

AMENDED IN SENATE MARCH 14, 2011

SENATE BILL

No. 201

Introduced by Senator DeSaulnier
(Coauthor: Senator Wolk)

February 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 amended, 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~~ *which* may include, but *are* 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 that
6 are not subject to Division 1.5 (commencing with Section 2500),
7 and to domestic corporations that are not subject to Division 2
8 (commencing with Section 5000) or Part 1 (commencing with
9 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 that are not

1 organized or existing under any statute of this state other than this
2 code; this division applies to any other corporation only to the
3 extent expressly included in a particular provision of this division.

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

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

16 SEC. 2. Section 107 of the Corporations Code is amended to
17 read:

18 107. No corporation, flexible purpose corporation, association
19 or individual shall issue or put in circulation, as money, anything
20 but the lawful money of the United States.

21 SEC. 3. Section 171.08 is added to the Corporations Code, to
22 read:

23 171.08. “Flexible purpose corporation” means any flexible
24 purpose corporation formed under Division 1.5 (commencing with
25 Section 2500).

26 SEC. 4. Section 174.5 of the Corporations Code is amended
27 to read:

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

1 “unincorporated association” has the meaning set forth in Section
2 18035.

3 SEC. 5. Section 1100 of the Corporations Code is amended to
4 read:

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

16 SEC. 6. Section 1112.5 is added to the Corporations Code, to
17 read:

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

21 (a) The merger 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 (Section 152) of the disappearing
24 corporation, notwithstanding any provision of Chapter 12
25 (commencing with Section 1200).

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

33 SEC. 7. Section 1113 of the Corporations Code is amended to
34 read:

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

1 section, the merger of any number of corporations with any number
2 of other business entities may be effected only if:

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

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

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

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

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

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

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

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

1 (5) Any other details or provisions required by the laws under
2 which any party to the merger is organized, including, if a public
3 benefit corporation or a religious corporation is a party to the
4 merger, Section 6019.1, or, if a mutual benefit corporation is a
5 party to the merger, Section 8019.1, or, if a consumer cooperative
6 corporation is a party to the merger, Section 12540.1, or, if a
7 domestic limited partnership is a party to the merger, Section
8 15678.2, or, if a domestic partnership is a party to the merger,
9 Section 16911, or, if a domestic limited liability company is a party
10 to the merger, Section 17551.

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

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

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

1 to the agreement of merger, the agreement of merger as so amended
2 shall then constitute the agreement of merger.

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

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

12 (g) (1) If the surviving party is a corporation or a foreign
13 corporation, or if a flexible purpose corporation (Section ~~2509~~
14 *171.08*), a public benefit corporation (Section 5060), a mutual
15 benefit corporation (Section 5059), a religious corporation (Section
16 5061), or a corporation organized under the Consumer Cooperative
17 Corporation Law (Section 12200) is a party to the merger, after
18 required approvals of the merger by each constituent corporation
19 through approval of the board (Section 151) and any approval of
20 the outstanding shares (Section 152) required by Chapter 12
21 (commencing with Section 1200) and by the other parties to the
22 merger, the surviving party shall file a copy of the agreement of
23 merger with an officers' certificate of each constituent domestic
24 and foreign corporation attached stating the total number of
25 outstanding shares or membership interests of each class entitled
26 to vote on the merger (and identifying any other person or persons
27 whose approval is required), that the agreement of merger in the
28 form attached or its principal terms, as required, were approved
29 by that corporation by a vote of a number of shares or membership
30 interests of each class that equaled or exceeded the vote required,
31 specifying each class entitled to vote and the percentage vote
32 required of each class and, if applicable, by that other person or
33 persons whose approval is required, or that the merger agreement
34 was entitled to be and was approved by the board alone (as
35 provided in Section 1201, in the case of corporations subject to
36 that section). If equity securities of a parent party (Section 1200)
37 are to be issued in the merger, the officers' certificate of that
38 controlled party shall state either that no vote of the shareholders
39 of the parent party was required or that the required vote was
40 obtained. In lieu of an officers' certificate, a certificate of merger,

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

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

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

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

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

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

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

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

1 which that party is authorized by the laws under which it is
2 organized to effect the merger.

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

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

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

1 be filed until there has been filed the certificate issued by the
2 Insurance Commissioner approving the merger in accordance with
3 Section 1555 of the Insurance Code.

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

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

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

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

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

36 (4) If a limited partnership or a general partnership is a party to
37 the merger, nothing in this section is intended to affect the liability
38 a general partner of a disappearing limited partnership or general
39 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 of Title 2 with respect to any domestic constituent
23 limited partnerships, the merger proceedings may be in accordance
24 with the laws of the state or place of incorporation or organization
25 of the surviving party.

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

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

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

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

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

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

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

38 1152. (a) A corporation that desires to convert to a domestic
39 other business entity shall approve a plan of conversion. The plan
40 of conversion shall state all of the following:

- 1 (1) The terms and conditions of the conversion.
- 2 (2) The jurisdiction of the organization of the converted entity
3 and of the converting corporation and the name of the converted
4 entity after conversion.
- 5 (3) The manner of converting the shares of each of the
6 shareholders of the converting corporation into securities of, or
7 interests in, the converted entity.
- 8 (4) The provisions of the governing documents for the converted
9 entity, including the partnership agreement or limited liability
10 company articles of organization and operating agreement, to
11 which the holders of interests in the converted entity are to be
12 bound.
- 13 (5) Any other details or provisions that are required by the laws
14 under which the converted entity is organized, or that are desired
15 by the converting corporation.
- 16 (b) The plan of conversion shall be approved by the board of
17 the converting corporation (Section 151), and the principal terms
18 of the plan of the conversion shall be approved by the outstanding
19 shares (Section 152) of each class of the converting corporation.
20 The approval of the outstanding shares may be given before or
21 after approval by the board. Notwithstanding the foregoing, if a
22 converting corporation is a close corporation, the conversion shall
23 be approved by the affirmative vote of at least two-thirds of each
24 class, or a greater vote if required in the articles, of outstanding
25 shares (Section 152) of that converting corporation; provided,
26 however, that the articles may provide for a lesser vote, but not
27 less than a majority of the outstanding shares of each class.
- 28 (c) If the corporation is converting into a general or limited
29 partnership or into a limited liability company, then in addition to
30 the approval of the shareholders set forth in subdivision (b), the
31 plan of conversion shall be approved by each shareholder who will
32 become a general partner or manager, as applicable, of the
33 converted entity pursuant to the plan of conversion unless the
34 shareholders have dissenters' rights pursuant to Section 1159 and
35 Chapter 13 (commencing with Section 1300).
- 36 (d) If the corporation is converting into a flexible purpose
37 corporation, both of the following shall apply:
- 38 (1) Notwithstanding subdivision (b), the plan of conversion
39 shall be approved by the affirmative vote of at least two-thirds of

1 each class, or a greater vote if required in the articles, of
2 outstanding shares (Section 152) of that converting corporation.

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

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

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

29 (g) A plan of conversion may be abandoned by the board of a
30 converting corporation, or by the shareholders of a converting
31 corporation if the abandonment is approved by the outstanding
32 shares, in each case in the same manner as required for approval
33 of the plan of conversion, subject to the contractual rights of third
34 parties, at any time before the conversion is effective.

35 (h) The converted entity shall keep the plan of conversion at
36 (1) the principal place of business of the converted entity if the
37 converted entity is a domestic partnership or (2) at the office at
38 which records are to be kept under Section 15614 or 15901.11 if
39 the converted entity is a domestic limited partnership or at the
40 office at which records are to be kept under Section 17057 if the

1 converted entity is a domestic limited liability company. Upon the
2 request of a shareholder of a converting corporation, the authorized
3 person on behalf of the converted entity shall promptly deliver to
4 the shareholder, at the expense of the converted entity, a copy of
5 the plan of conversion. A waiver by a shareholder of the rights
6 provided in this subdivision shall be unenforceable.

7 SEC. 9. Section 1155 of the Corporations Code is amended to
8 read:

9 1155. (a) To convert a corporation:

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

13 (2) If the corporation is converting into a domestic partnership,
14 a statement of conversion shall be completed on the statement of
15 partnership authority for the converted entity, or if no statement
16 of partnership authority is filed then a certificate of conversion
17 shall be filed separately.

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

21 (4) If the corporation is converting into a flexible purpose
22 corporation, a statement of conversion shall be completed on the
23 articles of incorporation for the converted entity.

24 (b) Any statement or certificate of conversion of a converting
25 corporation shall be executed and acknowledged by those officers
26 of the converting corporation as would be required to sign an
27 officers' certificate (Section 173), and shall set forth all of the
28 following:

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

31 (2) A statement of the total number of outstanding shares of
32 each class entitled to vote on the conversion, that the principal
33 terms of the plan of conversion were approved by a vote of the
34 number of shares of each class which equaled or exceeded the vote
35 required under Section 1152, specifying each class entitled to vote
36 and the percentage vote required of each class.

37 (3) The name, form, and jurisdiction of organization of the
38 converted entity.

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

1 (d) The filing with the Secretary of State of a statement of
2 conversion on an organizational document or a certificate of
3 conversion as set forth in subdivision (a) shall have the effect of
4 the filing of a certificate of dissolution by the converting
5 corporation and no converting corporation that has made the filing
6 is required to file a certificate of election under Section 1901 or a
7 certificate of dissolution under Section 1905 as a result of that
8 conversion.

9 ~~(e) No statement or certificate of conversion shall be filed with
10 the Secretary of State until there has been filed by or on behalf of
11 the converting corporation the certificate of satisfaction of the
12 Franchise Tax Board certifying that all taxes imposed by the
13 Corporation Tax Law (Part 11 (commencing with Section 23001)
14 of Division 2 of the Revenue and Taxation Code) have been paid
15 or secured. Notwithstanding the foregoing, if the converted entity
16 is a flexible purpose corporation, domestic partnership, domestic
17 limited partnership, or domestic limited liability company, the
18 Secretary of State shall file the statement or certificate of
19 conversion without the certificate of satisfaction of the Franchise
20 Tax Board and shall notify the Franchise Tax Board of the
21 conversion. Upon the effectiveness of~~

22 *(e) Upon the effectiveness of* a conversion pursuant to this
23 chapter, a converted entity that is a flexible purpose corporation,
24 domestic partnership, domestic limited partnership or domestic
25 limited liability company shall be deemed to have assumed the
26 liability of the converting corporation (1) to prepare and file or
27 cause to be prepared and filed all tax and information returns
28 otherwise required of the converting corporation under the
29 Corporation Tax Law (Part 11 (commencing with Section 23001)
30 of Division 2 of the Revenue and Taxation Code) and (2) to pay
31 any tax liability determined to be due pursuant to that law.

32 SEC. 10. Section 1201 of the Corporations Code is amended
33 to read:

34 1201. (a) The principal terms of a reorganization shall be
35 approved by the outstanding shares (Section 152) of each class of
36 each corporation the approval of whose board is required under
37 Section 1200, except as provided in subdivision (b) and except
38 that (unless otherwise provided in the articles) no approval of any
39 class of outstanding preferred shares of the surviving or acquiring
40 corporation or parent party shall be required if the rights,

1 preferences, privileges and restrictions granted to or imposed upon
2 that class of shares remain unchanged (subject to the provisions
3 of subdivision (c)). For the purpose of this subdivision, two classes
4 of common shares differing only as to voting rights shall be
5 considered as a single class of shares.

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

25 (c) Notwithstanding subdivision (b), the principal terms of a
26 reorganization shall be approved by the outstanding shares (Section
27 152) of the surviving corporation in a merger reorganization if any
28 amendment is made to its articles that would otherwise require
29 that approval.

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

1 (e) Notwithstanding subdivisions (a) and (b), the principal terms
2 of a reorganization shall be approved by the affirmative vote of at
3 least two-thirds of each class, or a greater vote if required in the
4 articles, of the outstanding shares (Section 152) of any close
5 corporation if the reorganization would result in their receiving
6 shares of a corporation that is not a close corporation. However,
7 the articles may provide for a lesser vote, but not less than a
8 majority of the outstanding shares of each class.

9 (f) Notwithstanding subdivisions (a) and (b), the principal terms
10 of a reorganization shall be approved by at least two-thirds of each
11 class, or a greater vote if required in the articles, of the outstanding
12 shares (Section 152) of a corporation that is a party to a merger
13 reorganization if holders of shares receive shares of a surviving
14 flexible purpose corporation in the merger.

15 (g) Notwithstanding subdivisions (a) and (b), the principal terms
16 of a reorganization shall be approved by the outstanding shares
17 (Section 152) of any class of a corporation that is a party to a
18 merger reorganization if holders of shares of that class receive
19 interests of a surviving other business entity in the merger.

20 (h) Notwithstanding subdivisions (a) and (b), the principal terms
21 of a reorganization shall be approved by all shareholders of any
22 class or series if, as a result of the reorganization, the holders of
23 that class or series become personally liable for any obligations
24 of a party to the reorganization, unless all holders of that class or
25 series have the dissenters' rights provided in Chapter 13
26 (commencing with Section 1300).

27 (i) Any approval required by this section may be given before
28 or after the approval by the board. Notwithstanding approval
29 required by this section, the board may abandon the proposed
30 reorganization without further action by the shareholders, subject
31 to the contractual rights, if any, of third parties.

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

34

35 DIVISION 1.5. CORPORATE FLEXIBILITY ACT OF 2011

36

37 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

38

39 2500. This division shall be known and may be cited as the
40 Corporate Flexibility Act of 2011.

1 2501. Except as otherwise expressly stated, the provisions of
2 Division 1 (commencing with Section 100) shall apply to
3 corporations organized under this division, and references in that
4 division to the terms “close corporation,” “constituent corporation,”
5 “corporation,” “disappearing corporation,” “domestic corporation,”
6 “foreign corporation,” “surviving corporation,” and similar terms
7 shall be read to apply, in the same manner, to include the similar
8 “flexible purpose corporation” organized under this division.

9 2502. This division applies only to flexible purpose
10 corporations organized expressly under this division whether
11 organized or existing under this division or merged or converted
12 into a flexible purpose corporation in accordance with Chapter 11
13 (commencing with Section 1100) of Division 1 or Chapter 11.5
14 (commencing with Section 1150) of Division 1.

15 2502.01. Every flexible purpose corporation organized under
16 the laws of this state or similar foreign flexible purpose corporation,
17 all of the capital stock of which is beneficially owned by the United
18 States, an agency or instrumentality of the United States or any
19 flexible purpose corporation or similar foreign flexible purpose
20 corporation the whole of the capital stock of which is owned by
21 the United States or by an agency or instrumentality of the United
22 States, is conclusively presumed to be an agency and
23 instrumentality of the United States and is entitled to all privileges
24 and immunities to which the holders of all of its stock are entitled
25 as agencies of the United States.

26 2502.02. Unless otherwise expressly provided, whenever
27 reference is made in this division to any other state or federal
28 statute, that reference is to that statute as it may be amended from
29 time to time, whether before or after the enactment of this division.

30 2502.03. A flexible purpose corporation may be sued in the
31 same manner as a corporation as provided in the Code of Civil
32 Procedure.

33 2502.04. A flexible purpose corporation formed under this
34 division shall, in respect of its property, as a condition of its
35 existence as a flexible purpose corporation, be subject, in the same
36 manner as a corporation, to the provisions of the Code of Civil
37 Procedure authorizing the attachment of corporate property.

38 2502.05. The fees of the Secretary of State for filing
39 instruments by or on behalf of flexible purpose corporations shall
40 be the same fees prescribed for corporations in Article 3

1 (commencing with Section 12180) of Chapter 3 of Part 2 of
2 Division 3 of Title 2 of the Government Code.

3 2502.06. (a) Provisions of the articles described in paragraph
4 (3) of subdivision (e) of Section 2602 and subdivisions (a) and (b)
5 of Section 2603 may be made dependent upon facts ascertainable
6 outside of the articles, if the manner in which those facts shall
7 operate upon those provisions is clearly and expressly set forth in
8 the articles. Similarly, any of the terms of an agreement of merger
9 pursuant to Section 1101 may be made dependent upon facts
10 ascertainable outside of that agreement, if the manner in which
11 those facts shall operate upon the terms of the agreement is clearly
12 and expressly set forth in the agreement of merger.

13 (b) Notwithstanding subdivision (a), when any provisions or
14 terms of articles or an agreement of merger are made dependent
15 upon facts ascertainable outside of the filed instrument through a
16 reference to an agreement or similar document, the flexible purpose
17 corporation filing that instrument shall maintain at its principal
18 executive office a copy of that referenced agreement or document
19 and all amendments, and shall provide to its shareholders, in the
20 case of articles, or to shareholders of any constituent corporation
21 or other business entity, in the case of an agreement of merger, a
22 copy of them upon written request and without charge.

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

28 (1) If the amendment or revision of the referenced agreement
29 would result in a material change in the rights, preferences,
30 privileges, or restrictions of a class or series of shares, the
31 amendment or revision shall be approved by the outstanding shares,
32 as defined in Section 152, of that class or series.

33 (2) If the amendment or revision of the referenced agreement
34 would result in a material change in the rights or liabilities of any
35 class or series of shares with respect to the subject matter of
36 paragraph (1), (2), (3), (5), or (9) of subdivision (a) of Section
37 2603, the amendment or revision shall be approved by the
38 outstanding shares, as defined in Section 152, of that class or series.

39 (3) If the amendment or revision of the referenced agreement
40 would result in a material change in the restrictions on transfer or

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

4 (4) If the amendment or revision of the referenced agreement
5 would result in a change of any of the principal terms of an
6 agreement of merger, the amendment or revision shall be approved
7 in the same manner as required by Section 3504 for a change in
8 the principal terms of an agreement of merger.

9 2502.07. Nothing contained in this division shall be construed
10 to modify the provisions of subdivision (h) of Section 25102, *or*
11 *the conditions provided therein to the availability of an exemption*
12 *under that subdivision.*

13 2503. “Annual report” means the report required by subdivision
14 (a) of Section 3500, including the information specified in
15 subdivision (b) of Section 3500.

16 2504. “Constituent flexible purpose corporation” means a
17 flexible purpose corporation that is merged with or into one or
18 more corporations or one or more other business entities and
19 includes a surviving flexible purpose corporation.

20 2505. “Conversion” means a conversion pursuant to Chapter
21 11.5 (commencing with Section 1150) of Division 1 and Chapter
22 9 (commencing with Section 3300) of this division.

23 2506. “Disappearing flexible purpose corporation” means a
24 constituent flexible purpose corporation that is not the surviving
25 entity.

26 2507. “Domestic flexible purpose corporation” means a
27 corporation organized under this division.

28 2509. “Flexible purpose corporation,” unless otherwise
29 expressly provided, refers only to a corporation organized under
30 this division.

31 2510. “Flexible purpose corporation subject to the Banking
32 Law” means any of the following:

33 (a) A flexible purpose corporation that, with the approval of the
34 Commissioner of Financial Institutions, is incorporated for the
35 purpose of engaging in, or that is authorized by the Commissioner
36 of Financial Institutions to engage in, the commercial banking
37 business under the Banking Law (Division 1 (commencing with
38 Section 99) of the Financial Code).

39 (b) Any flexible purpose corporation that, with the approval of
40 the Commissioner of Financial Institutions, is incorporated for the

1 purpose of engaging in, or that is authorized by the Commissioner
2 of Financial Institutions to engage in, the industrial banking
3 business under the Banking Law (Division 1 (commencing with
4 Section 99) of the Financial Code).

5 (c) Any flexible purpose corporation, other than a flexible
6 purpose corporation described in subdivision (d), that, with the
7 approval of the Commissioner of Financial Institutions, is
8 incorporated for the purpose of engaging in, or that is authorized
9 by the Commissioner of Financial Institutions to engage in, the
10 trust business under the Banking Law (Division 1 (commencing
11 with Section 99) of the Financial Code).

12 (d) Any flexible purpose corporation that is authorized by the
13 Commissioner of Financial Institutions and the Commissioner of
14 Insurance to maintain a title insurance department to engage in
15 title insurance business and a trust department to engage in trust
16 business.

17 (e) Any flexible purpose corporation that, with the approval of
18 the Commissioner of Financial Institutions, is incorporated for the
19 purpose of engaging in, or that is authorized by the Commissioner
20 of Financial Institutions to engage in, business under Article 1
21 (commencing with Section 3500) of Chapter 19 of Division 1 of
22 the Financial Code.

23 2511. “Reorganization” means a merger reorganization, an
24 exchange reorganization, or a sale of assets reorganization.

25 (a) “Merger reorganization” means a merger pursuant to Chapter
26 11 (commencing with Section 1100) of Division 1 and Chapter 8
27 (commencing with Section 3200), of this division, other than a
28 short-form merger.

29 (b) “Exchange reorganization” means the acquisition by one
30 domestic flexible purpose corporation, foreign flexible purpose
31 corporation, or other business entity in exchange, in whole or in
32 part, for its equity securities, or the equity securities of a domestic
33 flexible purpose corporation, a foreign flexible purpose corporation,
34 or an other business entity that is in control of the acquiring entity,
35 of equity securities of another domestic flexible purpose
36 corporation, foreign flexible purpose corporation, or other business
37 entity if, immediately after the acquisition, the acquiring entity
38 has control of the other entity.

39 (c) “Sale-of-assets reorganization” means the acquisition by
40 one 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 or for its debt securities, or debt securities of a domestic flexible
6 purpose corporation, foreign flexible purpose corporation, or other
7 business entity that is in control of the acquiring entity, that are
8 not adequately secured and that have a maturity date in excess of
9 five years after the consummation of the reorganization, or both,
10 of all or substantially all of the assets of another domestic flexible
11 purpose corporation, foreign flexible purpose corporation, or other
12 business entity.

13 2512. “Share exchange tender offer” means any acquisition by
14 one flexible purpose corporation in exchange in whole or in part
15 for its equity securities, or the equity securities of a corporation
16 or a flexible purpose corporation that is in control of the acquiring
17 flexible purpose corporation, of shares of another corporation or
18 flexible purpose corporation, other than an exchange reorganization
19 (subdivision (b) of Section 2511).

20 2513. “Special purpose” means the special purpose set forth
21 in a flexible purpose corporation’s articles pursuant to subdivision
22 (b) of Section 2602.

23 2514. “Special purpose current report” means the report
24 required of a flexible purpose corporation pursuant to Section
25 3501.

26 2515. “Special purpose MD&A” means the management
27 discussion and analysis required of a flexible purpose corporation
28 pursuant to subdivision (b) of Section 3500.

29 2516. “Special purpose objectives” means those objectives set
30 forth by management and the directors of a flexible purpose
31 corporation for purposes of measuring the impact of the flexible
32 purpose corporation’s efforts relating to its special purpose in
33 accordance with Section 3500.

34 2517. “Surviving flexible purpose corporation” means a flexible
35 purpose corporation into which one or more other corporations or
36 one or more other business entities is merged.

CHAPTER 2. ORGANIZATION AND BYLAWS

1
2
3 2600. (a) One or more natural persons, partnerships,
4 associations, flexible purpose corporations, or corporations,
5 domestic or foreign, may form a flexible purpose corporation under
6 this division by executing and filing articles of incorporation.

7 (b) If initial directors are named in the articles, each director
8 named in the articles shall sign and acknowledge the articles. If
9 initial directors are not named in the articles, the articles shall be
10 signed by one or more incorporators who shall be persons described
11 in subdivision (a).

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

15 2600.5. (a) An existing business association organized as a
16 trust under the laws of this state or of a foreign jurisdiction may
17 incorporate under this division upon approval by its board of
18 trustees or similar governing body and approval by the affirmative
19 vote of a majority of the outstanding voting shares of beneficial
20 interest, or a greater proportion of the outstanding shares of
21 beneficial interest or the vote of those other classes of shares of
22 beneficial interest as may be specifically required by its declaration
23 of trust or bylaws, and the filing of articles with a certificate
24 attached pursuant to this chapter.

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

29 (c) The articles filed pursuant to this section shall be signed by
30 the president, or any vice president, and the secretary, or any
31 assistant secretary, of the existing association and shall be
32 accompanied by a certificate signed and verified by those officers
33 signing the articles and stating that the incorporation of the
34 association has been approved by the trustees and by the required
35 vote of holders of shares of beneficial interest in accordance with
36 subdivision (a).

37 (d) Upon the filing of articles pursuant to this section, the
38 flexible purpose corporation shall succeed automatically to all of
39 the rights and property of the association being incorporated and
40 shall be subject to all of its debts and liabilities in the same manner

1 as if the flexible purpose corporation had itself incurred them. The
2 incumbent trustees of the association shall constitute the initial
3 directors of the flexible purpose corporation and shall continue in
4 office until the next annual meeting of the shareholders or their
5 earlier death, resignation, or removal. All rights of creditors and
6 all liens upon the property of the association shall be preserved
7 unimpaired. Any action or proceeding pending by or against the
8 association may be prosecuted to judgment, which shall bind the
9 flexible purpose corporation, or the flexible purpose corporation
10 may be proceeded against or substituted in its place.

11 (e) The filing for record in the office of the county recorder of
12 any county in this state in which any of the real property of the
13 association is located of a copy of the articles filed pursuant to this
14 section, certified by the Secretary of State, shall evidence record
15 ownership in the flexible purpose corporation of all interests of
16 the association in and to the real property located in that county.

17 2601. (a) The Secretary of State shall not file articles setting
18 forth a name in which “bank,” “trust,” “trustee” or related words
19 appear, unless the certificate of approval of the Commissioner of
20 Financial Institutions is attached to the articles. This subdivision
21 does not apply to the articles of any flexible purpose corporation
22 subject to the Banking Law on which is endorsed the approval of
23 the Commissioner of Financial Institutions.

24 (b) The Secretary of State shall not file articles that set forth a
25 name that is likely to mislead the public or that is the same as, or
26 resembles so closely as to tend to deceive, the name of a domestic
27 corporation, the name of a domestic flexible purpose corporation,
28 or the name of a foreign corporation that is authorized to transact
29 intrastate business or has registered its name pursuant to Section
30 2101, a name that a foreign corporation has assumed under
31 subdivision (b) of Section 2106, a name that will become the record
32 name of a corporation or flexible purpose corporation or a foreign
33 corporation upon the effective date of a filed corporate instrument
34 where there is a delayed effective date pursuant to subdivision (c)
35 of Section 110 or subdivision (c) of Section 5008, or a name that
36 is under reservation for another corporation or flexible purpose
37 corporation pursuant to this section, Section 5122, 7122, or 9122,
38 except that a flexible purpose corporation may adopt a name that
39 is substantially the same as an existing corporation or flexible
40 purpose corporation, foreign or domestic, which is authorized to

1 transact intrastate business or has registered its name pursuant to
2 Section 2101, upon proof of consent by the domestic or foreign
3 corporation or flexible purpose corporation and a finding by the
4 Secretary of State that under the circumstances the public is not
5 likely to be misled. The use by a flexible purpose corporation of
6 a name in violation of this section may be enjoined notwithstanding
7 the filing of its articles by the Secretary of State.

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

21 2602. The articles of incorporation shall set forth:

22 (a) The name of the flexible purpose corporation that shall
23 contain the words “flexible purpose corporation” or an abbreviation
24 of those words.

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

26 (A) “The purpose of this flexible purpose corporation is to
27 engage in any lawful act or activity for which a flexible purpose
28 corporation may be organized under Division 1.5 of the California
29 Corporations Code, other than the banking business, the trust
30 company business or the practice of a profession permitted to be
31 incorporated by the California Corporations Code, for the benefit
32 of the long-term and the short-term interests of the flexible purpose
33 corporation and its shareholders and in furtherance of the following
34 enumerated purposes ____.”

35 (B) “The purpose of this flexible purpose corporation is to
36 engage in the profession of ____ (with the insertion of a profession
37 permitted to be incorporated by the California Corporations Code)
38 and any other lawful activities, other than the banking or trust
39 company business, not prohibited to a flexible purpose corporation
40 engaging in that profession by applicable laws and regulations,

1 for the benefit of the long-term and the short-term interests of the
2 flexible purpose corporation and its shareholders.”

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

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

8 (B) The purpose of promoting positive short-term or long-term
9 effects of, or minimizing adverse short-term or long-term effects
10 of, the flexible purpose corporation’s activities upon any of the
11 following:

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

14 (ii) The community and society.

15 (iii) The environment.

16 (3) A statement that the flexible purpose corporation is organized
17 as a flexible purpose corporation under the Corporate Flexibility
18 Act of 2011.

19 (4) If the flexible purpose corporation is a flexible purpose
20 corporation subject to the Banking Law (Division 1 (commencing
21 with Section 99) of the Financial Code), the articles shall set forth
22 a statement of purpose that is prescribed by the applicable provision
23 of the Banking Law (Division 1 (commencing with Section 99)
24 of the Financial Code).

25 (5) If the flexible purpose corporation is a flexible purpose
26 corporation subject to the Insurance Code as an insurer, the articles
27 shall additionally state that the business of the flexible purpose
28 corporation is to be an insurer.

29 (6) If the flexible purpose corporation is intended to be a
30 professional corporation within the meaning of the Moscone-Knox
31 Professional Corporation Act (Part 4 (commencing with Section
32 13400) of Division 3), the articles shall additionally contain the
33 statement required by Section 13404. The articles shall not set
34 forth any further or additional statement with respect to the
35 purposes or powers of the flexible purpose corporation, except by
36 way of limitation or except as expressly required by any law of
37 this state, other than this division, or any federal or other statute
38 or regulation, including the Internal Revenue Code and regulations
39 thereunder as a condition of acquiring or maintaining a particular
40 status for tax purposes.

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

3 (d) If the flexible purpose corporation is authorized to issue
4 only one class of shares, the total number of shares that the flexible
5 purpose corporation is authorized to issue.

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

9 (1) The total number of shares of each class that the flexible
10 purpose corporation is authorized to issue and the total number of
11 shares of each series that the flexible purpose corporation is
12 authorized to issue or that the board is authorized to fix the number
13 of shares of any such series.

14 (2) The designation of each class and the designation of each
15 series or that the board may determine the designation of any such
16 series.

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

34 2603. The articles of incorporation may set forth:

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

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

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

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

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

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

11 (6) So long as consistent with the purpose of the flexible purpose
12 corporation as set forth in the articles in accordance with
13 subdivision (b) of Section 2602, a provision limiting or restricting
14 the business in which the flexible purpose corporation may engage
15 or the powers which the flexible purpose corporation may exercise,
16 or both.

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

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

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

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

32 (A) The provision may not eliminate or limit the liability of
33 directors (i) for acts or omissions that involve intentional
34 misconduct or a knowing and culpable violation of law, (ii) for
35 acts or omissions that a director believes to be contrary to the best
36 interests of the flexible purpose corporation or its shareholders
37 and its corporate purposes as expressed in its articles, or that
38 involve the absence of good faith on the part of the director, (iii)
39 for any transaction from which a director derived an improper
40 personal benefit, (iv) for acts or omissions that show a reckless

1 disregard for the director's duty to the flexible purpose corporation
2 or its shareholders in circumstances in which the director was
3 aware, or should have been aware, in the ordinary course of
4 performing a director's duties, of a risk of serious injury to the
5 flexible purpose corporation, its shareholders, or its corporate
6 purposes as expressed in its articles, (v) for acts or omissions that
7 constitute an unexcused pattern of inattention that amounts to an
8 abdication of the director's duty to the flexible purpose corporation,
9 its shareholders, or its corporate purposes as expressed in its articles
10 pursuant to Section 2602, or (vi) under Section 310 or 2701.

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

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

18 (11) A provision authorizing, whether by bylaw, agreement, or
19 otherwise, the indemnification of agents of the flexible purpose
20 corporation for breach of duty to the flexible purpose corporation
21 and its shareholders, provided, however, that the provision may
22 not provide for indemnification of any agent for any acts or
23 omissions or transactions from which a director may not be relieved
24 of liability as described in subparagraphs (A), (B), and (C) of
25 paragraph (10).

26 Notwithstanding this subdivision, bylaws may require, for all
27 or any actions by the board, the affirmative vote of a majority of
28 the authorized number of directors. Nothing contained in this
29 subdivision shall affect the enforceability, as between the parties
30 thereto, of any lawful agreement not otherwise contrary to public
31 policy.

32 (b) Reasonable restrictions upon the right to transfer or
33 hypothecate shares of any class or classes or series, except that no
34 restriction shall be binding with respect to shares issued prior to
35 the adoption of the restriction unless the holders of those shares
36 voted in favor of the restriction.

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

39 (d) Any other provision, not in conflict with law, for the
40 management of the business and for the conduct of the affairs of

1 the flexible purpose corporation, including any provision that is
2 required or permitted by this division to be stated in the bylaws.

3 2604. Subject to any limitation contained in the articles, to
4 compliance with any other applicable laws, and to consistency
5 with the special purpose of the flexible purpose corporation, any
6 flexible purpose corporation other than a flexible purpose
7 corporation subject to the Banking Law or a professional flexible
8 purpose corporation may engage in any business activity. A flexible
9 purpose corporation subject to the Banking Law or a professional
10 flexible purpose corporation may engage in any business activity
11 not prohibited by the respective statutes and regulations to which
12 it is subject.

13 2605. Subject to any limitations contained in the articles, to
14 compliance with other provisions of this division and any other
15 applicable laws, and to consistency with the special purpose of the
16 flexible purpose corporation, a flexible purpose corporation shall
17 have all the powers of a natural person in carrying out its business
18 activities, including, without limitation, the power to:

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

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

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

24 (d) Subject to the provisions of Section 510, issue, purchase,
25 redeem, receive, take or otherwise acquire, own, hold, sell, lend,
26 exchange, transfer or otherwise dispose of, pledge, use, and
27 otherwise deal in and with its own shares, bonds, debentures, and
28 other securities.

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

32 (f) Pay pensions, and establish and carry out pension,
33 profit-sharing, share bonus, share purchase, share option, savings,
34 thrift, and other retirement, incentive, and benefit plans, trusts and
35 provisions for any or all of the directors, officers, and employees
36 of the flexible purpose corporation or any of its subsidiaries or
37 affiliates, and to indemnify and purchase and maintain insurance
38 on behalf of any fiduciary of these plans, trusts, or provisions.

39 (g) Subject to the provisions of Section 315, assume obligations,
40 enter into contracts, including contracts of guaranty or suretyship,

1 incur liabilities, borrow and lend money and otherwise use its
2 credit, and secure any of its obligations, contracts, or liabilities by
3 mortgage, pledge, or other encumbrance of all or any part of its
4 property, franchises and income.

5 (h) Participate with others in any partnership, joint venture, or
6 other association, transaction, or arrangement of any kind, whether
7 or not that participation involves sharing or delegation of control
8 with or to others.

9

10 CHAPTER 3. DIRECTORS AND MANAGEMENT

11

12 2700. (a) A director shall perform the duties of a director,
13 including duties as a member of any committee of the board upon
14 which the director may serve, in good faith, in a manner the director
15 believes to be in the best interests of the flexible purpose
16 corporation and its shareholders, and with that care, including
17 reasonable inquiry, as an ordinarily prudent person in a like
18 position would use under similar circumstances.

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

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

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

29 (3) A committee of the board upon which the director does not
30 serve, as to matters within its designated authority, which
31 committee the director believes to merit confidence, so long as the
32 director acts in good faith, after reasonable inquiry when the need
33 therefor is indicated by the circumstances and without knowledge
34 that would cause that reliance to be unwarranted.

35 (c) In discharging his or her duties, a director may consider
36 those factors, and give weight to those factors, as the director
37 deems relevant, including the short-term and long-term prospects
38 of the flexible purpose corporation, the best interests of the flexible
39 purpose corporation and its shareholders, and the purposes of the
40 flexible purpose corporation as set forth in its articles.

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

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

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

17 2701. (a) Subject to Section 2700, directors of a flexible
18 purpose corporation who approve any of the following corporate
19 actions shall be jointly and severally liable to the flexible purpose
20 corporation for the benefit of all of the creditors or shareholders
21 entitled to institute an action under subdivision (c):

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

25 (2) The distribution of assets to shareholders after institution of
26 dissolution proceedings of the flexible purpose corporation, without
27 paying or adequately providing for all known liabilities of the
28 flexible purpose corporation, excluding any claims not filed by
29 creditors within the time limit set by the court in a notice given to
30 creditors under Chapter 18 (commencing with Section 1800) of
31 *Division 1*, Chapter 20 (commencing with Section 1900) of
32 *Division 1*, and Chapter 20 (commencing with Section 2000).

33 (3) The making of any loan or guaranty contrary to Section
34 2715.

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

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

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

4 (2) Under paragraph (2) or (3) of subdivision (a) against any or
5 all directors liable, by any one or more ~~creditor~~ *creditors* of the
6 flexible purpose corporation whose debts or claims arose prior to
7 the time of any of the corporate actions specified in paragraph (2)
8 or (3) of subdivision (a) and who have not consented to the
9 corporate action, regardless of whether they have reduced their
10 claims to judgment.

11 (3) Under paragraph (3) of subdivision (a) against any or all
12 directors liable, by any one or more holders of shares outstanding
13 at the time of any corporate action specified in paragraph (3) of
14 subdivision (a) who have not consented to the corporate action,
15 without regard to the provisions of Section 2900.

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

28 (e) Any director sued under this section may implead all other
29 directors liable and may compel contribution, either in that action
30 or in an independent action against directors not joined in that
31 action.

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

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

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

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

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

5 2702. (a) For the purposes of this section:

6 (1) “Agent” means any person who is or was a director, officer,
7 employee, or other agent of the flexible purpose corporation, or is
8 or was serving at the request of the flexible purpose corporation
9 as a director, officer, employee or agent of another foreign or
10 domestic corporation, partnership, joint venture, trust, or other
11 enterprise, or was a director, officer, employee, or agent of a
12 foreign or domestic corporation which was a predecessor
13 corporation of the flexible purpose corporation or of another
14 enterprise at the request of the predecessor corporation.

15 (2) “Proceeding” means any threatened, pending, or completed
16 action or proceeding, whether civil, criminal, administrative, or
17 investigative.

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

21 (b) Subject to the standards and restrictions, if any, set forth in
22 its articles or bylaws, and subject to the limitations required by
23 paragraph (11) of subdivision (a) of Section 2603, a flexible
24 purpose corporation may indemnify and hold harmless any agent
25 or any other person from and against any and all claims and
26 demands whatsoever.

27 (c) Expenses incurred in defending any proceeding may be
28 advanced by the flexible purpose corporation prior to the final
29 disposition of the proceeding. The provisions of subdivision (a)
30 of Section 315 do not apply to advances made pursuant to this
31 subdivision.

32 (d) A flexible purpose corporation may purchase and maintain
33 insurance on behalf of any of its agents against any liability
34 asserted against or incurred by the agent in that capacity or arising
35 out of the agent’s status as an agent regardless of whether the
36 flexible purpose corporation would have the power to indemnify
37 the agent against that liability under this section. The fact that a
38 flexible purpose corporation owns all or a portion of the shares of
39 the company issuing a policy of insurance shall not render this

1 subdivision inapplicable if either of the following conditions are
2 satisfied:

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

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

9 (B) The company issuing the policy provides procedures for
10 processing claims that do not permit that company to be subject
11 to the direct control of the flexible purpose corporation that
12 purchased that policy.

13 (C) The policy issued provides for some manner of risk sharing
14 between the issuer and purchaser of the policy, on one hand, and
15 some unaffiliated person or persons, on the other, such as by
16 providing for more than one unaffiliated owner of the company
17 issuing the policy or by providing that a portion of the coverage
18 furnished will be obtained from some unaffiliated insurer or
19 reinsurer.

20 (e) This section does not apply to any proceeding against any
21 trustee, investment manager, or other fiduciary of an employee
22 benefit plan in that person's capacity as such, even though the
23 person may also be an agent as defined in subdivision (a) of the
24 employer flexible purpose corporation. A flexible purpose
25 corporation shall have power to indemnify a trustee, investment
26 manager, or other fiduciary to the extent permitted by subdivision
27 (f) of Section 2605.

28

29 CHAPTER 4. SHARES AND SHARE CERTIFICATES

30

31 2800. (a) All certificates representing shares of a flexible
32 purpose corporation shall contain, in addition to any other
33 statements required by this section, the following conspicuous
34 language on the face of the certificate.

35

36 "This entity is a flexible purpose corporation organized under
37 Division 1.5 of the California Corporations Code. The articles of
38 this corporation state one or more purposes required by law. Refer
39 to the articles on file with the Secretary of State, and the bylaws

1 and any agreements on file with the secretary of the corporation,
2 for further information.”

3

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

8 (1) The fact that the shares are subject to restrictions upon
9 transfer.

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

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

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

18 (5) The fact that the shares are convertible and the period for
19 conversion.

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

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

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

1
 2 “This flexible purpose corporation is a close flexible purpose
 3 corporation. The number of holders of record of its shares of all
 4 classes cannot exceed ____ (a number not in excess of 35). Any
 5 attempted voluntary inter vivos transfer which would violate this
 6 requirement is void. Refer to the articles, bylaws and any
 7 agreements on file with the secretary of the flexible purpose
 8 corporation for further restrictions.”
 9

10 (e) Any attempted voluntary inter vivos transfer of the shares
 11 of a close flexible purpose corporation that would result in the
 12 number of holders of record of its shares exceeding the maximum
 13 number specified in its articles is void if the certificate contains
 14 the legend required by subdivision (c).
 15

16 CHAPTER 5. SHAREHOLDER DERIVATIVE ACTIONS
 17

18 2900. (a) As used in this section:

19 (1) “Flexible purpose corporation” includes an unincorporated
 20 association.

21 (2) “Board” includes the managing body of an unincorporated
 22 association.

23 (3) “Shareholder” includes a member of an unincorporated
 24 association.

25 (4) “Shares” includes memberships in an unincorporated
 26 association.

27 (b) No action may be instituted or maintained in right of any
 28 domestic or foreign flexible purpose corporation under this section
 29 by any party other than a shareholder of the flexible purpose
 30 corporation.

31 (c) No action may be instituted or maintained in right of any
 32 domestic or foreign flexible purpose corporation by any holder of
 33 shares or of voting trust certificates of the flexible purpose
 34 corporation unless both of the following conditions exist:

35 (1) The plaintiff alleges in the complaint that plaintiff was a
 36 shareholder, of record or beneficially, or the holder of voting trust
 37 certificates at the time of the transaction or any part thereof of
 38 which plaintiff complains or that plaintiff’s shares or voting trust
 39 certificates thereafter devolved upon plaintiff by operation of law
 40 from a holder who was a holder at the time of the transaction or

1 any part thereof complained of. Any shareholder who does not
2 meet these requirements may nevertheless be allowed, in the
3 discretion of the court, to maintain the action on a preliminary
4 showing to and determination by the court, by motion and after a
5 hearing, at which the court shall consider the evidence by affidavit
6 or testimony, as it deems material, of all of the following:

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

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

10 (iii) The plaintiff acquired the shares before there was disclosure
11 to the public or to the plaintiff of the wrongdoing of which plaintiff
12 complains.

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

16 (v) The requested relief will not result in unjust enrichment of
17 the flexible purpose corporation or any shareholder of the flexible
18 purpose corporation.

19 (2) The plaintiff alleges in the complaint with particularity
20 plaintiff's efforts to secure from the board the action as plaintiff
21 desires, or the reasons for not making that effort, and alleges further
22 that plaintiff has either informed the flexible purpose corporation
23 or the board in writing of the ultimate facts of each cause of action
24 against each defendant or delivered to the flexible purpose
25 corporation or the board a true copy of the complaint which
26 plaintiff proposes to file.

27 (d) In any action referred to in subdivision (b), at any time within
28 30 days after service of summons upon the flexible purpose
29 corporation or upon any defendant who is an officer or director of
30 the flexible purpose corporation, or held that office at the time of
31 the acts complained of, the flexible purpose corporation or the
32 defendant may move the court for an order, upon notice and
33 hearing, requiring the plaintiff to furnish a bond as hereinafter
34 provided. The motion shall be based upon one or both of the
35 following grounds:

36 (1) There is no reasonable possibility that the prosecution of
37 the cause of action alleged in the complaint against the moving
38 party will benefit the flexible purpose corporation or its
39 shareholders.

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

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

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

30 (f) If the plaintiff ~~shall~~, either before or after a motion is made
31 pursuant to subdivision (c), or any order or determination pursuant
32 to the motion, ~~furnish~~ *furnishes* a bond in the aggregate amount
33 of fifty thousand dollars (\$50,000) to secure the reasonable
34 expenses of the parties entitled to make the motion, the plaintiff
35 ~~has shall be deemed to have~~ complied with the requirements of
36 this section and with any order for a bond theretofore made, and
37 any motion then pending shall be dismissed and no further or
38 additional bond shall be required.

39 (g) If a motion is filed pursuant to subdivision (c), no pleadings
40 need be filed by the flexible purpose corporation or any other

1 defendant and the prosecution of the action shall be stayed until
2 10 days after the motion has been disposed of.

3

4

CHAPTER 6. AMENDMENT OF ARTICLES

5

6 3000. (a) A proposed amendment to the articles of a flexible
7 purpose corporation shall be approved by the outstanding shares
8 of a class, regardless of whether that class is entitled to vote thereon
9 by the provisions of the articles, if the amendment would:

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

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

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

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

20 (5) Create a new class of shares having rights, preferences, or
21 privileges prior to the shares of that class, or increase the rights,
22 preferences, or privileges or the number of authorized shares of
23 any class having rights, preferences, or privileges prior to the shares
24 of that class.

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

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

30 (b) A proposed amendment shall be approved by an affirmative
31 vote of at least two-thirds of the outstanding shares of each class,
32 or a greater vote if required in the articles, regardless of whether
33 that class is entitled to vote thereon by the provisions of the articles,
34 if the amendment would materially alter any special purpose of
35 the flexible purpose corporation stated in the articles pursuant to
36 paragraph (2) of subdivision (b) of Section 2602, regardless of
37 whether that purpose, as amended, would comply with the
38 provisions of that paragraph.

39 (c) Different series of the same class shall not constitute different
40 classes for the purpose of voting by classes except when a series

1 is adversely affected by an amendment in a different manner than
2 other shares of the same class.

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

6 3001. (a) A flexible purpose corporation may, by amendment
7 of its articles pursuant to this section, convert to a nonprofit public
8 benefit corporation, nonprofit mutual benefit corporation, nonprofit
9 religious corporation, or cooperative corporation.

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

23 (c) If shares have been issued, an amendment to convert to a
24 nonprofit corporation shall be approved by all of the outstanding
25 shares of all classes regardless of limitations or restrictions on their
26 voting rights and an amendment to convert to a cooperative
27 corporation shall be approved by the outstanding shares of each
28 class regardless of limitations or restrictions on their voting rights.

29 (d) If an amendment pursuant to this section is included in a
30 merger agreement, the provisions of this section shall apply, except
31 that any provision for cancellation or conversion of shares shall
32 be in the merger agreement rather than in the amendment of the
33 articles.

34 (e) Notwithstanding subdivision (c), if a flexible purpose
35 corporation is a mutual water company within the meaning of
36 Section 2705 of the Public Utilities Code and under the terms of
37 the conversion each outstanding share is converted to a membership
38 of a nonprofit mutual benefit corporation, an amendment to convert
39 to a nonprofit mutual benefit corporation shall be approved by the

1 outstanding shares of each class regardless of limitations or
2 restrictions on their voting rights.

3 3002. (a) A flexible purpose corporation may, by amendment
4 of its articles pursuant to this section, convert to a domestic
5 corporation.

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

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

15 (d) If an amendment pursuant to this section is included in a
16 merger agreement, the provisions of this section shall apply, except
17 that any provision for cancellation or conversion of shares shall
18 be in the merger agreement rather than in the amendment of the
19 articles.

20

21

CHAPTER 7. SALES OF ASSETS

22

23 3100. (a) A flexible purpose corporation may sell, lease,
24 convey, exchange, transfer, or otherwise dispose of all or
25 substantially all of its assets when the principal terms of the
26 transaction are approved by the board and are approved by an
27 affirmative vote of at least two-thirds of the outstanding shares of
28 each class, or a greater vote if required in the articles, regardless
29 of whether that class is entitled to vote thereon by the provisions
30 of the articles, either before or after approval by the board and
31 before the transaction. A transaction constituting a reorganization
32 shall be subject to Chapter 12 (commencing with Section 1200)
33 of Division 1 and Chapter 10 (commencing with Section 3400) of
34 this division and shall not be subject to this section, other than
35 subdivision (d). A transaction constituting a conversion shall be
36 subject to Chapter 11.5 (commencing with Section 1150) of
37 Division 1 and Chapter 9 (commencing with Section 3300) of this
38 division and shall not be subject to this section.

39 (b) Notwithstanding approval of the outstanding shares, the
40 board may abandon the proposed transaction without further action

1 by the shareholders, subject to the contractual rights, if any, of
2 third parties.

3 (c) The sale, lease, conveyance, exchange, transfer, or other
4 disposition may be made upon those terms and conditions and for
5 that consideration as the board may deem in the best interests of
6 the flexible purpose corporation. The consideration may be money,
7 securities, or other property.

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

18 (e) Subdivision (d) shall not apply to a transaction if the
19 Commissioner of Corporations, the Commissioner of Financial
20 Institutions, the Insurance Commissioner, or the Public Utilities
21 Commission has approved the terms and conditions of the
22 transaction and the fairness of those terms and conditions pursuant
23 to Section 25142, Section 696.5 of the Financial Code, Section
24 838.5 of the Insurance Code, or Section 822 of the Public Utilities
25 Code.

26
27
28

CHAPTER 8. MERGER

29 3200. If any disappearing flexible purpose corporation in a
30 merger is a close flexible purpose corporation and the surviving
31 flexible purpose corporation is not a close flexible purpose
32 corporation, the merger shall be approved by an affirmative vote
33 of at least two-thirds of the outstanding shares of each class, or a
34 greater vote if required in the articles, regardless of whether that
35 class is entitled to vote thereon by the provisions of the articles,
36 of the disappearing flexible purpose corporation. The articles may
37 provide for a lesser vote, but not less than a majority of the
38 outstanding shares of each class.

39 3201. If any disappearing corporation in a merger is a flexible
40 purpose corporation and the surviving entity is not a flexible

1 purpose corporation, or is a flexible purpose corporation the articles
2 of incorporation of which set forth materially different purposes,
3 the merger shall be approved by an affirmative vote of at least
4 two-thirds of the outstanding shares of each class, or a greater vote
5 if required in the articles, regardless of whether that class is entitled
6 to vote thereon by the provisions of the articles, of the disappearing
7 flexible purpose corporation.

8 3202. If a disappearing flexible purpose corporation in a merger
9 is a flexible purpose corporation governed by this division and the
10 surviving corporation is a nonprofit public benefit corporation, a
11 nonprofit mutual benefit corporation, or a nonprofit religious
12 corporation, the merger shall be approved by all of the outstanding
13 shares of all classes of the disappearing flexible purpose
14 corporation, regardless of limitations or restrictions on their voting
15 rights, notwithstanding any provision of Chapter 10 (commencing
16 with Section 3400).

17 3203. (a) Any one or more flexible purpose corporations may
18 merge with one or more other business entities. One or more
19 domestic flexible purpose corporations not organized under this
20 division and one or more foreign corporations may be parties to
21 the merger. Notwithstanding this section, the merger of any number
22 of flexible purpose corporations with any number of other business
23 entities may be effected only if:

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

28 (2) In a merger in which a foreign corporation is a party, it is
29 authorized by the laws under which it is organized to effect the
30 merger.

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

34 (b) Each flexible purpose corporation and each other party that
35 desires to merge shall approve, and shall be a party to, an
36 agreement of merger. Other persons, including a parent party, may
37 be parties to the agreement of merger. The board of each flexible
38 purpose corporation that desires to merge, and, if required, the
39 shareholders, shall approve the agreement of merger. The
40 agreement of merger shall be approved on behalf of each party by

1 those persons required to approve the merger by the laws under
2 which it is organized. The agreement of merger shall state:

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

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

6 (3) The amendments, if any, subject to Sections 900, 902, 907,
7 and 3002 to the articles of the surviving flexible purpose
8 corporation, if applicable, to be effected by the merger. If any
9 amendment changes the name of the surviving flexible purpose
10 corporation, if applicable, the new name may be, subject to
11 subdivision (b) of Section 2601, the same as or similar to the name
12 of a disappearing party to the merger.

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

24 (5) Any other details or provisions required by the laws under
25 which any party to the merger is organized, including, if a domestic
26 corporation is a party to the merger, Section 3203, if a public
27 benefit corporation or a religious corporation is a party to the
28 merger, Section 6019.1, if a mutual benefit corporation is a party
29 to the merger, Section 8019.1, if a consumer cooperative
30 corporation is a party to the merger, Section 12540.1, if a domestic
31 limited partnership is a party to the merger, Section 15678.2, if a
32 domestic partnership is a party to the merger, Section 16911, and
33 if a domestic limited liability company is a party to the merger,
34 Section 17551.

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

39 (c) Each share of the same class or series of any constituent
40 flexible purpose corporation, other than the cancellation of shares

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

17 (d) Notwithstanding its prior approval, an agreement of merger
18 may be amended prior to the filing of the agreement of merger or
19 the certificate of merger, as is applicable, if the amendment is
20 approved by the board of each constituent flexible purpose
21 corporation and, if the amendment changes any of the principal
22 terms of the agreement, by the outstanding shares, if required by
23 Chapter 10 (commencing with Section 3400), in the same manner
24 as the original agreement of merger. If the agreement of merger
25 as so amended and approved is also approved by each of the other
26 parties to the agreement of merger, the agreement of merger as so
27 amended shall then constitute the agreement of merger.

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

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

37 (g) (1) If the surviving party is a domestic flexible purpose
38 corporation, or if a domestic corporation or a foreign corporation,
39 a public benefit corporation, a mutual benefit corporation, a
40 religious corporation, or a corporation organized under the

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

1 constituent reciprocal insurer by the chairperson of the board,
2 president, or vice president, and by the secretary or assistant
3 secretary, or, if a constituent reciprocal insurer has not appointed
4 those officers, by the chairperson of the board, president, or vice
5 president, and by the secretary or assistant secretary of the
6 constituent reciprocal insurer's attorney-in-fact, and by each other
7 party to the merger by those persons required or authorized to
8 execute the certificate of merger by the laws under which that party
9 is organized, specifying for that party the provision of law or other
10 basis for the authority of the signing persons. The certificate of
11 merger shall set forth, if a vote of the shareholders, members,
12 partners, or other holders of interests of the constituent other
13 business entity was required, a statement setting forth the total
14 number of outstanding interests of each class entitled to vote on
15 the merger and that the agreement of merger in the form attached
16 or its principal terms, as required, were approved by a vote of the
17 number of interests of each class that equaled or exceeded the vote
18 required, specifying each class entitled to vote and the percentage
19 vote required of each class, and any other information required to
20 be set forth under the laws under which the constituent other
21 business entity is organized, including, if a domestic limited
22 partnership is a party to the merger, subdivision (a) of Section
23 15678.4, if a domestic partnership is a party to the merger,
24 subdivision (b) of Section 16915, and, if a domestic limited liability
25 company is a party to the merger, subdivision (a) of Section 17552.
26 The certificate of merger for each constituent foreign other business
27 entity, if any, shall also set forth the statutory or other basis under
28 which that foreign other business entity is authorized by the laws
29 under which it is organized to effect the merger. The merger and
30 any amendment of the articles of the surviving flexible purpose
31 corporation, if applicable, contained in the agreement of merger
32 shall be effective upon filing of the agreement of merger with an
33 officer's certificate of each constituent domestic corporation and
34 foreign corporation and a certificate of merger for each constituent
35 other business entity, subject to subdivision (c) of Section 153 and
36 subject to the provisions of subdivision (j), and the several parties
37 thereto shall be one entity. If a domestic reciprocal insurer
38 organized after 1974 to provide medical malpractice insurance is
39 a party to the merger, the agreement of merger or certificate of
40 merger shall not be filed until there has been filed the certificate

1 issued by the Insurance Commissioner approving the merger
2 pursuant to Section 1555 of the Insurance Code. The Secretary of
3 State may certify a copy of the agreement of merger separate from
4 the officers' certificates and certificates of merger attached thereto.

5 (2) If the surviving entity is an other business entity, and no
6 public benefit corporation, mutual benefit corporation, religious
7 corporation, or corporation organized under the Consumer
8 Cooperative Corporation Law (Part 2 (commencing with Section
9 12200) of Division 3) is a party to the merger, after required
10 approvals of the merger by each constituent flexible purpose
11 corporation through approval of the board and any approval of the
12 outstanding shares required by Chapter 10 (commencing with
13 Section 3400) and by the other parties to the merger, the parties
14 to the merger shall file a certificate of merger in the office of, and
15 on a form prescribed by, the Secretary of State. The certificate of
16 merger shall be executed and acknowledged by each constituent
17 domestic and foreign flexible purpose corporation by its
18 chairperson of the board, president, or a vice president and also
19 by its secretary or an assistant secretary and by each domestic
20 constituent limited liability company by all managers of the limited
21 liability company, unless a lesser number is specified in its articles
22 of organization or operating agreement, and by each domestic
23 constituent limited partnership by all general partners, unless a
24 lesser number is provided in its certificate of limited partnership
25 or partnership agreement, and by each domestic constituent general
26 partnership by two partners, unless a lesser number is provided in
27 its partnership agreement, and by each foreign constituent limited
28 liability company by one or more managers and by each foreign
29 constituent general partnership or foreign constituent limited
30 partnership by one or more general partners, and by each
31 constituent reciprocal insurer by the chairperson of the board,
32 president, or vice president, and by the secretary or assistant
33 secretary, or, if a constituent reciprocal insurer has not appointed
34 those officers, by the chairperson of the board, president, or vice
35 president, and by the secretary or assistant secretary of the
36 constituent reciprocal insurer's attorney-in-fact. The certificate of
37 merger shall be signed by each other party to the merger by those
38 persons required or authorized to execute the certificate of merger
39 by the laws under which that party is organized, specifying for
40 that party the provision of law or other basis for the authority of

1 the signing persons. The certificate of merger shall set forth all of
2 the following:

3 (A) The name, place of incorporation or organization, and the
4 Secretary of State's file number, if any, of each party to the merger,
5 separately identifying the disappearing parties and the surviving
6 party.

7 (B) If the approval of the outstanding shares of a constituent
8 flexible purpose corporation was required by Chapter 10
9 (commencing with Section 3400), a statement setting forth the
10 total number of outstanding shares of each class entitled to vote
11 on the merger and that the principal terms of the agreement of
12 merger were approved by a vote of the number of shares of each
13 class entitled to vote and the percentage vote required of each
14 class.

15 (C) The future effective date or time, not more than 90 days
16 subsequent to the date of filing of the merger, if the merger is not
17 to be effective upon the filing of the certificate of merger with the
18 Secretary of State.

19 (D) A statement, by each party to the merger that is a domestic
20 corporation not organized under this division, a foreign corporation
21 or foreign other business entity, or an other business entity, of the
22 statutory or other basis under which that party is authorized by the
23 laws under which it is organized to effect the merger.

24 (E) Any other information required to be stated in the certificate
25 of merger by the laws under which each respective party to the
26 merger is organized, including, if a domestic limited liability
27 company is a party to the merger, subdivision (a) of Section 17552,
28 if a domestic partnership is a party to the merger, subdivision (b)
29 of Section 16915, and, if a domestic limited partnership is a party
30 to the merger, subdivision (a) of Section 15678.4.

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

32 Unless a future effective date or time is provided in a certificate
33 of merger, in which event the merger shall be effective at that
34 future effective date or time, a merger shall be effective upon the
35 filing of the certificate of merger with the Secretary of State and
36 the several parties thereto shall be one entity. The surviving other
37 business entity shall keep a copy of the agreement of merger at its
38 principal place of business which, for purposes of this subdivision,
39 shall be the office referred to in Section 17057 if a domestic limited
40 liability company, at the business address specified in paragraph

1 (5) of subdivision (a) of Section 17552 if a foreign limited liability
2 company, at the office referred to in subdivision (a) of Section
3 16403 if a domestic general partnership, at the business address
4 specified in subdivision (f) of Section 16911 if a foreign
5 partnership, at the office referred to in subdivision (a) of Section
6 15614 if a domestic limited partnership, or at the business address
7 specified in paragraph (5) of subdivision (a) of Section 15678.4 if
8 a foreign limited partnership. Upon the request of a holder of equity
9 securities of a party to the merger, a person with authority to do
10 so on behalf of the surviving other business entity shall promptly
11 deliver to that holder, a copy of the agreement of merger. A waiver
12 by that holder of the rights provided in the foregoing sentence shall
13 be unenforceable. If a domestic reciprocal insurer organized after
14 1974 to provide medical malpractice insurance is a party to the
15 merger the agreement of merger or certificate of merger shall not
16 be filed until there has been filed the certificate issued by the
17 Insurance Commissioner approving the merger in accordance with
18 Section 1555 of the Insurance Code.

19 (h) (1) A copy of an agreement of merger certified on or after
20 the effective date by an official having custody thereof has the
21 same force in evidence as the original and, except as against the
22 state, is conclusive evidence of the performance of all conditions
23 precedent to the merger, the existence on the effective date of the
24 surviving party to the merger, and the performance of the
25 conditions necessary to the adoption of any amendment to the
26 articles, if applicable, contained in the agreement of merger.

27 (2) For all purposes for a merger in which the surviving entity
28 is a domestic other business entity and the filing of a certificate of
29 merger is required by paragraph (2) of subdivision (g), a copy of
30 the certificate of merger duly certified by the Secretary of State is
31 conclusive evidence of the merger of the constituent corporations,
32 either by themselves or together with the other parties to the
33 merger, into the surviving other business entity.

34 (i) (1) Upon a merger pursuant to this section, the separate
35 existences of the disappearing parties to the merger cease and the
36 surviving party to the merger shall succeed, without other transfer,
37 to all the rights and property of each of the disappearing parties to
38 the merger and shall be subject to all the debts and liabilities of
39 each in the same manner as if the surviving party to the merger
40 had itself incurred them.

1 (2) All rights of creditors and all liens upon the property of each
2 of the constituent flexible purpose corporations and other parties
3 to the merger shall be preserved unimpaired, provided that those
4 liens upon property of a disappearing party shall be limited to the
5 property affected thereby immediately prior to the time the merger
6 is effective.

7 (3) Any action or proceeding pending by or against any
8 disappearing flexible purpose corporation or disappearing party
9 to the merger may be prosecuted to judgment, which shall bind
10 the surviving party, or the surviving party may be proceeded
11 against or substituted in its place.

12 (4) Nothing in this section shall be construed to affect the
13 liability a general partner of a disappearing limited partnership or
14 general partnership may have in connection with the debts and
15 liabilities of the disappearing limited partnership or general
16 partnership existing prior to the time the merger is effective.

17 (j) (1) The merger of domestic flexible purpose corporations
18 with foreign corporations or foreign other business entities in a
19 merger in which one or more other business entities is a party shall
20 comply with subdivision (a) and this subdivision.

21 (2) If the surviving party is a domestic flexible purpose
22 corporation or domestic other business entity, the merger
23 proceedings with respect to that party and any domestic
24 disappearing flexible purpose corporation shall conform to the
25 provisions of this section. If the surviving party is a foreign
26 corporation or foreign other business entity, then, subject to the
27 requirements of subdivision (c), Section 407, Chapter 10
28 (commencing with Section 3400), and Chapter 13 (commencing
29 with Section 1300) of Division 1, and, if applicable, corresponding
30 provisions of the Nonprofit Corporation Law (Division 2
31 (commencing with Section 5002)) or the Consumer Cooperative
32 Corporation Law (Part 2 (commencing with Section 12200) of
33 Division 3), with respect to any domestic constituent corporations,
34 Chapter 13 (commencing with Section 17600) of Title 2.5 with
35 respect to any domestic constituent limited liability companies,
36 Article 6 (commencing with Section 16601) of Chapter 5 of Title
37 2 with respect to any domestic constituent general partnerships,
38 and Article 7.6 (commencing with Section 15679.1) of Chapter 3
39 of Title 2 with respect to any domestic constituent limited
40 partnerships, the merger proceedings may be in accordance with

1 the laws of the state or place of incorporation or organization of
2 the surviving party.

3 (3) If the surviving party is a domestic flexible purpose
4 corporation or domestic other business entity, the certificate of
5 merger or the agreement of merger with attachments shall be filed
6 as provided in subdivision (g) and thereupon, subject to subdivision
7 (c) of Section 153 or paragraph (2) of subdivision (g), as applicable,
8 the merger shall be effective as to each domestic constituent
9 flexible purpose corporation and domestic constituent other
10 business entity.

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

31 (5) If the date of the filing in this state pursuant to this
32 subdivision is more than six months after the time of the
33 effectiveness in the foreign jurisdiction, or if the powers of a
34 domestic disappearing flexible purpose corporation are suspended
35 at the time of effectiveness in the foreign jurisdiction, the merger
36 shall be effective as to the domestic disappearing flexible purpose
37 corporation as of the date of filing in this state.

38 (6) In a merger described in paragraph (3) or (4), each foreign
39 disappearing flexible purpose corporation that is qualified for the
40 transaction of intrastate business shall by virtue of the filing

1 pursuant to this subdivision, subject to subdivision (c) of Section
2 2508, automatically surrender its right to transact intrastate business
3 in this state. The filing of the agreement of merger or certificate
4 of merger, as is applicable, pursuant to this subdivision, by a
5 disappearing foreign other business entity registered for the
6 transaction of intrastate business in this state shall, by virtue of
7 that filing, subject to subdivision (c) of Section 2508, automatically
8 cancel the registration for that foreign other business entity, without
9 the necessity of the filing of a certificate of cancellation.

10
11 CHAPTER 9. CONVERSIONS
12

13 3300. For purposes of this chapter, the following definitions
14 shall apply:

15 (a) “Converted flexible purpose corporation” means a flexible
16 purpose corporation that results from a conversion of an other
17 business entity or a foreign other business entity or a foreign
18 corporation pursuant to Section 1158.

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

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

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

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

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

32 (g) “Other business entity” has the meaning provided in Section
33 174.5.

34 3301. (a) A flexible purpose corporation may be converted
35 into a domestic other business entity pursuant to this chapter if,
36 pursuant to the proposed conversion, each of the following
37 conditions is met:

38 (1) Each share of the same class or series of the converting
39 flexible purpose corporation shall, unless all the shareholders of
40 the class or series consent, be treated equally with respect to any

1 cash, rights, securities, or other property to be received by, or any
2 obligations or restrictions to be imposed on, the holder of that
3 share.

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

8 (3) Nonredeemable common shares of the converting flexible
9 purpose corporation shall be converted only into nonredeemable
10 equity securities of the converted entity unless all of the
11 shareholders of the class consent.

12 (4) Paragraph (1) shall not restrict the ability of the shareholders
13 of a converting flexible purpose corporation to appoint one or more
14 managers, if the converted entity is a limited liability company,
15 or one or more general partners, if the converted entity is a limited
16 partnership, in the plan of conversion or in the converted entity's
17 governing documents.

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

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

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

26 3302. (a) A flexible purpose corporation that desires to convert
27 to a domestic other business entity shall approve a plan of
28 conversion. The plan of conversion shall state all of the following:

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

30 (2) The jurisdiction of the organization of the converted entity
31 and of the converting flexible purpose corporation and the name
32 of the converted entity after conversion.

33 (3) The manner of converting the shares of each of the
34 shareholders of the converting flexible purpose corporation into
35 securities of, or interests in, the converted entity.

36 (4) The provisions of the governing documents for the converted
37 entity, including the articles and bylaws, partnership agreement
38 or limited liability company articles of organization and operating
39 agreement, to which the holders of interests in the converted entity
40 are to be bound.

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

4 (b) The plan of conversion shall be approved by the board of
5 the converting flexible purpose corporation, and the principal terms
6 of the plan of the conversion shall be approved by at least
7 two-thirds of the outstanding shares of each class, or a greater vote
8 if required in the articles, regardless of whether that class is entitled
9 to vote thereon by the provisions of the articles of the converting
10 flexible purpose corporation. The approval of the outstanding
11 shares may be given before or after approval by the board.

12 (c) If the flexible purpose corporation is converting into a
13 general or limited partnership or into a limited liability company,
14 then in addition to the approval of the shareholders set forth in
15 subdivision (b), the plan of conversion shall be approved by each
16 shareholder who will become a general partner or manager, as
17 applicable, of the converted entity pursuant to the plan of
18 conversion unless the shareholders have dissenters' rights pursuant
19 to Section 3305 and Chapter 13 (commencing with Section 1300)
20 of Division 1.

21 (d) Upon the effectiveness of the conversion, all shareholders
22 of the converting flexible purpose corporation, except those that
23 exercise dissenters' rights as provided in Section 3305 and Chapter
24 13 (commencing with Section 1300) of Division 1, shall be deemed
25 parties to any agreement or agreements constituting the governing
26 documents for the converted entity adopted as part of the plan of
27 conversion, regardless of whether a shareholder has executed the
28 plan of conversion or those governing documents for the converted
29 entity. Any adoption of governing documents made pursuant
30 thereto shall be effective at the effective time or date of the
31 conversion.

32 (e) Notwithstanding its prior approval by the board and the
33 outstanding shares, or either of them, a plan of conversion may be
34 amended before the conversion takes effect if the amendment is
35 approved by the board and, if it changes any of the principal terms
36 of the plan of conversion, by the shareholders of the converting
37 flexible purpose corporation in the same manner and to the same
38 extent as was required for approval of the original plan of
39 conversion.

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

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

20 3303. (a) After the approval, as provided in Section 3302, of
21 a plan of conversion by the board and the outstanding shares of a
22 flexible purpose corporation converting into a domestic other
23 business entity, the converting flexible purpose corporation shall
24 cause the filing of all documents required by law to effect the
25 conversion and create the converted entity, which documents shall
26 include a certificate of conversion or a statement of conversion as
27 required by Section 3304, and the conversion shall thereupon be
28 effective.

29 (b) A copy of the statement of partnership authority, certificate
30 of limited partnership, or articles of organization complying with
31 Section 1156, duly certified by the Secretary of State on or after
32 the effective date, shall be conclusive evidence of the conversion
33 of the flexible purpose corporation.

34 3304. (a) To convert a flexible purpose corporation:

35 (1) If the flexible purpose corporation is converting into a
36 domestic limited partnership, a statement of conversion shall be
37 completed on the certificate of limited partnership for the converted
38 entity.

39 (2) If the flexible purpose corporation is converting into a
40 domestic partnership, a statement of conversion shall be completed

1 on the statement of partnership authority for the converted entity,
2 or if no statement of partnership authority is filed, then a certificate
3 of conversion shall be filed separately.

4 (3) If the flexible purpose corporation is converting into a
5 domestic limited liability company, a statement of conversion shall
6 be completed on the articles of organization for the converted
7 entity.

8 (4) If the flexible purpose corporation is converting into a
9 domestic corporation, a statement of conversion shall be completed
10 on the articles ~~of incorporation~~ for the converted entity.

11 (b) Any statement or certificate of conversion of a converting
12 flexible purpose corporation shall be executed and acknowledged
13 by those officers of the converting flexible purpose corporation as
14 would be required to sign an officers' certificate, and shall set forth
15 all of the following:

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

18 (2) A statement of the total number of outstanding shares of
19 each class entitled to vote on the conversion, that the principal
20 terms of the plan of conversion were approved by a vote of the
21 number of shares of each class which equaled or exceeded the vote
22 required under Section 3602, specifying each class entitled to vote
23 and the percentage vote required of each class.

24 (3) The name, form, and jurisdiction of organization of the
25 converted entity.

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

28 (d) The filing with the Secretary of State of a statement of
29 conversion on an organizational document or a certificate of
30 conversion as set forth in subdivision (a) shall have the effect of
31 the filing of a certificate of dissolution by the converting flexible
32 purpose corporation and no converting flexible purpose corporation
33 that has made the filing is required to file a certificate of election
34 under Section 1901 or a certificate of dissolution under Section
35 1905 as a result of that conversion.

36 (e) Upon the effectiveness of a conversion pursuant to this
37 chapter, a converted entity that is a domestic partnership, domestic
38 limited partnership or domestic limited liability company shall be
39 deemed to have assumed the liability of the converting flexible
40 purpose corporation to prepare and file or cause to be prepared

1 and filed all tax and information returns otherwise required of the
2 converting flexible purpose corporation under the Corporation Tax
3 Law (Part 11 (commencing with Section 23001) of Division 2 of
4 the Revenue and Taxation Code) *and* to pay any tax liability
5 determined to be due pursuant to that law.

6 3305. The shareholders of a converting flexible purpose
7 corporation shall have all of the rights under Chapter 13
8 (commencing with Section 1300) of Division 1 of the shareholders
9 of a corporation involved in a reorganization requiring the approval
10 of its outstanding shares, and the converting flexible purpose
11 corporation shall have all of the obligations under Chapter 13
12 (commencing with Section 1300) of Division 1 of a corporation
13 involved in the reorganization. Solely for purposes of applying the
14 provisions of Chapter 13 (commencing with Section 1300) of
15 Division 1, and not for purposes of this chapter, a conversion
16 pursuant to Section 3301 or 1158 shall be deemed to constitute a
17 reorganization.

18 3306. Notwithstanding any other provision of law, the Secretary
19 of State shall charge an entity a fee not to exceed one hundred fifty
20 dollars (\$150) for its conversion made under this chapter.

21

22 CHAPTER 10. REORGANIZATIONS

23

24 3400. A reorganization or a share exchange tender offer shall
25 be approved by the board of all of the following:

26 (a) Each constituent flexible purpose corporation in a merger
27 reorganization.

28 (b) The acquiring flexible purpose corporation in an exchange
29 reorganization.

30 (c) The acquiring flexible purpose corporation and the flexible
31 purpose corporation whose property and assets are acquired in a
32 sale-of-assets reorganization.

33 (d) The acquiring flexible purpose corporation in a share
34 exchange tender offer.

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

1 3401. (a) The principal terms of a reorganization shall be
2 approved by the outstanding shares of each class of each flexible
3 purpose corporation the approval of whose board is required under
4 Section 3400, 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 flexible purpose corporation or parent party shall be required if
8 the rights, preferences, privileges, and restrictions granted to or
9 imposed upon that class of shares remain unchanged, subject to
10 the provisions of subdivision (c). For the purpose of this
11 subdivision, two classes of common shares differing only as to
12 voting rights shall be considered as a single class of shares.

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

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

38 (d) Notwithstanding subdivisions (a) and (b), the principal terms
39 of a reorganization shall be approved by the outstanding shares of
40 any class of a flexible purpose corporation that is a party to a

1 merger or sale-of-assets reorganization if holders of shares of that
2 class receive shares of the surviving or acquiring flexible purpose
3 corporation or parent party having different rights, preferences,
4 privileges, or restrictions than those surrendered. Shares in a
5 foreign corporation received in exchange for shares in a domestic
6 flexible purpose corporation shall be deemed to have different
7 rights, preferences, privileges, and restrictions within the meaning
8 of the preceding sentence.

9 (e) Notwithstanding subdivisions (a) and (b), the principal terms
10 of a reorganization shall be approved by the affirmative vote of at
11 least two-thirds of each class, or a greater vote if required in the
12 articles, of the outstanding shares of any flexible purpose
13 corporation that is a close flexible purpose corporation if the
14 reorganization would result in the holders receiving shares or other
15 interests of a corporation or other business entity that is not a close
16 flexible purpose corporation. The articles may provide for a lesser
17 vote, but not less than a majority of the outstanding shares of each
18 class.

19 (f) Notwithstanding subdivisions (a) and (b), the principal terms
20 of a reorganization shall be approved by a vote of at least two-thirds
21 of the outstanding shares of each class, or a greater vote if required
22 in the articles, of a flexible purpose corporation that is a party to
23 a merger reorganization, regardless of whether that class is entitled
24 to vote thereon by the provisions of the articles, if holders of shares
25 of that class receive interests of a surviving other business entity
26 in the merger that is not a flexible purpose corporation, or receive
27 interests of a surviving flexible purpose corporation the articles of
28 incorporation of which specify a materially different purpose as
29 part of the reorganization.

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

37 (h) Any approval required by this section may be given before
38 or after the approval by the board. Notwithstanding approval
39 required by this section, the board may abandon the proposed

1 reorganization without further action by the shareholders, subject
2 to the contractual rights, if any, of third parties.

3
4 CHAPTER 11. RECORDS AND REPORTS
5

6 3500. (a) The board of a flexible purpose corporation shall
7 cause an annual report to be sent to the shareholders not later than
8 120 days after the close of the fiscal year. The annual report shall
9 contain (1) a balance sheet as of the end of that fiscal year and an
10 income statement and a statement of cashflows for that fiscal year,
11 accompanied by any report thereon of independent accountants
12 or, if there is no report, the certificate of an authorized officer of
13 the flexible purpose corporation that the statements were prepared
14 without audit from the books and records of the corporation, and
15 (2) the information required by subdivision (b).

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

31 (1) Identification and discussion of the short-term and long-term
32 objectives of the flexible purpose corporation relating to its special
33 purpose or purposes, and an identification and explanation of any
34 changes made in those special purpose objectives during the fiscal
35 year.

36 (2) Identification and discussion of the material actions taken
37 by the flexible purpose corporation during the fiscal year to achieve
38 its special purpose objectives, the impact of those actions, including
39 the causal relationships between the actions and the reported

1 outcomes, and the extent to which those actions achieved the
2 special purpose objectives for the fiscal year.

3 (3) Identification *and discussion* of material actions, including
4 the intended impact of those actions, that the flexible purpose
5 corporation expects to take in the short term and long term with
6 respect to achievement of its special purpose objectives.

7 (4) A description of the process for selecting, and an
8 identification and description of, the financial, operating, and other
9 measures used by the flexible purpose corporation during the fiscal
10 year for evaluating its performance in achieving its special purpose
11 objectives, including an explanation of why the flexible purpose
12 corporation selected those measures and identification and
13 discussion of the nature and rationale for any material changes in
14 those measures made during the fiscal year.

15 (5) Identification and discussion of any material operating and
16 capital expenditures incurred by the flexible purpose corporation
17 during the fiscal year in furtherance of achieving the special
18 purpose objectives, a good faith estimate of any additional material
19 operating or capital expenditures the flexible purpose corporation
20 expects to incur over the next three fiscal years in order to achieve
21 its special purpose objectives, and other material expenditures of
22 resources incurred by the flexible purpose corporation during the
23 fiscal year, including employee time, in furtherance of achieving
24 the special purpose objectives, including a discussion of the extent
25 to which that capital or use of other resources serves purposes
26 other than and in addition to furthering the achievement of the
27 special purpose objectives.

28 (c) Except as may otherwise be excused pursuant to subdivision
29 (h) of Section 1501.5, the reports specified in subdivisions (a) and
30 (b) shall be sent to the shareholders at least 15 days, or, if sent by
31 bulk mail, 35 days, prior to the annual meeting of shareholders to
32 be held during the next fiscal year. This requirement shall not limit
33 the requirement for holding an annual meeting as required by
34 Section 600.

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

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

24 3501. (a) The board shall cause a special purpose current report
25 to be sent to the shareholders not later than 45 days following the
26 occurrence of any one or more of the events specified in
27 subdivision (b), and, to the extent consistent with reasonable
28 confidentiality requirements, shall cause the special purpose current
29 report to be made publicly available by posting it on the flexible
30 purpose corporation's Internet Web site or providing it through
31 similar electronic means.

32 (b) Unless previously reported in the most recent annual report,
33 the special purpose current report shall identify and discuss, in
34 reasonable detail, any expenditure or group of related or planned
35 expenditures, excluding compensation of officers and directors,
36 made in furtherance of the special purpose objectives, whether an
37 operating expenditure, a capital expenditure, or some other
38 expenditure of corporate resources, including employee time or
39 otherwise, whether the expenditure was direct or indirect and
40 whether the expenditure was made to a person or entity outside of

1 the flexible purpose corporation or was made internally, where the
2 expenditure has or is likely to have a material adverse impact on
3 the flexible purpose corporation's results of operations or financial
4 condition for a quarterly or annual fiscal period.

5 3502. (a) Nothing contained in subdivision (b) of Section 3500
6 or Section 3501 shall require a detailing or itemization of every
7 relevant expenditure incurred or action taken by the corporation.
8 Management and the board shall use their discretion in providing
9 that information, including the reasonable detail that a reasonable
10 investor would consider important in understanding the
11 corporation's objectives, actions, impacts, measures, and results
12 of operations as they relate to the nature and achievement of the
13 special purpose objectives.

14 (b) Where best practices emerge for providing the information
15 required by subdivision (b) of Section 3500 or Section 3501, use
16 of those best practices shall create a presumption that the flexible
17 purpose corporation caused all the information required by those
18 provisions to be provided. This presumption can only be rebutted
19 by showing that the reporting contained either a misstatement of
20 a material fact or omission of a material fact.

21 (c) Notwithstanding subdivision (b) of Section 3500 and Section
22 3501, under no circumstances shall the flexible purpose corporation
23 be required to provide information that would result in a violation
24 of state or federal securities laws or other applicable laws.

25 (d) The flexible purpose corporation and its officers and
26 directors are expressly excluded from liability for any and all
27 forward looking statements supplied in the report required by
28 subdivision (b) of Section 3500 and Section 3501, so long as those
29 statements are supplied in good faith. Statements are deemed to
30 be forward looking as that term is defined in the federal securities
31 laws.

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

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

1 (g) The financial statements of any flexible purpose corporation
2 with fewer than 100 holders of record of its shares, determined as
3 provided in Section 605, required to be furnished by subdivision
4 (b) of Section 3500 and Section 3501 are not required to be
5 prepared in conformity with generally accepted accounting
6 principles if they reasonably set forth the assets and liabilities and
7 the income and expense of the flexible purpose corporation and
8 disclose the accounting basis used in their preparation.

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

24 (i) The requirements described in Section 3500 shall be satisfied
25 if a corporation with an outstanding class of securities registered
26 under Section 12 of the Securities Exchange Act of 1934 both
27 complies with Section 240.14a-16 of Title 17 of the Code of
28 Federal Regulations, as amended from time to time, with respect
29 to the obligation of a corporation to furnish an annual report to
30 shareholders pursuant to Section 240.14a-3(b) of Title 17 of the
31 Code of Federal Regulations, and includes the information required
32 by subdivision (b) of Section 3500 in the annual report.

33 (j) The requirements described in Section 3501 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 240.13a-13 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 a quarterly report to
39 shareholders, and includes the information required by subdivision
40 (b) of Section 3501 in the quarterly report.

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

6 (l) In any action or proceeding with respect to Section 3500 or
7 3501, if the court finds the failure of the flexible purpose
8 corporation to comply with the requirements of those sections to
9 have been without justification, the court may award an amount
10 sufficient to reimburse the shareholder for the reasonable expenses
11 incurred by the shareholder, including attorney's fees, in connection
12 with the action or proceeding.

13 (m) Subdivision (b) of Section 3500 and Section 3501 apply to
14 any domestic flexible purpose corporation and also to a foreign
15 flexible purpose corporation having its principal executive office
16 in this state or customarily holding meetings of its board in this
17 state.

18 (n) All reports and notices required by subdivision (b) of Section
19 3500 and Section 3501 shall be maintained by the flexible purpose
20 corporation, in an electronic form for a period of not less than 10
21 years.

22 3503. Any officers, directors, employees, or agents of a flexible
23 purpose corporation who do any of the following shall be liable
24 jointly and severally for all the damages resulting therefrom to the
25 flexible purpose corporation or any person injured by those actions
26 who relied on those actions or to both:

27 (a) Make, issue, deliver or publish any prospectus, report,
28 including the reports required pursuant to subdivision (b) of Section
29 3500 and Section 3501, circular, certificate, financial statement,
30 balance sheet, public notice, or document respecting the flexible
31 purpose corporation or its shares, assets, liabilities, capital,
32 dividends, business, earnings, or accounts which is false in any
33 material respect, knowing it to be false, or participate in the
34 making, issuance, delivery, or publication thereof with knowledge
35 that the same is false in a material respect.

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

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

1 (d) With respect to the reports required pursuant to subdivision
2 (b) of Section 3500 and Section 3501, omit to state any material
3 fact necessary in order to make the statements contained therein,
4 in light of the circumstances under which those statements were
5 made, not misleading in a material respect, knowing the omission
6 to be misleading.

7

8

9 **CORRECTIONS:** _____

10 **Text—Pages 11, 17 and 18.**

11 _____

O