurer
6 organized after 1974 to provide medical malpractice insurance is
7 a party to the merger, the agreement of merger or certificate of
8 merger shall not be filed until there has been filed the certificate
9 issued by the Insurance Commissioner approving the merger
10 pursuant to Section 1555 of the Insurance Code. The Secretary of
11 State may certify a copy of the agreement of merger separate from
12 the officers' certificates and certificates of merger attached thereto.

13 (2) If the surviving entity is an other business entity, and no
14 public benefit corporation, mutual benefit corporation, religious
15 corporation, or corporation organized under the Consumer
16 Cooperative Corporation Law (Part 2 (commencing with Section
17 12200) of Division 3) is a party to the merger, after required
18 approvals of the merger by each constituent flexible purpose
19 corporation through approval of the board and any approval of the
20 outstanding shares required by Chapter 10 (commencing with
21 Section 3400) and by the other parties to the merger, the parties
22 to the merger shall file a certificate of merger in the office of, and
23 on a form prescribed by, the Secretary of State. The certificate of
24 merger shall be executed and acknowledged by each constituent
25 domestic and foreign flexible purpose corporation by its
26 chairperson of the board, president, or a vice president and also
27 by its secretary or an assistant secretary and by each domestic
28 constituent limited liability company by all managers of the limited
29 liability company, unless a lesser number is specified in its articles
30 of organization or operating agreement, and by each domestic
31 constituent limited partnership by all general partners, unless a
32 lesser number is provided in its certificate of limited partnership
33 or partnership agreement, and by each domestic constituent general
34 partnership by two partners, unless a lesser number is provided in
35 its partnership agreement, and by each foreign constituent limited
36 liability company by one or more managers and by each foreign
37 constituent general partnership or foreign constituent limited
38 partnership by one or more general partners, and by each
39 constituent reciprocal insurer by the chairperson of the board,
40 president, or vice president, and by the secretary or assistant

1 secretary, or, if a constituent reciprocal insurer has not appointed
2 those officers, by the chairperson of the board, president, or vice
3 president, and by the secretary or assistant secretary of the
4 constituent reciprocal insurer's attorney-in-fact. The certificate of
5 merger shall be signed by each other party to the merger by those
6 persons required or authorized to execute the certificate of merger
7 by the laws under which that party is organized, specifying for
8 that party the provision of law or other basis for the authority of
9 the signing persons. The certificate of merger shall set forth all of
10 the following:

11 (A) The name, place of incorporation or organization, and the
12 Secretary of State's file number, if any, of each party to the merger,
13 separately identifying the disappearing parties and the surviving
14 party.

15 (B) If the approval of the outstanding shares of a constituent
16 flexible purpose corporation was required by Chapter 10
17 (commencing with Section 3400), a statement setting forth the
18 total number of outstanding shares of each class entitled to vote
19 on the merger and that the principal terms of the agreement of
20 merger were approved by a vote of the number of shares of each
21 class entitled to vote and the percentage vote required of each
22 class.

23 (C) The future effective date or time, not more than 90 days
24 subsequent to the date of filing of the merger, if the merger is not
25 to be effective upon the filing of the certificate of merger with the
26 Secretary of State.

27 (D) A statement, by each party to the merger that is a domestic
28 corporation not organized under this division, a foreign corporation
29 or foreign other business entity, or an other business entity, of the
30 statutory or other basis under which that party is authorized by the
31 laws under which it is organized to effect the merger.

32 (E) Any other information required to be stated in the certificate
33 of merger by the laws under which each respective party to the
34 merger is organized, including, if a domestic limited liability
35 company is a party to the merger, subdivision (a) of Section 17552,
36 if a domestic partnership is a party to the merger, subdivision (b)
37 of Section 16915, and, if a domestic limited partnership is a party
38 to the merger, subdivision (a) of Section 15678.4.

39 (F) Any other details or provisions that may be desired.

1 Unless a future effective date or time is provided in a certificate
2 of merger, in which event the merger shall be effective at that
3 future effective date or time, a merger shall be effective upon the
4 filing of the certificate of merger with the Secretary of State and
5 the several parties thereto shall be one entity. The surviving other
6 business entity shall keep a copy of the agreement of merger at its
7 principal place of business which, for purposes of this subdivision,
8 shall be the office referred to in Section 17057 if a domestic limited
9 liability company, at the business address specified in paragraph
10 (5) of subdivision (a) of Section 17552 if a foreign limited liability
11 company, at the office referred to in subdivision (a) of Section
12 16403 if a domestic general partnership, at the business address
13 specified in subdivision (f) of Section 16911 if a foreign
14 partnership, at the office referred to in subdivision (a) of Section
15 15614 if a domestic limited partnership, or at the business address
16 specified in paragraph (5) of subdivision (a) of Section 15678.4 if
17 a foreign limited partnership. Upon the request of a holder of equity
18 securities of a party to the merger, a person with authority to do
19 so on behalf of the surviving other business entity shall promptly
20 deliver to that holder, a copy of the agreement of merger. A waiver
21 by that holder of the rights provided in the foregoing sentence shall
22 be unenforceable. If a domestic reciprocal insurer organized after
23 1974 to provide medical malpractice insurance is a party to the
24 merger the agreement of merger or certificate of merger shall not
25 be filed until there has been filed the certificate issued by the
26 Insurance Commissioner approving the merger in accordance with
27 Section 1555 of the Insurance Code.

28 (h) (1) A copy of an agreement of merger certified on or after
29 the effective date by an official having custody thereof has the
30 same force in evidence as the original and, except as against the
31 state, is conclusive evidence of the performance of all conditions
32 precedent to the merger, the existence on the effective date of the
33 surviving party to the merger, and the performance of the
34 conditions necessary to the adoption of any amendment to the
35 articles, if applicable, contained in the agreement of merger.

36 (2) For all purposes for a merger in which the surviving entity
37 is a domestic other business entity and the filing of a certificate of
38 merger is required by paragraph (2) of subdivision (g), a copy of
39 the certificate of merger duly certified by the Secretary of State is
40 conclusive evidence of the merger of the constituent corporations,

1 either by themselves or together with the other parties to the
2 merger, into the surviving other business entity.

3 (i) (1) Upon a merger pursuant to this section, the separate
4 existences of the disappearing parties to the merger cease and the
5 surviving party to the merger shall succeed, without other transfer,
6 to all the rights and property of each of the disappearing parties to
7 the merger and shall be subject to all the debts and liabilities of
8 each in the same manner as if the surviving party to the merger
9 had itself incurred them.

10 (2) All rights of creditors and all liens upon the property of each
11 of the constituent flexible purpose corporations and other parties
12 to the merger shall be preserved unimpaired, provided that those
13 liens upon property of a disappearing party shall be limited to the
14 property affected thereby immediately prior to the time the merger
15 is effective.

16 (3) Any action or proceeding pending by or against any
17 disappearing flexible purpose corporation or disappearing party
18 to the merger may be prosecuted to judgment, which shall bind
19 the surviving party, or the surviving party may be proceeded
20 against or substituted in its place.

21 (4) Nothing in this section shall be construed to affect the
22 liability a general partner of a disappearing limited partnership or
23 general partnership may have in connection with the debts and
24 liabilities of the disappearing limited partnership or general
25 partnership existing prior to the time the merger is effective.

26 (j) (1) The merger of domestic flexible purpose corporations
27 with foreign corporations or foreign other business entities in a
28 merger in which one or more other business entities is a party shall
29 comply with subdivision (a) and this subdivision.

30 (2) If the surviving party is a domestic flexible purpose
31 corporation or domestic other business entity, the merger
32 proceedings with respect to that party and any domestic
33 disappearing flexible purpose corporation shall conform to the
34 provisions of this section. If the surviving party is a foreign
35 corporation or foreign other business entity, then, subject to the
36 requirements of subdivision (c), Section 407, Chapter 10
37 (commencing with Section 3400), and Chapter 13 (commencing
38 with Section 1300) of Division 1, and, if applicable, corresponding
39 provisions of the Nonprofit Corporation Law (Division 2
40 (commencing with Section 5002)) or the Consumer Cooperative

1 Corporation Law (Part 2 (commencing with Section 12200) of
2 Division 3), with respect to any domestic constituent corporations,
3 Chapter 13 (commencing with Section 17600) of Title 2.5 with
4 respect to any domestic constituent limited liability companies,
5 Article 6 (commencing with Section 16601) of Chapter 5 of Title
6 2 with respect to any domestic constituent general partnerships,
7 and Article 7.6 (commencing with Section 15679.1) of Chapter 3
8 of Title 2 with respect to any domestic constituent limited
9 partnerships, the merger proceedings may be in accordance with
10 the laws of the state or place of incorporation or organization of
11 the surviving party.

12 (3) If the surviving party is a domestic flexible purpose
13 corporation or domestic other business entity, the certificate of
14 merger or the agreement of merger with attachments shall be filed
15 as provided in subdivision (g) and thereupon, subject to subdivision
16 (c) of Section 153 or paragraph (2) of subdivision (g), as applicable,
17 the merger shall be effective as to each domestic constituent
18 flexible purpose corporation and domestic constituent other
19 business entity.

20 (4) If the surviving party is a foreign corporation or foreign
21 other business entity, the merger shall become effective in
22 accordance with the law of the jurisdiction in which the surviving
23 party is organized, but, except as provided in paragraph (5), the
24 merger shall be effective as to any domestic disappearing flexible
25 purpose corporation as of the time of effectiveness in the foreign
26 jurisdiction upon the filing in this state of a copy of the agreement
27 of merger with an officers' certificate of each constituent foreign
28 and domestic flexible purpose corporation and a certificate of
29 merger of each constituent other business entity attached, which
30 officers' certificates and certificates of merger shall conform to
31 the requirements of paragraph (1) of subdivision (g). If one or
32 more domestic other business entities is a disappearing party in a
33 merger pursuant to this subdivision in which a foreign other
34 business entity is the surviving entity, a certificate of merger
35 required by the laws under which that domestic other business
36 entity is organized, including subdivision (a) of Section 15678.4,
37 subdivision (b) of Section 16915, or subdivision (a) of Section
38 17552, as is applicable, shall also be filed at the same time as the
39 filing of the agreement of merger.

1 (5) If the date of the filing in this state pursuant to this
2 subdivision is more than six months after the time of the
3 effectiveness in the foreign jurisdiction, or if the powers of a
4 domestic disappearing flexible purpose corporation are suspended
5 at the time of effectiveness in the foreign jurisdiction, the merger
6 shall be effective as to the domestic disappearing flexible purpose
7 corporation as of the date of filing in this state.

8 (6) In a merger described in paragraph (3) or (4), each foreign
9 disappearing flexible purpose corporation that is qualified for the
10 transaction of intrastate business shall by virtue of the filing
11 pursuant to this subdivision, subject to subdivision (c) of Section
12 2508, automatically surrender its right to transact intrastate business
13 in this state. The filing of the agreement of merger or certificate
14 of merger, as is applicable, pursuant to this subdivision, by a
15 disappearing foreign other business entity registered for the
16 transaction of intrastate business in this state shall, by virtue of
17 that filing, subject to subdivision (c) of Section 2508, automatically
18 cancel the registration for that foreign other business entity, without
19 the necessity of the filing of a certificate of cancellation.

20
21 CHAPTER 9. CONVERSIONS

22
23 3300. For purposes of this chapter, the following definitions
24 shall apply:

25 (a) “Converted flexible purpose corporation” means a flexible
26 purpose corporation that results from a conversion of an other
27 business entity or a foreign other business entity or a foreign
28 corporation pursuant to Section 1158.

29 (b) “Converted entity” means a domestic other business entity
30 that results from a conversion of a flexible purpose corporation
31 under this chapter.

32 (c) “Converting flexible purpose corporation” means a flexible
33 purpose corporation that converts into a domestic or foreign other
34 business entity pursuant to this chapter.

35 (d) “Converting entity” means an other business entity or a
36 foreign other business entity or foreign corporation that converts
37 into a flexible purpose corporation pursuant to Section 3607.

38 (e) “Domestic other business entity” has the meaning provided
39 in Section 167.7.

1 (f) “Foreign other business entity” has the meaning provided in
2 Section 171.05.

3 (g) “Other business entity” has the meaning provided in Section
4 174.5.

5 3301. (a) A flexible purpose corporation may be converted
6 into a domestic other business entity pursuant to this chapter if,
7 pursuant to the proposed conversion, each of the following
8 conditions is met:

9 (1) Each share of the same class or series of the converting
10 flexible purpose corporation shall, unless all the shareholders of
11 the class or series consent, be treated equally with respect to any
12 cash, rights, securities, or other property to be received by, or any
13 obligations or restrictions to be imposed on, the holder of that
14 share.

15 (2) The conversion is approved by an affirmative vote of at least
16 two-thirds of the outstanding shares (Section 152) of each class,
17 or a greater vote if required in the articles, regardless of whether
18 that class is entitled to vote thereon by the provisions of the articles.

19 (3) Nonredeemable common shares of the converting flexible
20 purpose corporation shall be converted only into nonredeemable
21 equity securities of the converted entity unless all of the
22 shareholders of the class consent.

23 (4) Paragraph (1) shall not restrict the ability of the shareholders
24 of a converting flexible purpose corporation to appoint one or more
25 managers, if the converted entity is a limited liability company,
26 or one or more general partners, if the converted entity is a limited
27 partnership, in the plan of conversion or in the converted entity’s
28 governing documents.

29 (b) Notwithstanding subdivision (a), the conversion of a flexible
30 purpose corporation into a domestic other business entity may be
31 effected only if both of the following conditions are met:

32 (1) The law under which the converted entity will exist expressly
33 permits the formation of that entity pursuant to a conversion.

34 (2) The flexible purpose corporation complies with any and all
35 other requirements of any other law that applies to conversion to
36 the converted entity.

37 3302. (a) A flexible purpose corporation that desires to convert
38 to a domestic other business entity shall approve a plan of
39 conversion. The plan of conversion shall state all of the following:

40 (1) The terms and conditions of the conversion.

1 (2) The jurisdiction of the organization of the converted entity
2 and of the converting flexible purpose corporation and the name
3 of the converted entity after conversion.

4 (3) The manner of converting the shares of each of the
5 shareholders of the converting flexible purpose corporation into
6 securities of, or interests in, the converted entity.

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

12 (5) Any other details or provisions that are required by the laws
13 under which the converted entity is organized, or that are desired
14 by the converting flexible purpose corporation.

15 (b) The plan of conversion shall be approved by the board of
16 the converting flexible purpose corporation, and the principal terms
17 of the plan of the conversion shall be approved by at least
18 two-thirds of the outstanding shares of each class, or a greater vote
19 if required in the articles, regardless of whether that class is entitled
20 to vote thereon by the provisions of the articles of the converting
21 flexible purpose corporation. The approval of the outstanding
22 shares may be given before or after approval by the board.

23 (c) If the flexible purpose corporation is converting into a
24 general or limited partnership or into a limited liability company,
25 then in addition to the approval of the shareholders set forth in
26 subdivision (b), the plan of conversion shall be approved by each
27 shareholder who will become a general partner or manager, as
28 applicable, of the converted entity pursuant to the plan of
29 conversion unless the shareholders have dissenters' rights pursuant
30 to Section 3305 and Chapter 13 (commencing with Section 1300)
31 of Division 1.

32 (d) Upon the effectiveness of the conversion, all shareholders
33 of the converting flexible purpose corporation, except those that
34 exercise dissenters' rights as provided in Section 3305 and Chapter
35 13 (commencing with Section 1300) of Division 1, shall be deemed
36 parties to any agreement or agreements constituting the governing
37 documents for the converted entity adopted as part of the plan of
38 conversion, regardless of whether a shareholder has executed the
39 plan of conversion or those governing documents for the converted
40 entity. Any adoption of governing documents made pursuant

1 thereto shall be effective at the effective time or date of the
2 conversion.

3 (e) Notwithstanding its prior approval by the board and the
4 outstanding shares, or either of them, a plan of conversion may be
5 amended before the conversion takes effect if the amendment is
6 approved by the board and, if it changes any of the principal terms
7 of the plan of conversion, by the shareholders of the converting
8 flexible purpose corporation in the same manner and to the same
9 extent as was required for approval of the original plan of
10 conversion.

11 (f) A plan of conversion may be abandoned by the board of a
12 converting flexible purpose corporation, or by the shareholders of
13 a converting flexible purpose corporation if the abandonment is
14 approved by the outstanding shares, in each case in the same
15 manner as required for approval of the plan of conversion, subject
16 to the contractual rights of third parties, at any time before the
17 conversion is effective.

18 (g) The converted entity shall keep the plan of conversion at
19 the principal place of business of the converted entity if the
20 converted entity is a domestic partnership, or at the office at which
21 records are to be kept under Section 15614 if the converted entity
22 is a domestic limited partnership, or at the office at which records
23 are to be kept under Section 17057 if the converted entity is a
24 domestic limited liability company. Upon the request of a
25 shareholder of a converting flexible purpose corporation, the
26 authorized person on behalf of the converted entity shall promptly
27 deliver to the shareholder, at the expense of the converted entity,
28 a copy of the plan of conversion. A waiver by a shareholder of the
29 rights provided in this subdivision shall be unenforceable.

30 3303. (a) After the approval, as provided in Section 3302, of
31 a plan of conversion by the board and the outstanding shares of a
32 flexible purpose corporation converting into a domestic other
33 business entity, the converting flexible purpose corporation shall
34 cause the filing of all documents required by law to effect the
35 conversion and create the converted entity, which documents shall
36 include a certificate of conversion or a statement of conversion as
37 required by Section 3304, and the conversion shall thereupon be
38 effective.

39 (b) A copy of the statement of partnership authority, certificate
40 of limited partnership, or articles of organization complying with

1 Section 1156, duly certified by the Secretary of State on or after
2 the effective date, shall be conclusive evidence of the conversion
3 of the flexible purpose corporation.

4 3304. (a) To convert a flexible purpose corporation:

5 (1) If the flexible purpose corporation is converting into a
6 domestic limited partnership, a statement of conversion shall be
7 completed on the certificate of limited partnership for the converted
8 entity.

9 (2) If the flexible purpose corporation is converting into a
10 domestic partnership, a statement of conversion shall be completed
11 on the statement of partnership authority for the converted entity,
12 or if no statement of partnership authority is filed, then a certificate
13 of conversion shall be filed separately.

14 (3) If the flexible purpose corporation is converting into a
15 domestic limited liability company, a statement of conversion shall
16 be completed on the articles of organization for the converted
17 entity.

18 (4) If the flexible purpose corporation is converting into a
19 domestic corporation, a statement of conversion shall be completed
20 on the articles of incorporation for the converted entity.

21 (b) Any statement or certificate of conversion of a converting
22 flexible purpose corporation shall be executed and acknowledged
23 by those officers of the converting flexible purpose corporation as
24 would be required to sign an officers' certificate, and shall set forth
25 all of the following:

26 (1) The name and the Secretary of State's file number of the
27 converting flexible purpose corporation.

28 (2) A statement of the total number of outstanding shares of
29 each class entitled to vote on the conversion, that the principal
30 terms of the plan of conversion were approved by a vote of the
31 number of shares of each class which equaled or exceeded the vote
32 required under Section 3602, specifying each class entitled to vote
33 and the percentage vote required of each class.

34 (3) The name, form, and jurisdiction of organization of the
35 converted entity.

36 (c) The certificate of conversion shall be on a form prescribed
37 by the Secretary of State.

38 (d) The filing with the Secretary of State of a statement of
39 conversion on an organizational document or a certificate of
40 conversion as set forth in subdivision (a) shall have the effect of

1 the filing of a certificate of dissolution by the converting flexible
2 purpose corporation and no converting flexible purpose corporation
3 that has made the filing is required to file a certificate of election
4 under Section 1901 or a certificate of dissolution under Section
5 1905 as a result of that conversion.

6 (e) Upon the effectiveness of a conversion pursuant to this
7 chapter, a converted entity that is a domestic partnership, domestic
8 limited partnership or domestic limited liability company shall be
9 deemed to have assumed the liability of the converting flexible
10 purpose corporation to prepare and file or cause to be prepared
11 and filed all tax and information returns otherwise required of the
12 converting flexible purpose corporation under the Corporation Tax
13 Law (Part 11 (commencing with Section 23001) of Division 2 of
14 the Revenue and Taxation Code) to pay any tax liability determined
15 to be due pursuant to that law.

16 3305. The shareholders of a converting flexible purpose
17 corporation shall have all of the rights under Chapter 13
18 (commencing with Section 1300) of Division 1 of the shareholders
19 of a corporation involved in a reorganization requiring the approval
20 of its outstanding shares, and the converting flexible purpose
21 corporation shall have all of the obligations under Chapter 13
22 (commencing with Section 1300) of Division 1 of a corporation
23 involved in the reorganization. Solely for purposes of applying the
24 provisions of Chapter 13 (commencing with Section 1300) of
25 Division 1, and not for purposes of this chapter, a conversion
26 pursuant to Section 3301 or 1158 shall be deemed to constitute a
27 reorganization.

28 3306. Notwithstanding any other provision of law, the Secretary
29 of State shall charge an entity a fee not to exceed one hundred fifty
30 dollars (\$150) for its conversion made under this chapter.

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CHAPTER 10. REORGANIZATIONS

34 3400. A reorganization or a share exchange tender offer shall
35 be approved by the board of all of the following:

36 (a) Each constituent flexible purpose corporation in a merger
37 reorganization.

38 (b) The acquiring flexible purpose corporation in an exchange
39 reorganization.

1 (c) The acquiring flexible purpose corporation and the flexible
2 purpose corporation whose property and assets are acquired in a
3 sale-of-assets reorganization.

4 (d) The acquiring flexible purpose corporation in a share
5 exchange tender offer.

6 (e) The flexible purpose corporation in control of any constituent
7 or acquiring domestic or foreign flexible purpose corporation or
8 other business entity under subdivision (a), (b), or (c) and whose
9 equity securities are issued, transferred, or exchanged in the
10 reorganization, hereafter a “parent party.”

11 3401. (a) The principal terms of a reorganization shall be
12 approved by the outstanding shares of each class of each flexible
13 purpose corporation the approval of whose board is required under
14 Section 3400, except as provided in subdivision (b) and except
15 that, unless otherwise provided in the articles, no approval of any
16 class of outstanding preferred shares of the surviving or acquiring
17 flexible purpose corporation or parent party shall be required if
18 the rights, preferences, privileges, and restrictions granted to or
19 imposed upon that class of shares remain unchanged, subject to
20 the provisions of subdivision (c). For the purpose of this
21 subdivision, two classes of common shares differing only as to
22 voting rights shall be considered as a single class of shares.

23 (b) No approval of the outstanding shares is required by
24 subdivision (a) if the flexible purpose corporation, or its
25 shareholders immediately before the reorganization, or both, shall
26 own, immediately after the reorganization, equity securities, other
27 than any warrant or right to subscribe to or purchase those equity
28 securities, of the surviving or acquiring flexible purpose
29 corporation or a parent party possessing more than five-sixths of
30 the voting power of the surviving or acquiring flexible purpose
31 corporation or parent party. In making the determination of
32 ownership by the shareholders of a flexible purpose corporation,
33 immediately after the reorganization, of equity securities pursuant
34 to the preceding sentence, equity securities that they owned
35 immediately before the reorganization as shareholders of another
36 party to the transaction shall be disregarded. For the purpose of
37 this section, the voting power of a flexible purpose corporation
38 shall be calculated by assuming the conversion of all equity
39 securities convertible, immediately or at some future time, into

1 shares entitled to vote but not assuming the exercise of any warrant
2 or right to subscribe to or purchase those shares.

3 (c) Notwithstanding subdivisions (a) and (b), the principal terms
4 of a reorganization shall be approved by the outstanding shares of
5 the surviving flexible purpose corporation in a merger
6 reorganization, as otherwise required by Chapter 11 (commencing
7 with Section 3500), if any amendment is made to its articles that
8 would otherwise require that approval.

9 (d) Notwithstanding subdivisions (a) and (b), the principal terms
10 of a reorganization shall be approved by the outstanding shares of
11 any class of a flexible purpose corporation that is a party to a
12 merger or sale-of-assets reorganization if holders of shares of that
13 class receive shares of the surviving or acquiring flexible purpose
14 corporation or parent party having different rights, preferences,
15 privileges, or restrictions than those surrendered. Shares in a
16 foreign corporation received in exchange for shares in a domestic
17 flexible purpose corporation shall be deemed to have different
18 rights, preferences, privileges, and restrictions within the meaning
19 of the preceding sentence.

20 (e) Notwithstanding subdivisions (a) and (b), the principal terms
21 of a reorganization shall be approved by the affirmative vote of at
22 least two-thirds of each class, or a greater vote if required in the
23 articles, of the outstanding shares of any flexible purpose
24 corporation that is a close flexible purpose corporation if the
25 reorganization would result in the holders receiving shares or other
26 interests of a corporation or other business entity that is not a close
27 flexible purpose corporation. The articles may provide for a lesser
28 vote, but not less than a majority of the outstanding shares of each
29 class.

30 (f) Notwithstanding subdivisions (a) and (b), the principal terms
31 of a reorganization shall be approved by a vote of at least two-thirds
32 of the outstanding shares of each class, or a greater vote if required
33 in the articles, of a flexible purpose corporation that is a party to
34 a merger reorganization, regardless of whether that class is entitled
35 to vote thereon by the provisions of the articles, if holders of shares
36 of that class receive interests of a surviving other business entity
37 in the merger that is not a flexible purpose corporation, or receive
38 interests of a surviving flexible purpose corporation the articles of
39 incorporation of which specify a materially different purpose as
40 part of the reorganization.

1 (g) Notwithstanding subdivisions (a) and (b), the principal terms
2 of a reorganization shall be approved by all shareholders of any
3 class or series if, as a result of the reorganization, the holders of
4 that class or series become personally liable for any obligations
5 of a party to the reorganization, unless all holders of that class or
6 series have the dissenters' rights provided in Chapter 13
7 (commencing with Section 1300) of Division 1.

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

13
14 CHAPTER 11. RECORDS AND REPORTS
15

16 3500. (a) The board of a flexible purpose corporation shall
17 cause an annual report to be sent to the shareholders not later than
18 120 days after the close of the fiscal year. The annual report shall
19 contain (1) a balance sheet as of the end of that fiscal year and an
20 income statement and a statement of cashflows for that fiscal year,
21 accompanied by any report thereon of independent accountants
22 or, if there is no report, the certificate of an authorized officer of
23 the flexible purpose corporation that the statements were prepared
24 without audit from the books and records of the corporation, and
25 (2) the information required by subdivision (b).

26 (b) The board shall cause to be provided with the annual report,
27 a management discussion and analysis (special purpose MD&A)
28 concerning the flexible purpose corporation's stated purpose or
29 purposes as set forth in its articles pursuant to paragraph (2) of
30 subdivision (b) of Section 2602, and, to the extent consistent with
31 reasonable confidentiality requirements, shall cause the special
32 purpose MD&A to be made publicly available by posting it on the
33 flexible purpose corporation's Internet Web site or providing it
34 through similar electronic means. The special purpose MD&A
35 shall include the information specified in this subdivision and any
36 other information that the flexible purpose corporation's officers
37 and directors believe to be reasonably necessary or appropriate to
38 an understanding of the flexible purpose corporation's efforts in
39 connection with its special purpose or purposes. The special
40 purpose MD&A shall also include the following information:

1 (1) Identification and discussion of the short-term and long-term
2 objectives of the flexible purpose corporation relating to its special
3 purpose or purposes, and an identification and explanation of any
4 changes made in those special purpose objectives during the fiscal
5 year.

6 (2) Identification and discussion of the material actions taken
7 by the flexible purpose corporation during the fiscal year to achieve
8 its special purpose objectives, the impact of those actions, including
9 the causal relationships between the actions and the reported
10 outcomes, and the extent to which those actions achieved the
11 special purpose objectives for the fiscal year.

12 (3) Identification of material actions, including the intended
13 impact of those actions, that the flexible purpose corporation
14 expects to take in the short term and long term with respect to
15 achievement of its special purpose objectives.

16 (4) A description of the process for selecting, and an
17 identification and description of, the financial, operating, and other
18 measures used by the flexible purpose corporation during the fiscal
19 year for evaluating its performance in achieving its special purpose
20 objectives, including an explanation of why the flexible purpose
21 corporation selected those measures and identification and
22 discussion of the nature and rationale for any material changes in
23 those measures made during the fiscal year.

24 (5) Identification and discussion of any material operating and
25 capital expenditures incurred by the flexible purpose corporation
26 during the fiscal year in furtherance of achieving the special
27 purpose objectives, a good faith estimate of any additional material
28 operating or capital expenditures the flexible purpose corporation
29 expects to incur over the next three fiscal years in order to achieve
30 its special purpose objectives, and other material expenditures of
31 resources incurred by the flexible purpose corporation during the
32 fiscal year, including employee time, in furtherance of achieving
33 the special purpose objectives, including a discussion of the extent
34 to which that capital or use of other resources serves purposes
35 other than and in addition to furthering the achievement of the
36 special purpose objectives.

37 (c) Except as may otherwise be excused pursuant to subdivision
38 (h) of Section 1501.5, the reports specified in subdivisions (a) and
39 (b) shall be sent to the shareholders at least 15 days, or, if sent by
40 bulk mail, 35 days, prior to the annual meeting of shareholders to

1 be held during the next fiscal year. This requirement shall not limit
2 the requirement for holding an annual meeting as required by
3 Section 600.

4 (d) If no annual report for the last fiscal year has been sent to
5 shareholders, the flexible purpose corporation shall, upon the
6 written request of any shareholder made more than 120 days after
7 the end of that fiscal year, deliver or mail to the person making
8 the request within 30 days following the request, the statements
9 required by subdivisions (a) and (b) for that fiscal year.

10 (e) A shareholder or shareholders holding at least 5 percent of
11 the outstanding shares of any class of a flexible purpose corporation
12 may make a written request to the flexible purpose corporation for
13 an income statement of the flexible purpose corporation for the
14 three-month, six-month, or nine-month period of the current fiscal
15 year ended more than 30 days prior to the date of the request and
16 a balance sheet of the flexible purpose corporation as of the end
17 of the period and, in addition, if no annual report for the most
18 recent fiscal year has been sent to the shareholders, the statements
19 referred to in subdivisions (a) and (b) relating to that fiscal year.
20 The statements shall be delivered or mailed to the person making
21 the request within 30 days following the request. A copy of the
22 statements shall be kept on file in the principal office of the flexible
23 purpose corporation for 12 months and shall be exhibited at all
24 reasonable times to any shareholder demanding an examination
25 of the statements or a copy shall be mailed to the shareholder. The
26 quarterly income statements and balance sheets referred to in this
27 subdivision shall be accompanied by the report thereon, if any, of
28 any independent accountants engaged by the flexible purpose
29 corporation or the certificate of an authorized officer of the flexible
30 purpose corporation that the financial statements were prepared
31 without audit from the books and records of the flexible purpose
32 corporation.

33 3501. (a) The board shall cause a special purpose current report
34 to be sent to the shareholders not later than 45 days following the
35 occurrence of any one or more of the events specified in
36 subdivision (b), and, to the extent consistent with reasonable
37 confidentiality requirements, shall cause the special purpose current
38 report to be made publicly available by posting it on the flexible
39 purpose corporation's Internet Web site or providing it through
40 similar electronic means.

1 (b) Unless previously reported in the most recent annual report,
2 the special purpose current report shall identify and discuss, in
3 reasonable detail, any expenditure or group of related or planned
4 expenditures, excluding compensation of officers and directors,
5 made in furtherance of the special purpose objectives, whether an
6 operating expenditure, a capital expenditure, or some other
7 expenditure of corporate resources, including employee time or
8 otherwise, whether the expenditure was direct or indirect and
9 whether the expenditure was made to a person or entity outside of
10 the flexible purpose corporation or was made internally, where the
11 expenditure has or is likely to have a material adverse impact on
12 the flexible purpose corporation's results of operations or financial
13 condition for a quarterly or annual fiscal period .

14 3502. (a) Nothing contained in subdivision (b) of Section 3500
15 or Section 3501 shall require a detailing or itemization of every
16 relevant expenditure incurred or action taken by the corporation.
17 Management and the board shall use their discretion in providing
18 that information, including the reasonable detail that a reasonable
19 investor would consider important in understanding the
20 corporation's objectives, actions, impacts, measures, and results
21 of operations as they relate to the nature and achievement of the
22 special purpose objectives.

23 (b) Where best practices emerge for providing the information
24 required by subdivision (b) of Section 3500 or Section 3501, use
25 of those best practices shall create a presumption that the flexible
26 purpose corporation caused all the information required by those
27 provisions to be provided. This presumption can only be rebutted
28 by showing that the reporting contained either a misstatement of
29 a material fact or omission of a material fact.

30 (c) Notwithstanding subdivision (b) of Section 3500 and Section
31 3501, under no circumstances shall the flexible purpose corporation
32 be required to provide information that would result in a violation
33 of state or federal securities laws or other applicable laws.

34 (d) The flexible purpose corporation and its officers and
35 directors are expressly excluded from liability for any and all
36 forward looking statements supplied in the report required by
37 subdivision (b) of Section 3500 and Section 3501, so long as those
38 statements are supplied in good faith. Statements are deemed to
39 be forward looking as that term is defined in the federal securities
40 laws.

1 (e) The special purpose MD&A and any special purpose current
2 report shall be written in plain English and shall be provided in an
3 efficient and understandable manner, avoiding repetition and
4 disclosure of immaterial information.

5 (f) Unless otherwise provided by the articles or bylaws, and if
6 approved by the board of directors, the reports specified in
7 subdivision (b) of Section 3500 and Section 3501 and any
8 accompanying material sent pursuant to this section may be sent
9 by electronic transmission by the corporation.

10 (g) The financial statements of any flexible purpose corporation
11 with fewer than 100 holders of record of its shares, determined as
12 provided in Section 605, required to be furnished by subdivision
13 (b) of Section 3500 and Section 3501 are not required to be
14 prepared in conformity with generally accepted accounting
15 principles if they reasonably set forth the assets and liabilities and
16 the income and expense of the flexible purpose corporation and
17 disclose the accounting basis used in their preparation.

18 (h) Any corporation with fewer than 100 holders of record of
19 its shares, determined as provided in Section 605, shall not be
20 required to prepare and furnish the reports required by subdivision
21 (b) of Section 3500 and Section 3501, if and only if, the flexible
22 purpose corporation holds unrevoked waivers of such compliance
23 executed by shareholders holding two-thirds of the outstanding
24 shares. That waiver shall remain valid and in effect for each fiscal
25 year that the flexible purpose corporation provides each waiving
26 shareholder with notice, prior to the end of that year, that the
27 shareholder may revoke the waiver and, on the 30th day following
28 the end of the fiscal year, the flexible purpose corporation holds
29 unrevoked waivers to that compliance executed by shareholders
30 holding two-thirds of the outstanding shares. The shareholder
31 notice may be sent by electronic transmission pursuant to Section
32 20.

33 (i) The requirements described in Section 3500 shall be satisfied
34 if a corporation with an outstanding class of securities registered
35 under Section 12 of the Securities Exchange Act of 1934 both
36 complies with Section 240.14a-16 of Title 17 of the Code of
37 Federal Regulations, as amended from time to time, with respect
38 to the obligation of a corporation to furnish an annual report to
39 shareholders pursuant to Section 240.14a-3(b) of Title 17 of the

1 Code of Federal Regulations, and includes the information required
2 by subdivision (b) of Section 3500 in the annual report.

3 (j) The requirements described in Section 3501 shall be satisfied
4 if a corporation with an outstanding class of securities registered
5 under Section 12 of the Securities Exchange Act of 1934 both
6 complies with Section 240.13a-13 of Title 17 of the Code of
7 Federal Regulations, as amended from time to time, with respect
8 to the obligation of a corporation to furnish a quarterly report to
9 shareholders, and includes the information required by subdivision
10 (b) of Section 3501 in the quarterly report.

11 (k) In addition to the penalties provided for in this division, the
12 superior court of the proper county shall enforce the duty of making
13 and mailing or delivering the information and financial statements
14 required by subdivision (b) of Section 3500 and Section 3501 and,
15 for good cause shown, may extend the time therefor.

16 (l) In any action or proceeding with respect to Section 3500 or
17 3501, if the court finds the failure of the flexible purpose
18 corporation to comply with the requirements of those sections to
19 have been without justification, the court may award an amount
20 sufficient to reimburse the shareholder for the reasonable expenses
21 incurred by the shareholder, including attorney's fees, in connection
22 with the action or proceeding.

23 (m) Subdivision (b) of Section 3500 and Section 3501 apply to
24 any domestic flexible purpose corporation and also to a foreign
25 flexible purpose corporation having its principal executive office
26 in this state or customarily holding meetings of its board in this
27 state.

28 (n) All reports and notices required by subdivision (b) of Section
29 3500 and Section 3501 shall be maintained by the flexible purpose
30 corporation, in an electronic form for a period of not less than 10
31 years.

32 3503. Any officers, directors, employees, or agents of a flexible
33 purpose corporation who do any of the following shall be liable
34 jointly and severally for all the damages resulting therefrom to the
35 flexible purpose corporation or any person injured by those actions
36 who relied on those actions or to both:

37 (a) Make, issue, deliver or publish any prospectus, report,
38 including the reports required pursuant to subdivision (b) of Section
39 3500 and Section 3501, circular, certificate, financial statement,
40 balance sheet, public notice, or document respecting the flexible

1 purpose corporation or its shares, assets, liabilities, capital,
2 dividends, business, earnings, or accounts which is false in any
3 material respect, knowing it to be false, or participate in the
4 making, issuance, delivery, or publication thereof with knowledge
5 that the same is false in a material respect.

6 (b) Make or cause to be made in the books, minutes, records or
7 accounts of a flexible purpose corporation any entry that is false
8 in any material particular knowing it to be false.

9 (c) Remove, erase, alter, or cancel any entry in any books or
10 records of the flexible purpose corporation, with intent to deceive.

11 (d) With respect to the reports required pursuant to subdivision
12 (b) of Section 3500 and Section 3501, omit to state any material
13 fact necessary in order to make the statements contained therein,
14 in light of the circumstances under which those statements were
15 made, not misleading in a material respect, knowing the omission
16 to be misleading.

O