

AMENDED IN ASSEMBLY AUGUST 22, 2011

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~~ 158, 201, 1100, 1113, 1152, 1155, ~~and 1201~~ 1201, 5122, 7122, and 9122 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:~~ corporations.

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, which may include, but are not 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.

This bill would incorporate additional changes to Section 1113 of the Corporations Code proposed by AB 1211, to be operative only if AB 1211 and this bill are both chaptered and become effective on or before January 1, 2012, and this bill is chaptered last.

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

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

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

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

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

SEC. 3. *Section 158 of the Corporations Code is amended to read:*

158. (a) “Close corporation” means a corporation, *including a close flexible purpose corporation*, whose articles contain, in addition to the provisions required by Section 202, a provision that all of the corporation’s issued shares of all classes shall be held of record by not more than a specified number of persons, not exceeding 35, and a statement “This corporation is a close corporation.”

(b) The special provisions referred to in subdivision (a) may be included in the articles by amendment, but if such amendment is adopted after the issuance of shares only by the affirmative vote of all of the issued and outstanding shares of all classes.

(c) The special provisions referred to in subdivision (a) may be deleted from the articles by amendment, or the number of shareholders specified may be changed by amendment, but if such amendment is adopted after the issuance of shares only by the affirmative vote of at least two-thirds of each class of the outstanding shares; provided, however, that the articles may provide for a lesser vote, but not less than a majority of the outstanding shares, or may deny a vote to any class, or both.

(d) In determining the number of shareholders for the purposes of the provision in the articles authorized by this section, a husband

1 and wife and the personal representative of either shall be counted
2 as one regardless of how shares may be held by either or both of
3 them, a trust or personal representative of a decedent holding shares
4 shall be counted as one regardless of the number of trustees or
5 beneficiaries and a partnership or corporation or business
6 association holding shares shall be counted as one (except that any
7 such trust or entity the primary purpose of which was the
8 acquisition or voting of the shares shall be counted according to
9 the number of beneficial interests therein).

10 (e) A corporation shall cease to be a close corporation upon the
11 filing of an amendment to its articles pursuant to subdivision (c)
12 or if it shall have more than the maximum number of holders of
13 record of its shares specified in its articles as a result of an inter
14 vivos transfer of shares which is not void under subdivision (d) of
15 Section 418, the transfer of shares on distribution by will or
16 pursuant to the laws of descent and distribution, the dissolution of
17 a partnership or corporation or business association or the
18 termination of a trust which holds shares, by court decree upon
19 dissolution of a marriage or otherwise by operation of law.
20 Promptly upon acquiring more than the specified number of holders
21 of record of its shares, a close corporation shall execute and file
22 an amendment to its articles deleting the special provisions referred
23 to in subdivision (a) and deleting any other provisions not
24 permissible for a corporation which is not a close corporation,
25 which amendment shall be promptly approved and filed by the
26 board and need not be approved by the outstanding shares.

27 (f) Nothing contained in this section shall invalidate any
28 agreement among the shareholders to vote for the deletion from
29 the articles of the special provisions referred to in subdivision (a)
30 upon the lapse of a specified period of time or upon the occurrence
31 of a certain event or condition or otherwise.

32 (g) The following sections contain specific references to close
33 corporations: *Sections* 186, 202, 204, 300, 418, 421, 1111, 1201,
34 1800 and 1904.

35 ~~SEC. 3.~~

36 *SEC. 4.* Section 171.08 is added to the Corporations Code, to
37 read:

38 171.08. "Flexible purpose corporation" means any flexible
39 purpose corporation formed under Division 1.5 (commencing with
40 Section 2500).

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

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

SEC. 5. *Section 201 of the Corporations Code is amended to read:*

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

(b) The Secretary of State shall not file articles which set forth a name which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive, the name of a domestic corporation, the name of a foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, a name which a foreign corporation has assumed under subdivision (b) of Section 2106, a name which will become the record name of a domestic or foreign corporation upon the effective date of a filed corporate instrument where there is a delayed effective date pursuant to subdivision (c) of Section 110 or subdivision (c) of Section 5008, or a name which is under reservation for another corporation pursuant to this section, ~~Section 5122, Section 7122, or Section 9122 title~~, except that a corporation may adopt a name that is substantially the same as an existing

1 domestic corporation or foreign corporation which is authorized
2 to transact intrastate business or has registered its name pursuant
3 to Section 2101, upon proof of consent by such domestic or foreign
4 corporation and a finding by the Secretary of State that under the
5 circumstances the public is not likely to be misled.

6 The use by a corporation of a name in violation of this section
7 may be enjoined notwithstanding the filing of its articles by the
8 Secretary of State.

9 (c) Any applicant may, upon payment of the fee prescribed
10 therefor in the Government Code, obtain from the Secretary of
11 State a certificate of reservation of any name not prohibited by
12 subdivision (b), and upon the issuance of the certificate the name
13 stated therein shall be reserved for a period of 60 days. The
14 Secretary of State shall not, however, issue certificates reserving
15 the same name for two or more consecutive 60-day periods to the
16 same applicant or for the use or benefit of the same person,
17 partnership, firm or corporation; nor shall consecutive reservations
18 be made by or for the use or benefit of the same person, partnership,
19 firm or corporation of names so similar as to fall within the
20 prohibitions of subdivision (b).

21 ~~SEC. 5.~~

22 *SEC. 6.* Section 1100 of the Corporations Code is amended to
23 read:

24 1100. Any two or more corporations may be merged into one
25 of those corporations. A corporation may merge with one or more
26 domestic corporations (Section 167), flexible purpose corporations
27 (Section 171.08), foreign corporations (Section 171), or other
28 business entities (Section 174.5) pursuant to this chapter. Mergers
29 in which a foreign corporation but no other business entity is a
30 constituent party are governed by Section 1108, mergers in which
31 a flexible purpose corporation but no other business entity is a
32 constituent party are governed by Section 1112.5, and mergers in
33 which an other business entity is a constituent party are governed
34 by Section 1113.

35 ~~SEC. 6.~~

36 *SEC. 7.* Section 1112.5 is added to the Corporations Code, to
37 read:

38 1112.5. If a disappearing corporation in a merger is a
39 corporation governed by this division and the surviving corporation
40 is a flexible purpose corporation, both of the following shall apply:

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

6 (b) The shareholders of the disappearing corporation shall have
7 all of the rights under Chapter 13 (commencing with Section 1300)
8 of the shareholders of a corporation involved in a reorganization
9 requiring the approval of its outstanding shares (Section 152), and
10 the disappearing corporation shall have all of the obligations under
11 Chapter 13 (commencing with Section 1300) of a corporation
12 involved in the reorganization.

13 ~~SEC. 7.~~

14 *SEC. 8.* Section 1113 of the Corporations Code is amended to
15 read:

16 1113. (a) Any one or more corporations may merge with one
17 or more other business entities (Section 174.5). One or more
18 domestic corporations (Section 167) not organized under this
19 division and one or more foreign corporations (Section 171) may
20 be parties to the merger. Notwithstanding the provisions of this
21 section, the merger of any number of corporations with any number
22 of other business entities may be effected only if:

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

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

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

33 (b) Each corporation and each other party that desires to merge
34 shall approve, and shall be a party to, an agreement of merger.
35 Other persons, including a parent party (Section 1200), may be
36 parties to the agreement of merger. The board of each corporation
37 that desires to merge and, if required, the shareholders shall
38 approve the agreement of merger. The agreement of merger shall
39 be approved on behalf of each party by those persons required to

1 approve the merger by the laws under which it is organized. The
2 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 and 907,
7 to the articles of the surviving corporation, if applicable, to be
8 effected by the merger. If any amendment changes the name of
9 the surviving corporation, if applicable, the new name may be,
10 subject to subdivision (b) of Section 201, the same as or similar
11 to the name of a disappearing party to the merger.

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

22 (5) Any other details or provisions required by the laws under
23 which any party to the merger is organized, including, if a public
24 benefit corporation or a religious corporation is a party to the
25 merger, Section 6019.1, or, if a mutual benefit corporation is a
26 party to the merger, Section 8019.1, or, if a consumer cooperative
27 corporation is a party to the merger, Section 12540.1, or, if a
28 domestic limited partnership is a party to the merger, Section
29 ~~15678.2~~ 15911.12, or, if a domestic partnership is a party to the
30 merger, Section 16911, or, if a domestic limited liability company
31 is a party to the merger, Section 17551.

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

36 (c) Each share of the same class or series of any constituent
37 corporation (other than the cancellation of shares held by a party
38 to the merger or its parent, or a wholly owned subsidiary of either,
39 in another constituent corporation) shall, unless all shareholders
40 of the class or series consent and except as provided in Section

407, be treated equally with respect to any distribution of cash, rights, securities, or other property. Notwithstanding paragraph (4) of subdivision (b), the unredeemable common shares of a constituent corporation may be converted only into unredeemable common shares of a surviving corporation or a parent party (Section 1200) or unredeemable equity securities of a surviving party other than a corporation if another party to the merger or its parent owns, directly or indirectly, prior to the merger shares of that corporation representing more than 50 percent of the voting power of that corporation, unless all of the shareholders of the class consent and except as provided in Section 407.

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

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

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

(g) (1) If the surviving party is a corporation or a foreign corporation, or if a flexible purpose corporation (Section 171.08), a public benefit corporation (Section 5060), a mutual benefit corporation (Section 5059), a religious corporation (Section 5061), or a corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12

1 (commencing with Section 1200) and by the other parties to the
2 merger, the surviving party shall file a copy of the agreement of
3 merger with an officers' certificate of each constituent domestic
4 and foreign corporation attached stating the total number of
5 outstanding shares or membership interests of each class entitled
6 to vote on the merger (and identifying any other person or persons
7 whose approval is required), that the agreement of merger in the
8 form attached or its principal terms, as required, were approved
9 by that corporation by a vote of a number of shares or membership
10 interests of each class that equaled or exceeded the vote required,
11 specifying each class entitled to vote and the percentage vote
12 required of each class and, if applicable, by that other person or
13 persons whose approval is required, or that the merger agreement
14 was entitled to be and was approved by the board alone (as
15 provided in Section 1201, in the case of corporations subject to
16 that section). If equity securities of a parent party (Section 1200)
17 are to be issued in the merger, the officers' certificate of that
18 controlled party shall state either that no vote of the shareholders
19 of the parent party was required or that the required vote was
20 obtained. In lieu of an officers' certificate, a certificate of merger,
21 on a form prescribed by the Secretary of State, shall be filed for
22 each constituent other business entity. The certificate of merger
23 shall be executed and acknowledged by each domestic constituent
24 limited liability company by all managers of the limited liability
25 company (unless a lesser number is specified in its articles of
26 organization or operating agreement) and by each domestic
27 constituent limited partnership by all general partners (unless a
28 lesser number is provided in its certificate of limited partnership
29 or partnership agreement) and by each domestic constituent general
30 partnership by two partners (unless a lesser number is provided in
31 its partnership agreement) and by each foreign constituent limited
32 liability company by one or more managers and by each foreign
33 constituent general partnership or foreign constituent limited
34 partnership by one or more general partners, and by each
35 constituent reciprocal insurer by the chairperson of the board,
36 president, or vice president, and by the secretary or assistant
37 secretary, or, if a constituent reciprocal insurer has not appointed
38 those officers, by the chairperson of the board, president, or vice
39 president, and by the secretary or assistant secretary of the
40 constituent reciprocal insurer's attorney-in-fact, and by each other

1 party to the merger by those persons required or authorized to
2 execute the certificate of merger by the laws under which that party
3 is organized, specifying for that party the provision of law or other
4 basis for the authority of the signing persons. The certificate of
5 merger shall set forth, if a vote of the shareholders, members,
6 partners, or other holders of interests of the constituent other
7 business entity was required, a statement setting forth the total
8 number of outstanding interests of each class entitled to vote on
9 the merger and that the agreement of merger in the form attached
10 or its principal terms, as required, were approved by a vote of the
11 number of interests of each class that equaled or exceeded the vote
12 required, specifying each class entitled to vote and the percentage
13 vote required of each class, and any other information required to
14 be set forth under the laws under which the constituent other
15 business entity is organized, including, if a domestic limited
16 partnership is a party to the merger, subdivision (a) of Section
17 ~~15678.4~~ 15911.14, if a domestic partnership is a party to the
18 merger, subdivision (b) of Section 16915, and, if a domestic limited
19 liability company is a party to the merger, subdivision (a) of
20 Section 17552. The certificate of merger for each constituent
21 foreign other business entity, if any, shall also set forth the statutory
22 or other basis under which that foreign other business entity is
23 authorized by the laws under which it is organized to effect the
24 merger. The merger and any amendment of the articles of the
25 surviving corporation, if applicable, contained in the agreement
26 of merger shall be effective upon filing of the agreement of merger
27 with an officer's certificate of each constituent domestic and
28 foreign corporation and a certificate of merger for each constituent
29 other business entity, subject to subdivision (c) of Section 110 and
30 subject to the provisions of subdivision (j), and the several parties
31 thereto shall be one entity. If a domestic reciprocal insurer
32 organized after 1974 to provide medical malpractice insurance is
33 a party to the merger, the agreement of merger or certificate of
34 merger shall not be filed until there has been filed the certificate
35 issued by the Insurance Commissioner approving the merger
36 pursuant to Section 1555 of the Insurance Code. The Secretary of
37 State may certify a copy of the agreement of merger separate from
38 the officers' certificates and certificates of merger attached thereto.
39 (2) If the surviving entity is an other business entity, and no
40 public benefit corporation (Section 5060), mutual benefit

1 corporation (Section 5059), religious corporation (Section 5061),
2 or corporation organized under the Consumer Cooperative
3 Corporation Law (Section 12200) is a party to the merger, after
4 required approvals of the merger by each constituent corporation
5 through approval of the board (Section 151) and any approval of
6 the outstanding shares (Section 152) required by Chapter 12
7 (commencing with Section 1200) and by the other parties to the
8 merger, the parties to the merger shall file a certificate of merger
9 in the office of, and on a form prescribed by, the Secretary of State.
10 The certificate of merger shall be executed and acknowledged by
11 each constituent domestic and foreign corporation by its
12 chairperson of the board, president or a vice president and also by
13 its secretary or an assistant secretary and by each domestic
14 constituent limited liability company by all managers of the limited
15 liability company (unless a lesser number is specified in its articles
16 of organization or operating agreement) and by each domestic
17 constituent limited partnership by all general partners (unless a
18 lesser number is provided in its certificate of limited partnership
19 or partnership agreement) and by each domestic constituent general
20 partnership by two partners (unless a lesser number is provided in
21 its partnership agreement) and by each foreign constituent limited
22 liability company by one or more managers and by each foreign
23 constituent general partnership or foreign constituent limited
24 partnership by one or more general partners, and by each
25 constituent reciprocal insurer by the chairperson of the board,
26 president, or vice president, and by the secretary or assistant
27 secretary, or, if a constituent reciprocal insurer has not appointed
28 those officers, by the chairperson of the board, president, or vice
29 president, and by the secretary or assistant secretary of the
30 constituent reciprocal insurer's attorney-in-fact. The certificate of
31 merger shall be signed by each other party to the merger by those
32 persons required or authorized to execute the certificate of merger
33 by the laws under which that party is organized, specifying for
34 that party the provision of law or other basis for the authority of
35 the signing persons. The certificate of merger shall set forth all of
36 the following:

37 (A) The name, place of incorporation or organization, and the
38 Secretary of State's file number, if any, of each party to the merger,
39 separately identifying the disappearing parties and the surviving
40 party.

1 (B) If the approval of the outstanding shares of a constituent
2 corporation was required by Chapter 12 (commencing with Section
3 1200), a statement setting forth the total number of outstanding
4 shares of each class entitled to vote on the merger and that the
5 principal terms of the agreement of merger were approved by a
6 vote of the number of shares of each class entitled to vote and the
7 percentage vote required of each class.

8 (C) The future effective date or time, not more than 90 days
9 subsequent to the date of filing of the merger, if the merger is not
10 to be effective upon the filing of the certificate of merger with the
11 office of the Secretary of State.

12 (D) A statement, by each party to the merger which is a domestic
13 corporation not organized under this division, a foreign corporation,
14 or an other business entity, of the statutory or other basis under
15 which that party is authorized by the laws under which it is
16 organized to effect the merger.

17 (E) Any other information required to be stated in the certificate
18 of merger by the laws under which each party to the merger is
19 organized, including, if a domestic limited liability company is a
20 party to the merger, subdivision (a) of Section 17552, if a domestic
21 partnership is a party to the merger, subdivision (b) of Section
22 16915, and, if a domestic limited partnership is a party to the
23 merger, subdivision (a) of Section ~~15678.4~~ 15911.14.

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

25 Unless a future effective date or time is provided in a certificate
26 of merger, in which event the merger shall be effective at that
27 future effective date or time, a merger shall be effective upon the
28 filing of the certificate of merger in the office of the Secretary of
29 State and the several parties thereto shall be one entity. The
30 surviving other business entity shall keep a copy of the agreement
31 of merger at its principal place of business which, for purposes of
32 this subdivision, shall be the office referred to in Section 17057 if
33 a domestic limited liability company, at the business address
34 specified in paragraph (5) of subdivision (a) of Section 17552 if
35 a foreign limited liability company, at the office referred to in
36 subdivision (a) of Section 16403 if a domestic general partnership,
37 at the business address specified in subdivision (f) of Section 16911
38 if a foreign partnership, at the office referred to in subdivision (a)
39 of Section ~~15614~~ 15901.14 if a domestic limited partnership, or
40 at the business address specified in paragraph ~~(5)~~ (3) of subdivision

1 (a) of Section ~~15678.4~~ 15909.02 if a foreign limited partnership.
2 Upon the request of a holder of equity securities of a party to the
3 merger, a person with authority to do so on behalf of the surviving
4 other business entity shall promptly deliver to that holder, a copy
5 of the agreement of merger. A waiver by that holder of the rights
6 provided in the foregoing sentence shall be unenforceable. If a
7 domestic reciprocal insurer organized after 1974 to provide medical
8 malpractice insurance is a party to the merger the agreement of
9 merger or certificate of merger shall not be filed until there has
10 been filed the certificate issued by the Insurance Commissioner
11 approving the merger in accordance with Section 1555 of the
12 Insurance Code.

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

21 (2) For all purposes for a merger in which the surviving entity
22 is a domestic other business entity and the filing of a certificate of
23 merger is required by paragraph (2) of subdivision (g), a copy of
24 the certificate of merger duly certified by the Secretary of State is
25 conclusive evidence of the merger of the constituent corporations,
26 either by themselves or together with the other parties to the
27 merger, into the surviving other business entity.

28 (i) (1) Upon a merger pursuant to this section, the separate
29 existences of the disappearing parties to the merger cease and the
30 surviving party to the merger shall succeed, without other transfer,
31 to all the rights and property of each of the disappearing parties to
32 the merger and shall be subject to all the debts and liabilities of
33 each in the same manner as if the surviving party to the merger
34 had itself incurred them.

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

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

(4) If a limited partnership or a general partnership is a party to the merger, nothing in this section is intended to affect the liability a general partner of a disappearing limited partnership or general partnership may have in connection with the debts and liabilities of the disappearing limited partnership or general partnership existing prior to the time the merger is effective.

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

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

(3) If the surviving party is a domestic corporation or domestic other business entity, the certificate of merger or the agreement of merger with attachments shall be filed as provided in subdivision (g) and thereupon, subject to subdivision (c) of Section 110 or paragraph (2) of subdivision (g), as is applicable, the merger shall

1 be effective as to each domestic constituent corporation and
2 domestic constituent other business entity.

3 (4) If the surviving party is a foreign corporation or foreign
4 other business entity, the merger shall become effective in
5 accordance with the law of the jurisdiction in which the surviving
6 party is organized, but, except as provided in paragraph (5), the
7 merger shall be effective as to any domestic disappearing
8 corporation as of the time of effectiveness in the foreign jurisdiction
9 upon the filing in this state of a copy of the agreement of merger
10 with an officers' certificate of each constituent foreign and
11 domestic corporation and a certificate of merger of each constituent
12 other business entity attached, which officers' certificates and
13 certificates of merger shall conform to the requirements of
14 paragraph (1) of subdivision (g). If one or more domestic other
15 business entities is a disappearing party in a merger pursuant to
16 this subdivision in which a foreign other business entity is the
17 surviving entity, a certificate of merger required by the laws under
18 which that domestic other business entity is organized, including
19 subdivision (a) of Section ~~15678.4~~ 15911.14, subdivision (b) of
20 Section 16915, or subdivision (a) of Section 17552, as is applicable,
21 shall also be filed at the same time as the filing of the agreement
22 of merger.

23 (5) If the date of the filing in this state pursuant to this
24 subdivision is more than six months after the time of the
25 effectiveness in the foreign jurisdiction, or if the powers of a
26 domestic disappearing corporation are suspended at the time of
27 effectiveness in the foreign jurisdiction, the merger shall be
28 effective as to the domestic disappearing corporation as of the date
29 of filing in this state.

30 (6) In a merger described in paragraph (3) or (4), each foreign
31 disappearing corporation that is qualified for the transaction of
32 intrastate business shall by virtue of the filing pursuant to this
33 subdivision, subject to subdivision (c) of Section 110, automatically
34 surrender its right to transact intrastate business in this state. The
35 filing of the agreement of merger or certificate of merger, as is
36 applicable, pursuant to this subdivision, by a disappearing foreign
37 other business entity registered for the transaction of intrastate
38 business in this state shall, by virtue of that filing, subject to
39 subdivision (c) of Section 110, automatically cancels the

1 registration for that foreign other business entity, without the
2 necessity of the filing of a certificate of cancellation.

3 *SEC. 7.5. Section 1113 of the Corporations Code is amended*
4 *to read:*

5 1113. (a) Any one or more corporations may merge with one
6 or more other business entities (Section 174.5). One or more
7 domestic corporations (Section 167) not organized under this
8 division and one or more foreign corporations (Section 171) may
9 be parties to the merger. Notwithstanding the provisions of this
10 section, the merger of any number of corporations with any number
11 of other business entities may be effected only if:

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

16 (2) In a merger in which a foreign corporation is a party, it is
17 authorized by the laws under which it is organized to effect the
18 merger.

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

22 (b) Each corporation and each other party ~~which~~ *that* desires to
23 merge shall approve, and shall be a party to, an agreement of
24 merger. Other persons, including a parent party (Section 1200),
25 may be parties to the agreement of merger. The board of each
26 corporation ~~which~~ *that* desires to merge; and, if required, the
27 shareholders; shall approve the agreement of merger. The
28 agreement of merger shall be approved on behalf of each party by
29 those persons required to approve the merger by the laws under
30 which it is organized. The agreement of merger shall state:

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

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

34 (3) The amendments, if any, subject to Sections 900 and 907,
35 to the articles of the surviving corporation, if applicable, to be
36 effected by the merger. If any amendment changes the name of
37 the surviving corporation, if applicable, the new name may be,
38 subject to subdivision (b) of Section 201, the same as or similar
39 to the name of a disappearing party to the merger.

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

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a public benefit corporation or a religious corporation is a party to the merger, Section 6019.1, or, if a mutual benefit corporation is a party to the merger, Section 8019.1, or, if a consumer cooperative corporation is a party to the merger, Section 12540.1, *or if an unincorporated association is a party to the merger, Section 18370*, or, if a domestic limited partnership is a party to the merger, ~~Section 15678.2 or 15911.12~~, 15678.2, or, if a domestic partnership is a party to the merger, Section 16911, or, if a domestic limited liability company is a party to the merger, Section 17551.

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

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

1 power of that corporation, unless all of the shareholders of the
2 class consent and except as provided in Section 407.

3 (d) Notwithstanding its prior approval, an agreement of merger
4 may be amended prior to the filing of the agreement of merger or
5 the certificate of merger, as is applicable, if the amendment is
6 approved by the board of each constituent corporation and, if the
7 amendment changes any of the principal terms of the agreement,
8 by the outstanding shares (Section 152), if required by Chapter 12
9 (commencing with Section 1200), in the same manner as the
10 original agreement of merger. If the agreement of merger as so
11 amended and approved is also approved by each of the other parties
12 to the agreement of merger, the agreement of merger as so amended
13 shall then constitute the agreement of merger.

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

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

23 (g) (1) If the surviving party is a corporation or a foreign
24 corporation, or if a *flexible purpose corporation* (Section 171.08),
25 a public benefit corporation (Section 5060), a mutual benefit
26 corporation (Section 5059), a religious corporation (Section 5061),
27 or a 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 surviving party shall file a copy of the agreement of
34 merger with an officers' certificate of each constituent domestic
35 and foreign corporation attached stating the total number of
36 outstanding shares or membership interests of each class entitled
37 to vote on the merger (and identifying any other person or persons
38 whose approval is required), that the agreement of merger in the
39 form attached or its principal terms, as required, were approved
40 by that corporation by a vote of a number of shares or membership

1 interests of each class that equaled or exceeded the vote required,
2 specifying each class entitled to vote and the percentage vote
3 required of each class and, if applicable, by that other person or
4 persons whose approval is required, or that the merger agreement
5 was entitled to be and was approved by the board alone (as
6 provided in Section 1201, in the case of corporations subject to
7 that section). If equity securities of a parent party (Section 1200)
8 are to be issued in the merger, the officers' certificate of that
9 controlled party shall state either that no vote of the shareholders
10 of the parent party was required or that the required vote was
11 obtained. In lieu of an officers' certificate, a certificate of merger,
12 on a form prescribed by the Secretary of State, shall be filed for
13 each constituent other business entity. The certificate of merger
14 shall be executed and acknowledged by each domestic constituent
15 limited liability company by all managers of the limited liability
16 company (unless a lesser number is specified in its articles of
17 organization or operating agreement) and by each domestic
18 constituent limited partnership by all general partners (unless a
19 lesser number is provided in its certificate of limited partnership
20 or partnership agreement) and by each domestic constituent general
21 partnership by two partners (unless a lesser number is provided in
22 its partnership agreement) and by each foreign constituent limited
23 liability company by one or more managers and by each foreign
24 constituent general partnership or foreign constituent limited
25 partnership by one or more general partners, and by each
26 constituent reciprocal insurer by the chairperson of the board,
27 president, or vice president, and by the secretary or assistant
28 secretary, or, if a constituent reciprocal insurer has not appointed
29 those officers, by the chairperson of the board, president, or vice
30 president, and by the secretary or assistant secretary of the
31 constituent reciprocal insurer's attorney-in-fact, and by each other
32 party to the merger by those persons required or authorized to
33 execute the certificate of merger by the laws under which that party
34 is organized, specifying for that party the provision of law or other
35 basis for the authority of the signing persons. The certificate of
36 merger shall set forth, if a vote of the shareholders, members,
37 partners, or other holders of interests of the constituent other
38 business entity was required, a statement setting forth the total
39 number of outstanding interests of each class entitled to vote on
40 the merger and that the agreement of merger in the form attached

1 or its principal terms, as required, were approved by a vote of the
2 number of interests of each class that equaled or exceeded the vote
3 required, specifying each class entitled to vote and the percentage
4 vote required of each class, and any other information required to
5 be set forth under the laws under which the constituent other
6 business entity is organized, including, if a domestic limited
7 partnership is a party to the merger, subdivision (a) of Section
8 ~~15678.4 or subdivision (a) of Section 15911.14~~, 15678.4, if a
9 domestic partnership is a party to the merger, subdivision (b) of
10 Section 16915, and, if a domestic limited liability company is a
11 party to the merger, subdivision (a) of Section 17552. The
12 certificate of merger for each constituent foreign other business
13 entity, if any, shall also set forth the statutory or other basis under
14 which that foreign other business entity is authorized by the laws
15 under which it is organized to effect the merger. The merger and
16 any amendment of the articles of the surviving corporation, if
17 applicable, contained in the agreement of merger shall be effective
18 upon filing of the agreement of merger with an officer's certificate
19 of each constituent domestic and foreign corporation and a
20 certificate of merger for each constituent other business entity,
21 subject to subdivision (c) of Section 110 and subject to the
22 provisions of subdivision (j), and the several parties thereto shall
23 be one entity. If a domestic reciprocal insurer organized after 1974
24 to provide medical malpractice insurance is a party to the merger,
25 the agreement of merger or certificate of merger shall not be filed
26 until there has been filed the certificate issued by the Insurance
27 Commissioner approving the merger pursuant to Section 1555 of
28 the Insurance Code. The Secretary of State may certify a copy of
29 the agreement of merger separate from the officers' certificates
30 and certificates of merger attached thereto.

31 (2) If the surviving entity is an other business entity, and no
32 public benefit corporation (Section 5060), mutual benefit
33 corporation (Section 5059), religious corporation (Section 5061),
34 or corporation organized under the Consumer Cooperative
35 Corporation Law (Section 12200) is a party to the merger, after
36 required approvals of the merger by each constituent corporation
37 through approval of the board (Section 151) and any approval of
38 the outstanding shares (Section 152) required by Chapter 12
39 (commencing with Section 1200) and by the other parties to the
40 merger, the parties to the merger shall file a certificate of merger

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

29 (A) The name, place of incorporation or organization, and the
30 Secretary of State's file number, if any, of each party to the merger,
31 separately identifying the disappearing parties and the surviving
32 party.

33 (B) If the approval of the outstanding shares of a constituent
34 corporation was required by Chapter 12 (commencing with Section
35 1200), a statement setting forth the total number of outstanding
36 shares of each class entitled to vote on the merger and that the
37 principal terms of the agreement of merger were approved by a
38 vote of the number of shares of each class entitled to vote and the
39 percentage vote required of each class.

1 (C) The future effective date or time, not more than 90 days
2 subsequent to the date of filing of the merger, if the merger is not
3 to be effective upon the filing of the certificate of merger with the
4 office of the Secretary of State.

5 (D) A statement, by each party to the merger which is a domestic
6 corporation not organized under this division, a foreign corporation,
7 or an other business entity, of the statutory or other basis under
8 which that party is authorized by the laws under which it is
9 organized to effect the merger.

10 (E) Any other information required to be stated in the certificate
11 of merger by the laws under which each party to the merger is
12 organized, including, if a domestic limited liability company is a
13 party to the merger, subdivision (a) of Section 17552, if a domestic
14 partnership is a party to the merger, subdivision (b) of Section
15 16915, and, if a domestic limited partnership is a party to the
16 merger, subdivision (a) of Section ~~15678.4 or subdivision (a) of~~
17 ~~Section 15911.14~~ 15678.4.

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

19 Unless a future effective date or time is provided in a certificate
20 of merger, in which event the merger shall be effective at that
21 future effective date or time, a merger shall be effective upon the
22 filing of the certificate of merger in the office of the Secretary of
23 State and the several parties thereto shall be one entity. The
24 surviving other business entity shall keep a copy of the agreement
25 of merger at its principal place of business which, for purposes of
26 this subdivision, shall be the office referred to in Section 17057 if
27 a domestic limited liability company, at the business address
28 specified in paragraph (5) of subdivision (a) of Section 17552 if
29 a foreign limited liability company, at the office referred to in
30 subdivision (a) of Section 16403 if a domestic general partnership,
31 at the business address specified in subdivision (f) of Section 16911
32 if a foreign partnership, at the office referred to in subdivision (a)
33 of Section 15614 ~~or in subdivision (a) of Section 15901.14~~ if a
34 domestic limited partnership, or at the business address specified
35 in paragraph (5) of subdivision (a) of Section 15678.4 ~~or paragraph~~
36 ~~(3) of subdivision (a) of Section 15909.02~~ if a foreign limited
37 partnership. Upon the request of a holder of equity securities of a
38 party to the merger, a person with authority to do so on behalf of
39 the surviving other business entity shall promptly deliver to that
40 holder, a copy of the agreement of merger. A waiver by that holder

1 of the rights provided in the foregoing sentence shall be
2 unenforceable. If a domestic reciprocal insurer organized after
3 1974 to provide medical malpractice insurance is a party to the
4 merger the agreement of merger or certificate of merger shall not
5 be filed until there has been filed the certificate issued by the
6 Insurance Commissioner approving the merger in accordance with
7 Section 1555 of the Insurance Code.

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

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

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

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

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

(4) If a limited partnership or a general partnership is a party to the merger, nothing in this section is intended to affect the liability a general partner of a disappearing limited partnership or general partnership may have in connection with the debts and liabilities of the disappearing limited partnership or general partnership existing prior to the time the merger is effective.

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

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

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

(4) If the surviving party is a foreign corporation or foreign other business entity, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving

1 party is organized, but, except as provided in paragraph (5), the
2 merger shall be effective as to any domestic disappearing
3 corporation as of the time of effectiveness in the foreign jurisdiction
4 upon the filing in this state of a copy of the agreement of merger
5 with an officers' certificate of each constituent foreign and
6 domestic corporation and a certificate of merger of each constituent
7 other business entity attached, which officers' certificates and
8 certificates of merger shall conform to the requirements of
9 paragraph (1) of subdivision (g). If one or more domestic other
10 business entities is a disappearing party in a merger pursuant to
11 this subdivision in which a foreign other business entity is the
12 surviving entity, a certificate of merger required by the laws under
13 which that domestic other business entity is organized, including
14 subdivision (a) of Section 15678.4, subdivision ~~(a) of Section~~
15 ~~15911.14, subdivision~~ (b) of Section 16915, or subdivision (a) of
16 Section 17552, as is applicable, shall also be filed at the same time
17 as the filing of the agreement of merger.

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

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

37 ~~SEC. 8.~~

38 SEC. 9. Section 1152 of the Corporations Code is amended to
39 read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the converted entity is a domestic limited partnership or at the
2 office at which records are to be kept under Section 17057 if the
3 converted entity is a domestic limited liability company. Upon the
4 request of a shareholder of a converting corporation, the authorized
5 person on behalf of the converted entity shall promptly deliver to
6 the shareholder, at the expense of the converted entity, a copy of
7 the plan of conversion. A waiver by a shareholder of the rights
8 provided in this subdivision shall be unenforceable.

9 ~~SEC. 9.~~

10 *SEC. 10.* Section 1155 of the Corporations Code is amended
11 to read:

12 1155. (a) To convert a corporation:

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

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

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

24 (4) If the corporation is converting into a flexible purpose
25 corporation, a statement of conversion shall be completed on the
26 articles for the converted entity.

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

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

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

1 (3) The name, form, and jurisdiction of organization of the
2 converted entity.

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

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

13 (e) Upon the effectiveness of a conversion pursuant to this
14 chapter, a converted entity that is a flexible purpose corporation,
15 domestic partnership, domestic limited partnership or domestic
16 limited liability company shall be deemed to have assumed the
17 liability of the converting corporation (1) to prepare and file or
18 cause to be prepared and filed all tax and information returns
19 otherwise required of the converting corporation under the
20 Corporation Tax Law (Part 11 (commencing with Section 23001)
21 of Division 2 of the Revenue and Taxation Code) and (2) to pay
22 any tax liability determined to be due pursuant to that law.

23 ~~SEC. 10.~~

24 *SEC. 11.* Section 1201 of the Corporations Code is amended
25 to read:

26 1201. (a) The principal terms of a reorganization shall be
27 approved by the outstanding shares (Section 152) of each class of
28 each corporation the approval of whose board is required under
29 Section 1200, except as provided in subdivision (b) and except
30 that (unless otherwise provided in the articles) no approval of any
31 class of outstanding preferred shares of the surviving or acquiring
32 corporation or parent party shall be required if the rights,
33 preferences, privileges and restrictions granted to or imposed upon
34 that class of shares remain unchanged (subject to the provisions
35 of subdivision (c)). For the purpose of this subdivision, two classes
36 of common shares differing only as to voting rights shall be
37 considered as a single class of shares.

38 (b) No approval of the outstanding shares (Section 152) is
39 required by subdivision (a) in the case of any corporation if that
40 corporation, or its shareholders immediately before the

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

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

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

32 (e) Notwithstanding subdivisions (a) and (b), the principal terms
33 of a reorganization shall be approved by the affirmative vote of at
34 least two-thirds of each class, or a greater vote if required in the
35 articles, of the outstanding shares (Section 152) of any close
36 corporation if the reorganization would result in their receiving
37 shares of a corporation that is not a close corporation. However,
38 the articles may provide for a lesser vote, but not less than a
39 majority of the outstanding shares of each class.

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

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

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

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

~~SEC. 11.~~

SEC. 12. Division 1.5 (commencing with Section 2500) is added to Title 1 of the Corporations Code, to read:

DIVISION 1.5. CORPORATE FLEXIBILITY ACT OF 2011

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

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

2501. Except as otherwise expressly stated, the provisions of Division 1 (commencing with Section 100) shall apply to corporations organized under this division, and references in that division to the terms "close corporation," "constituent corporation," "corporation," "disappearing corporation," "domestic corporation," "foreign corporation," "surviving corporation," and similar terms

1 shall be read to apply, in the same manner, to include the similar
2 “flexible purpose corporation” organized under this division.

3 2502. This division applies only to flexible purpose
4 corporations organized expressly under this division whether
5 organized or existing under this division or merged or converted
6 into a flexible purpose corporation in accordance with Chapter 11
7 (commencing with Section 1100) of Division 1 or Chapter 11.5
8 (commencing with Section 1150) of Division 1.

9 2502.01. Every flexible purpose corporation organized under
10 the laws of this state or similar foreign flexible purpose corporation,
11 all of the capital stock of which is beneficially owned by the United
12 States, an agency or instrumentality of the United States or any
13 flexible purpose corporation or similar foreign flexible purpose
14 corporation the whole of the capital stock of which is owned by
15 the United States or by an agency or instrumentality of the United
16 States, is conclusively presumed to be an agency and
17 instrumentality of the United States and is entitled to all privileges
18 and immunities to which the holders of all of its stock are entitled
19 as agencies of the United States.

20 2502.02. Unless otherwise expressly provided, whenever
21 reference is made in this division to any other state or federal
22 statute, that reference is to that statute as it may be amended from
23 time to time, whether before or after the enactment of this division.

24 2502.03. A flexible purpose corporation may be sued in the
25 same manner as a corporation as provided in the Code of Civil
26 Procedure.

27 2502.04. A flexible purpose corporation formed under this
28 division shall, in respect of its property, as a condition of its
29 existence as a flexible purpose corporation, be subject, in the same
30 manner as a corporation, to the provisions of the Code of Civil
31 Procedure authorizing the attachment of corporate property.

32 2502.05. The fees of the Secretary of State for filing
33 instruments by or on behalf of flexible purpose corporations shall
34 be the same fees prescribed for corporations in Article 3
35 (commencing with Section 12180) of Chapter 3 of Part 2 of
36 Division 3 of Title 2 of the Government Code.

37 2502.06. (a) Provisions of the articles described in paragraph
38 (3) of subdivision (e) of Section 2602 and subdivisions (a) and (b)
39 of Section 2603 may be made dependent upon facts ascertainable
40 outside of the articles, if the manner in which those facts shall

1 operate upon those provisions is clearly and expressly set forth in
2 the articles. Similarly, any of the terms of an agreement of merger
3 pursuant to Section 1101 may be made dependent upon facts
4 ascertainable outside of that agreement, if the manner in which
5 those facts shall operate upon the terms of the agreement is clearly
6 and expressly set forth in the agreement of merger.

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

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

22 (1) If the amendment or revision of the referenced agreement
23 would result in a material change in the rights, preferences,
24 privileges, or restrictions of a class or series of shares, the
25 amendment or revision shall be approved by the outstanding shares,
26 as defined in Section 152, of that class or series.

27 (2) If the amendment or revision of the referenced agreement
28 would result in a material change in the rights or liabilities of any
29 class or series of shares with respect to the subject matter of
30 paragraph (1), (2), (3), (5), or (9) of subdivision (a) of Section
31 2603, the amendment or revision shall be approved by the
32 outstanding shares, as defined in Section 152, of that class or series.

33 (3) If the amendment or revision of the referenced agreement
34 would result in a material change in the restrictions on transfer or
35 hypothecation of any class or series of shares, the amendment or
36 revision shall be approved by the outstanding shares, as defined
37 in Section 152, of that class or series.

38 (4) If the amendment or revision of the referenced agreement
39 would result in a change of any of the principal terms of an
40 agreement of merger, the amendment or revision shall be approved

1 in the same manner as required by Section 3504 for a change in
2 the principal terms of an agreement of merger.

3 2502.07. Nothing contained in this division shall be construed
4 to modify the provisions of subdivision (h) of Section 25102, or
5 the conditions provided therein to the availability of an exemption
6 under that subdivision.

7 2503. “Annual report” means the report required by subdivision
8 (a) of Section 3500, including the information specified in
9 subdivision (b) of Section 3500.

10 2503.1. *“Close flexible purpose corporation” means a flexible*
11 *purpose corporation that is also a close corporation.*

12 2504. “Constituent flexible purpose corporation” means a
13 flexible purpose corporation that is merged with or into one or
14 more corporations or one or more other business entities and
15 includes a surviving flexible purpose corporation.

16 2505. “Conversion” means a conversion pursuant to Chapter
17 11.5 (commencing with Section 1150) of Division 1 and Chapter
18 9 (commencing with Section 3300) of this division.

19 2506. “Disappearing flexible purpose corporation” means a
20 constituent flexible purpose corporation that is not the surviving
21 entity.

22 2507. “Domestic flexible purpose corporation” means a
23 corporation organized under this division.

24 2509. “Flexible purpose corporation,” unless otherwise
25 expressly provided, refers only to a corporation organized under
26 this division.

27 2510. “Flexible purpose corporation subject to the Banking
28 Law” means any of the following:

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

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

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

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

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

2510.1. “Flexible purpose corporation subject to the Insurance Code as an insurer” means a flexible purpose corporation that has met the requirements of Sections 201.5, 201.6, and 201.7.

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

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

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

(c) “Sale-of-assets reorganization” means the acquisition by one domestic flexible purpose corporation, foreign flexible purpose corporation, or other business entity in exchange in whole or in

part for its equity securities, or the equity securities of a domestic flexible purpose corporation, a foreign flexible purpose corporation, or an other business entity that is in control of the acquiring entity, or for its debt securities, or debt securities of a domestic flexible purpose corporation, foreign flexible purpose corporation, or other business entity that is in control of the acquiring entity, that are not adequately secured and that have a maturity date in excess of five years after the consummation of the reorganization, or both, of all or substantially all of the assets of another domestic flexible purpose corporation, foreign flexible purpose corporation, or other business entity.

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

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

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

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

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

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

CHAPTER 2. ORGANIZATION AND BYLAWS

2600. (a) One or more natural persons, partnerships, associations, flexible purpose corporations, or corporations,

1 domestic or foreign, may form a flexible purpose corporation under
2 this division by executing and filing articles of incorporation.

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

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

11 2600.5. (a) An existing business association organized as a
12 trust under the laws of this state or of a foreign jurisdiction may
13 incorporate under this division upon approval by its board of
14 trustees or similar governing body and approval by the affirmative
15 vote of a majority of the outstanding voting shares of beneficial
16 interest, or a greater proportion of the outstanding shares of
17 beneficial interest or the vote of those other classes of shares of
18 beneficial interest as may be specifically required by its declaration
19 of trust or bylaws, and the filing of articles with a certificate
20 attached pursuant to this chapter.

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

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

33 (d) Upon the filing of articles pursuant to this section, the
34 flexible purpose corporation shall succeed automatically to all of
35 the rights and property of the association being incorporated and
36 shall be subject to all of its debts and liabilities in the same manner
37 as if the flexible purpose corporation had itself incurred them. The
38 incumbent trustees of the association shall constitute the initial
39 directors of the flexible purpose corporation and shall continue in
40 office until the next annual meeting of the shareholders or their

1 earlier death, resignation, or removal. All rights of creditors and
2 all liens upon the property of the association shall be preserved
3 unimpaired. Any action or proceeding pending by or against the
4 association may be prosecuted to judgment, which shall bind the
5 flexible purpose corporation, or the flexible purpose corporation
6 may be proceeded against or substituted in its place.

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

13 2601. (a) The Secretary of State shall not file articles setting
14 forth a name in which “bank,” “trust,” “trustee” or related words
15 appear, unless the certificate of approval of the Commissioner of
16 Financial Institutions is attached to the articles. This subdivision
17 does not apply to the articles of any flexible purpose corporation
18 subject to the Banking Law on which is endorsed the approval of
19 the Commissioner of Financial Institutions.

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

likely to be misled. The use by a flexible purpose corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State.

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

2602. The articles of incorporation shall set forth:

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

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

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

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

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

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

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

(i) The flexible purpose corporation's employees, suppliers, customers, and creditors.

(ii) The community and society.

(iii) The environment.

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

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

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

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

1 (7) *If the flexible purpose corporation is a close flexible purpose*
2 *corporation, a statement as required by subdivision (a) of Section*
3 *158.*

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

6 (d) If the flexible purpose corporation is authorized to issue
7 only one class of shares, the total number of shares that the flexible
8 purpose corporation is authorized to issue.

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

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

17 (2) The designation of each class and the designation of each
18 series or that the board may determine the designation of any such
19 series.

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

37 2603. The articles of incorporation may set forth:

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

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

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

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

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

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

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

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

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

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

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

36 (A) The provision may not eliminate or limit the liability of
37 directors (i) for acts or omissions that involve intentional
38 misconduct or a knowing and culpable violation of law, (ii) for
39 acts or omissions that a director believes to be contrary to the best
40 interests of the flexible purpose corporation or its shareholders

1 and its corporate purposes as expressed in its articles, or that
2 involve the absence of good faith on the part of the director, (iii)
3 for any transaction from which a director derived an improper
4 personal benefit, (iv) for acts or omissions that show a reckless
5 disregard for the director's duty to the flexible purpose corporation
6 or its shareholders in circumstances in which the director was
7 aware, or should have been aware, in the ordinary course of
8 performing a director's duties, of a risk of serious injury to the
9 flexible purpose corporation, its shareholders, or its corporate
10 purposes as expressed in its articles, (v) for acts or omissions that
11 constitute an unexcused pattern of inattention that amounts to an
12 abdication of the director's duty to the flexible purpose corporation,
13 its shareholders, or its corporate purposes as expressed in its articles
14 pursuant to Section 2602, or (vi) under Section 310 or 2701.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (f) Pay pensions, and establish and carry out pension,
37 profit-sharing, share bonus, share purchase, share option, savings,
38 thrift, and other retirement, incentive, and benefit plans, trusts and
39 provisions for any or all of the directors, officers, and employees
40 of the flexible purpose corporation or any of its subsidiaries or

1 affiliates, and to indemnify and purchase and maintain insurance
2 on behalf of any fiduciary of these plans, trusts, or provisions.

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

9 (h) Participate with others in any partnership, joint venture, or
10 other association, transaction, or arrangement of any kind, whether
11 or not that participation involves sharing or delegation of control
12 with or to others.

13
14 CHAPTER 3. DIRECTORS AND MANAGEMENT
15

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

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

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

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

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

39 (c) In discharging his or her duties, a director may consider
40 those factors, and give weight to those factors, as the director

1 deems relevant, including the short-term and long-term prospects
2 of the flexible purpose corporation, the best interests of the flexible
3 purpose corporation and its shareholders, and the purposes of the
4 flexible purpose corporation as set forth in its articles.

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

12 (e) Notwithstanding any of the purposes set forth in its articles,
13 a flexible purpose corporation shall not be deemed to hold any of
14 its assets ~~in charitable trust or~~ for the benefit of any party other
15 than its shareholders. *However, nothing in this division shall be*
16 *construed as negating existing charitable trust principles or the*
17 *Attorney General's authority to enforce any charitable trust*
18 *created.*

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

24 2701. (a) Subject to Section 2700, directors of a flexible
25 purpose corporation who approve any of the following corporate
26 actions shall be jointly and severally liable to the flexible purpose
27 corporation for the benefit of all of the creditors or shareholders
28 entitled to institute an action under subdivision (c):

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

32 (2) The distribution of assets to shareholders after institution of
33 dissolution proceedings of the flexible purpose corporation, without
34 paying or adequately providing for all known liabilities of the
35 flexible purpose corporation, excluding any claims not filed by
36 creditors within the time limit set by the court in a notice given to
37 creditors under Chapter 18 (commencing with Section 1800) of
38 Division 1, Chapter 20 (commencing with Section 1900) of
39 Division 1, and Chapter 20 (commencing with Section 2000).

1 (3) The making of any loan or guaranty contrary to Section
2 2715.

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

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

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

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

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

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

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

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

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

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

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

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

11 2702. (a) For the purposes of this section:

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

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

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

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

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

38 (d) A flexible purpose corporation may purchase and maintain
39 insurance on behalf of any of its agents against any liability
40 asserted against or incurred by the agent in that capacity or arising

1 out of the agent's status as an agent regardless of whether the
2 flexible purpose corporation would have the power to indemnify
3 the agent against that liability under this section. The fact that a
4 flexible purpose corporation owns all or a portion of the shares of
5 the company issuing a policy of insurance shall not render this
6 subdivision inapplicable if either of the following conditions are
7 satisfied:

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

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

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

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

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

33 CHAPTER 4. SHARES AND SHARE CERTIFICATES

34
35
36 2800. (a) All certificates representing shares of a flexible
37 purpose corporation shall contain, in addition to any other
38 statements required by this section, the following conspicuous
39 language on the face of the certificate.
40

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

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

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

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

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

(4) The fact that the shares are redeemable.

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

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

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

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

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

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

CHAPTER 5. SHAREHOLDER DERIVATIVE ACTIONS

2900. (a) As used in this section:

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

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

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

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

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

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

(1) The plaintiff alleges in the complaint that plaintiff was a shareholder, of record or beneficially, or the holder of voting trust

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

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

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

14 (iii) The plaintiff acquired the shares before there was disclosure
15 to the public or to the plaintiff of the wrongdoing of which plaintiff
16 complains.

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

20 (v) The requested relief will not result in unjust enrichment of
21 the flexible purpose corporation or any shareholder of the flexible
22 purpose corporation.

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

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

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

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

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

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

34 (f) If the plaintiff, either before or after a motion is made
35 pursuant to subdivision (c), or any order or determination pursuant
36 to the motion, furnishes a bond in the aggregate amount of fifty
37 thousand dollars (\$50,000) to secure the reasonable expenses of
38 the parties entitled to make the motion, the plaintiff shall be deemed
39 to have complied with the requirements of this section and with
40 any order for a bond theretofore made, and any motion then

1 pending shall be dismissed and no further or additional bond shall
2 be required.

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

7
8 CHAPTER 6. AMENDMENT OF ARTICLES
9

10 3000. (a) A proposed amendment to the articles of a flexible
11 purpose corporation shall be approved by the outstanding shares
12 of a class, regardless of whether that class is entitled to vote thereon
13 by the provisions of the articles, if the amendment would:

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

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

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

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

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

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

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

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

1 whether that purpose, as amended, would comply with the
2 provisions of that paragraph.

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

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

10 3001. (a) A flexible purpose corporation may, by amendment
11 of its articles pursuant to this section, convert to a nonprofit public
12 benefit corporation, nonprofit mutual benefit corporation, nonprofit
13 religious corporation, or cooperative corporation.

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

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

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

38 (e) Notwithstanding subdivision (c), if a flexible purpose
39 corporation is a mutual water company within the meaning of
40 Section 2705 of the Public Utilities Code and under the terms of

the conversion each outstanding share is converted to a membership of a nonprofit mutual benefit corporation, an amendment to convert to a nonprofit mutual benefit corporation shall be approved by the outstanding shares of each class regardless of limitations or restrictions on their voting rights.

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

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

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

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

CHAPTER 7. SALES OF ASSETS

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

1 Division 1 and Chapter 9 (commencing with Section 3300) of this
2 division and shall not be subject to this section.

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

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

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

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

30 CHAPTER 8. MERGER

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

1 provide for a lesser vote, but not less than a majority of the
2 outstanding shares of each class.

3 3201. If any disappearing corporation in a merger is a flexible
4 purpose corporation and the surviving entity is not a flexible
5 purpose corporation, or is a flexible purpose corporation the articles
6 of incorporation of which set forth materially different purposes,
7 the merger shall be approved by an affirmative vote of at least
8 two-thirds of the outstanding shares of each class, or a greater vote
9 if required in the articles, regardless of whether that class is entitled
10 to vote thereon by the provisions of the articles, of the disappearing
11 flexible purpose corporation.

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

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

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

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

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

38 (b) Each flexible purpose corporation and each other party that
39 desires to merge shall approve, and shall be a party to, an
40 agreement of merger. Other persons, including a parent party, may

1 be parties to the agreement of merger. The board of each flexible
2 purpose corporation that desires to merge, and, if required, the
3 shareholders, shall approve the agreement of merger. The
4 agreement of merger shall be approved on behalf of each party by
5 those persons required to approve the merger by the laws under
6 which it is organized. The agreement of merger shall state:

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

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

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

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

28 (5) Any other details or provisions required by the laws under
29 which any party to the merger is organized, including, if a domestic
30 corporation is a party to the merger, Section 3203, if a public
31 benefit corporation or a religious corporation is a party to the
32 merger, Section 6019.1, if a mutual benefit corporation is a party
33 to the merger, Section 8019.1, if a consumer cooperative
34 corporation is a party to the merger, Section 12540.1, if a domestic
35 limited partnership is a party to the merger, Section ~~15678.2~~
36 ~~15911.12~~, if a domestic partnership is a party to the merger, Section
37 16911, and if a domestic limited liability company is a party to
38 the merger, Section 17551.

39 (6) Any other details or provisions as are desired, including,
40 without limitation, a provision for the payment of cash in lieu of

1 fractional shares or for any other arrangement with respect thereto
2 consistent with the provisions of Section 407.

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

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

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

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

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

1 its partnership agreement, and by each foreign constituent limited
2 liability company by one or more managers and by each foreign
3 constituent general partnership or foreign constituent limited
4 partnership by one or more general partners, and by each
5 constituent reciprocal insurer by the chairperson of the board,
6 president, or vice president, and by the secretary or assistant
7 secretary, or, if a constituent reciprocal insurer has not appointed
8 those officers, by the chairperson of the board, president, or vice
9 president, and by the secretary or assistant secretary of the
10 constituent reciprocal insurer's attorney-in-fact, and by each other
11 party to the merger by those persons required or authorized to
12 execute the certificate of merger by the laws under which that party
13 is organized, specifying for that party the provision of law or other
14 basis for the authority of the signing persons. The certificate of
15 merger shall set forth, if a vote of the shareholders, members,
16 partners, or other holders of interests of the constituent other
17 business entity was required, a statement setting forth the total
18 number of outstanding interests of each class entitled to vote on
19 the merger and that the agreement of merger in the form attached
20 or its principal terms, as required, were approved by a vote of the
21 number of interests of each class that equaled or exceeded the vote
22 required, specifying each class entitled to vote and the percentage
23 vote required of each class, and any other information required to
24 be set forth under the laws under which the constituent other
25 business entity is organized, including, if a domestic limited
26 partnership is a party to the merger, subdivision (a) of Section
27 ~~15678.4~~ 15911.14, if a domestic partnership is a party to the
28 merger, subdivision (b) of Section 16915, and, if a domestic limited
29 liability company is a party to the merger, subdivision (a) of
30 Section 17552. The certificate of merger for each constituent
31 foreign other business entity, if any, shall also set forth the statutory
32 or other basis under which that foreign other business entity is
33 authorized by the laws under which it is organized to effect the
34 merger. The merger and any amendment of the articles of the
35 surviving flexible purpose corporation, if applicable, contained in
36 the agreement of merger shall be effective upon filing of the
37 agreement of merger with an officer's certificate of each constituent
38 domestic corporation and foreign corporation and a certificate of
39 merger for each constituent other business entity, subject to
40 subdivision (c) of Section 153 and subject to the provisions of

subdivision (j), and the several parties thereto shall be one entity. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code. The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(2) If the surviving entity is an other business entity, and no public benefit corporation, mutual benefit corporation, religious corporation, or corporation organized under the Consumer Cooperative Corporation Law (Part 2 (commencing with Section 12200) of Division 3) is a party to the merger, after required approvals of the merger by each constituent flexible purpose corporation through approval of the board and any approval of the outstanding shares required by Chapter 10 (commencing with Section 3400) and by the other parties to the merger, the parties to the merger shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each constituent domestic and foreign flexible purpose corporation by its chairperson of the board, president, or a vice president and also by its secretary or an assistant secretary and by each domestic constituent limited liability company by all managers of the limited liability company, unless a lesser number is specified in its articles of organization or operating agreement, and by each domestic constituent limited partnership by all general partners, unless a lesser number is provided in its certificate of limited partnership or partnership agreement, and by each domestic constituent general partnership by two partners, unless a lesser number is provided in its partnership agreement, and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the

1 constituent reciprocal insurer's attorney-in-fact. The certificate of
2 merger shall be signed by each other party to the merger by those
3 persons required or authorized to execute the certificate of merger
4 by the laws under which that party is organized, specifying for
5 that party the provision of law or other basis for the authority of
6 the signing persons. The certificate of merger shall set forth all of
7 the following:

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

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

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

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

29 (E) Any other information required to be stated in the certificate
30 of merger by the laws under which each respective party to the
31 merger is organized, including, if a domestic limited liability
32 company is a party to the merger, subdivision (a) of Section 17552,
33 if a domestic partnership is a party to the merger, subdivision (b)
34 of Section 16915, and, if a domestic limited partnership is a party
35 to the merger, subdivision (a) of Section ~~15678.4~~ 15911.14.

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

37 Unless a future effective date or time is provided in a certificate
38 of merger, in which event the merger shall be effective at that
39 future effective date or time, a merger shall be effective upon the
40 filing of the certificate of merger with the Secretary of State and

1 the several parties thereto shall be one entity. The surviving other
2 business entity shall keep a copy of the agreement of merger at its
3 principal place of business which, for purposes of this subdivision,
4 shall be the office referred to in Section 17057 if a domestic limited
5 liability company, at the business address specified in paragraph
6 (5) of subdivision (a) of Section 17552 if a foreign limited liability
7 company, at the office referred to in subdivision (a) of Section
8 16403 if a domestic general partnership, at the business address
9 specified in subdivision (f) of Section 16911 if a foreign
10 partnership, at the office referred to in subdivision (a) of Section
11 ~~15614~~ 15901.14 if a domestic limited partnership, or at the business
12 address specified in paragraph (5) of subdivision (a) of Section
13 ~~15678.4~~ 15911.14 if a foreign limited partnership. Upon the request
14 of a holder of equity securities of a party to the merger, a person
15 with authority to do so on behalf of the surviving other business
16 entity shall promptly deliver to that holder, a copy of the agreement
17 of merger. A waiver by that holder of the rights provided in the
18 foregoing sentence shall be unenforceable. If a domestic reciprocal
19 insurer organized after 1974 to provide medical malpractice
20 insurance is a party to the merger the agreement of merger or
21 certificate of merger shall not be filed until there has been filed
22 the certificate issued by the Insurance Commissioner approving
23 the merger in accordance with Section 1555 of the Insurance Code.

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

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

39 (i) (1) Upon a merger pursuant to this section, the separate
40 existences of the disappearing parties to the merger cease and the

1 surviving party to the merger shall succeed, without other transfer,
2 to all the rights and property of each of the disappearing parties to
3 the merger and shall be subject to all the debts and liabilities of
4 each in the same manner as if the surviving party to the merger
5 had itself incurred them.

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

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

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

22 (j) (1) The merger of domestic flexible purpose corporations
23 with foreign corporations or foreign other business entities in a
24 merger in which one or more other business entities is a party shall
25 comply with subdivision (a) and this subdivision.

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

Article 6 (commencing with Section 16601) of Chapter 5 of Title 2 with respect to any domestic constituent general partnerships, ~~and Article 7.6 (commencing with Section 15679.1) of Chapter 3 and Article 11.5 (commencing with Section 15911.20) of Chapter 5.5 of Title 2~~ with respect to any domestic constituent limited partnerships, the merger proceedings may be in accordance with the laws of the state or place of incorporation or organization of the surviving party.

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

(4) If the surviving party is a foreign corporation or foreign other business entity, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving party is organized, but, except as provided in paragraph (5), the merger shall be effective as to any domestic disappearing flexible purpose corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of each constituent foreign and domestic flexible purpose corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of paragraph (1) of subdivision (g). If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which that domestic other business entity is organized, including subdivision (a) of Section ~~15678.4~~ *15911.14*, subdivision (b) of Section 16915, or subdivision (a) of Section 17552, as is applicable, shall also be filed at the same time as the filing of the agreement of merger.

(5) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing flexible purpose corporation are suspended

1 at the time of effectiveness in the foreign jurisdiction, the merger
2 shall be effective as to the domestic disappearing flexible purpose
3 corporation as of the date of filing in this state.

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

16
17 CHAPTER 9. CONVERSIONS
18

19 3300. For purposes of this chapter, the following definitions
20 shall apply:

21 (a) “Converted flexible purpose corporation” means a flexible
22 purpose corporation that results from a conversion of an other
23 business entity or a foreign other business entity or a foreign
24 corporation pursuant to Section 1158.

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

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

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

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

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

38 (g) “Other business entity” has the meaning provided in Section
39 174.5.

1 3301. (a) A flexible purpose corporation may be converted
2 into a domestic other business entity pursuant to this chapter if,
3 pursuant to the proposed conversion, each of the following
4 conditions is met:

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

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

15 (3) Nonredeemable common shares of the converting flexible
16 purpose corporation shall be converted only into nonredeemable
17 equity securities of the converted entity unless all of the
18 shareholders of the class consent.

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

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

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

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

33 3302. (a) A flexible purpose corporation that desires to convert
34 to a domestic other business entity shall approve a plan of
35 conversion. The plan of conversion shall state all of the following:

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

37 (2) The jurisdiction of the organization of the converted entity
38 and of the converting flexible purpose corporation and the name
39 of the converted entity after conversion.

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

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

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

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

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

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

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

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

16 (g) The converted entity shall keep the plan of conversion at
17 the principal place of business of the converted entity if the
18 converted entity is a domestic partnership, or at the office at which
19 records are to be kept under ~~Section 15614~~ 15901.14 if the
20 converted entity is a domestic limited partnership, or at the office
21 at which records are to be kept under Section 17057 if the
22 converted entity is a domestic limited liability company. Upon the
23 request of a shareholder of a converting flexible purpose
24 corporation, the authorized person on behalf of the converted entity
25 shall promptly deliver to the shareholder, at the expense of the
26 converted entity, a copy of the plan of conversion. A waiver by a
27 shareholder of the rights provided in this subdivision shall be
28 unenforceable.

29 3303. (a) After the approval, as provided in Section 3302, of
30 a plan of conversion by the board and the outstanding shares of a
31 flexible purpose corporation converting into a domestic other
32 business entity, the converting flexible purpose corporation shall
33 cause the filing of all documents required by law to effect the
34 conversion and create the converted entity, which documents shall
35 include a certificate of conversion or a statement of conversion as
36 required by Section 3304, and the conversion shall thereupon be
37 effective.

38 (b) A copy of the statement of partnership authority, certificate
39 of limited partnership, or articles of organization complying with
40 Section 1156, duly certified by the Secretary of State on or after

1 the effective date, shall be conclusive evidence of the conversion
2 of the flexible purpose corporation.

3 3304. (a) To convert a flexible purpose corporation:

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

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

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

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

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

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

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

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

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

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

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

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

15 3305. The shareholders of a converting flexible purpose
16 corporation shall have all of the rights under Chapter 13
17 (commencing with Section 1300) of Division 1 of the shareholders
18 of a corporation involved in a reorganization requiring the approval
19 of its outstanding shares, and the converting flexible purpose
20 corporation shall have all of the obligations under Chapter 13
21 (commencing with Section 1300) of Division 1 of a corporation
22 involved in the reorganization. Solely for purposes of applying the
23 provisions of Chapter 13 (commencing with Section 1300) of
24 Division 1, and not for purposes of this chapter, a conversion
25 pursuant to Section 3301 or 1158 shall be deemed to constitute a
26 reorganization.

27 3306. Notwithstanding any other provision of law, the Secretary
28 of State shall charge an entity a fee not to exceed one hundred fifty
29 dollars (\$150) for its conversion made under this chapter.

30 CHAPTER 10. REORGANIZATIONS

31
32
33 3400. A reorganization or a share exchange tender offer shall
34 be approved by the board of all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 11. RECORDS AND REPORTS

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

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

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

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

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

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

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

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

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

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

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

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

(b) Unless previously reported in the most recent annual report, the special purpose current report shall identify and discuss, in reasonable detail, any expenditure or group of related or planned expenditures, excluding compensation of officers and directors, made in furtherance of the special purpose objectives, whether an operating expenditure, a capital expenditure, or some other expenditure of corporate resources, including ~~employee time or otherwise~~, but not limited to, employee time, whether the expenditure was direct or indirect, and whether the expenditure was ~~made to a person or entity outside of the flexible purpose corporation or was made internally, where the~~ categorized as overhead or otherwise where the expenditure has or is likely to have a material adverse impact on the flexible purpose corporation's results of operations or financial condition for a quarterly or annual fiscal period.

(c) Unless previously reported in the most recent annual report, the special purpose current report shall identify and discuss, in reasonable detail, any decision by the board or action by management to do either of the following:

(1) Withhold expenditures or a group of related or planned expenditures, whether temporarily or permanently, that were to have been made in furtherance of the special purpose as contemplated in the most recent annual report, whether those planned expenditures were an operating expenditure, a capital expenditure, or some other expenditure of corporate resources, including, but not limited to, employee time, whether the planned expenditure was direct or indirect, and whether the planned expenditure to be made would have been categorized as overhead or otherwise, in any case, where the planned expenditure was likely to have had a material positive impact on the flexible purpose corporation's impact in furtherance of its special purpose objectives, as contemplated in the most recent annual report.

(2) Determine that the special purpose has been satisfied or should no longer be pursued, whether temporarily or permanently.

3502. (a) Nothing contained in subdivision (b) of Section 3500 or Section 3501 shall require a detailing or itemization of every relevant expenditure incurred ~~or action taken~~, or planned or action taken or planned, by the corporation. Management and the board shall use their discretion in providing that information, including the reasonable detail that a reasonable investor would consider

important in understanding the corporation's objectives, actions, impacts, measures, *rationale*, and results of operations as they relate to the nature and achievement of the special purpose objectives.

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

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

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

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

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

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

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

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

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

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

(l) In any action or proceeding with respect to Section 3500 or 3501, if the court finds the failure of the flexible purpose corporation to comply with the requirements of those sections to

1 have been without justification, the court may award an amount
2 sufficient to reimburse the shareholder for the reasonable expenses
3 incurred by the shareholder, including attorney's fees, in connection
4 with the action or proceeding.

5 (m) Subdivision (b) of Section 3500 and Section 3501 apply to
6 any domestic flexible purpose corporation and also to a foreign
7 flexible purpose corporation having its principal executive office
8 in this state or customarily holding meetings of its board in this
9 state.

10 (n) All reports and notices required by subdivision (b) of Section
11 3500 and Section 3501 shall be maintained by the flexible purpose
12 corporation, in an electronic form for a period of not less than 10
13 years.

14 3503. Any officers, directors, employees, or agents of a flexible
15 purpose corporation who do any of the following shall be liable
16 jointly and severally for all the damages resulting therefrom to the
17 flexible purpose corporation or any person injured by those actions
18 who relied on those actions or to both:

19 (a) Make, issue, deliver or publish any prospectus, report,
20 including the reports required pursuant to subdivision (b) of Section
21 3500 and Section 3501, circular, certificate, financial statement,
22 balance sheet, public notice, or document respecting the flexible
23 purpose corporation or its shares, assets, liabilities, capital,
24 dividends, business, earnings, or accounts which is false in any
25 material respect, knowing it to be false, or participate in the
26 making, issuance, delivery, or publication thereof with knowledge
27 that the same is false in a material respect.

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

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

33 (d) With respect to the reports required pursuant to subdivision
34 (b) of Section 3500 and Section 3501, omit to state any material
35 fact necessary in order to make the statements contained therein,
36 in light of the circumstances under which those statements were
37 made, not misleading in a material respect, knowing the omission
38 to be misleading.

39 *SEC. 13. Section 5122 of the Corporations Code is amended*
40 *to read:*

1 5122. (a) The Secretary of State shall not file articles setting
2 forth a name in which “bank,” “trust,” “trustee” or related words
3 appear, unless the certificate of approval of the Commissioner of
4 Financial Institutions is attached thereto.

5 (b) The Secretary of State shall not file articles which set forth
6 a name which is likely to mislead the public or which is the same
7 as, or resembles so closely as to tend to deceive, the name of a
8 domestic corporation, the name of a foreign corporation which is
9 authorized to transact intrastate business or has registered its name
10 pursuant to Section 2101, a name which a foreign corporation has
11 assumed under subdivision (b) of Section 2106 or a name which
12 will become the record name of a domestic or foreign corporation
13 upon the effective date of a filed corporate instrument where there
14 is a delayed effective date pursuant to subdivision (c) of Section
15 110, or subdivision (c) of Section 5008, or a name which is under
16 reservation pursuant to this section, ~~Section 201, Section 7122, or~~
17 ~~Section 9122~~ title, except that a corporation may adopt a name
18 that is substantially the same as an existing domestic or foreign
19 corporation which is authorized to transact intrastate business or
20 has registered its name pursuant to Section 2101, upon proof of
21 consent by such corporation and a finding by the Secretary of State
22 that under the circumstances the public is not likely to be misled.

23 The use by a corporation of a name in violation of this section
24 may be enjoined notwithstanding the filing of its articles by the
25 Secretary of State.

26 (c) Any applicant may, upon payment of the fee prescribed
27 therefor in the Government Code, obtain from the Secretary of
28 State a certificate of reservation of any name not prohibited by
29 subdivision (b), and upon the issuance of the certificate the name
30 stated therein shall be reserved for a period of 60 days. The
31 Secretary of State shall not, however, issue certificates reserving
32 the same name for two or more consecutive 60-day periods to the
33 same applicant or for the use or benefit of the same person; nor
34 shall consecutive reservations be made by or for the use or benefit
35 of the same person of names so similar as to fall within the
36 prohibitions of subdivision (b).

37 *SEC. 14. Section 7122 of the Corporations Code is amended*
38 *to read:*

39 7122. (a) The Secretary of State shall not file articles setting
40 forth a name in which “bank,” “trust,” “trustee” or related words

1 appear, unless the certificate of approval of the Commissioner of
2 Financial Institutions is attached thereto.

3 (b) The Secretary of State shall not file articles pursuant to this
4 part setting forth a name which may create the impression that the
5 purpose of the corporation is public, charitable or religious or that
6 it is a charitable foundation.

7 (c) The Secretary of State shall not file articles which set forth
8 a name which is likely to mislead the public or which is the same
9 as, or resembles so closely as to tend to deceive, the name of a
10 domestic corporation, the name of a foreign corporation which is
11 authorized to transact intrastate business or has registered its name
12 pursuant to Section 2101, a name which a foreign corporation has
13 assumed under subdivision (b) of Section 2106, a name which will
14 become the record name of a domestic or foreign corporation upon
15 the effective date of a filed corporate instrument where there is a
16 delayed effective date pursuant to subdivision (c) of Section 110,
17 or subdivision (c) of Section 5008, or a name which is under
18 reservation pursuant to this ~~section, Section 201, Section 5122, or~~
19 ~~Section 9122~~ title, except that a corporation may adopt a name
20 that is substantially the same as an existing domestic or foreign
21 corporation which is authorized to transact intrastate business or
22 has registered its name pursuant to Section 2101, upon proof of
23 consent by such corporation and a finding by the Secretary of State
24 that under the circumstances the public is not likely to be misled.

25 The use by a corporation of a name in violation of this section
26 may be enjoined notwithstanding the filing of its articles by the
27 Secretary of State.

28 (d) Any applicant may, upon payment of the fee prescribed
29 therefor in the Government Code, obtain from the Secretary of
30 State a certificate of reservation of any name not prohibited by
31 subdivision (c), and upon the issuance of the certificate the name
32 stated therein shall be reserved for a period of 60 days. The
33 Secretary of State shall not, however, issue certificates reserving
34 the same name for two or more consecutive 60-day periods to the
35 same applicant or for the use or benefit of the same person; nor
36 shall consecutive reservations be made by or for the use or benefit
37 of the same person of names so similar as to fall within the
38 prohibitions of subdivision (c).

39 *SEC. 15. Section 9122 of the Corporations Code is amended*
40 *to read:*

1 9122. (a) The Secretary of State shall not file articles setting
2 forth a name in which “bank,” “trust,” “trustee” or related words
3 appear, unless the certificate of approval of the Commissioner of
4 Financial Institutions is attached thereto.

5 (b) The Secretary of State shall not file articles which set forth
6 a name which is likely to mislead the public or which is the same
7 as, or resembles so closely as to tend to deceive, the name of a
8 domestic corporation, the name of a foreign corporation which is
9 authorized to transact intrastate business or has registered its name
10 pursuant to Section 2101, a name which a foreign corporation has
11 assumed under subdivision (b) of Section 2106 or a name which
12 will become the record name of a domestic or foreign corporation
13 upon the effective date of a filed corporate instrument where there
14 is a delayed effective date pursuant to subdivision (c) of Section
15 110 or subdivision (c) of Section 5008, or a name which is under
16 reservation pursuant to this section, ~~Section 201, Section 5122, or~~
17 ~~Section 7122~~ title, except that a corporation may adopt a name
18 that is substantially the same as an existing domestic or foreign
19 corporation which is authorized to transact intrastate business or
20 has registered its name pursuant to Section 2101, upon proof of
21 consent by such corporation and a finding by the Secretary of State
22 that under the circumstances the public is not likely to be misled.

23 The use by a corporation of a name in violation of this section
24 may be enjoined notwithstanding the filing of its articles by the
25 Secretary of State.

26 (c) Any applicant may, upon payment of the fee prescribed
27 therefor in the Government Code, obtain from the Secretary of
28 State a certificate of reservation of any name not prohibited by
29 subdivision (b), and upon the issuance of the certificate the name
30 stated therein shall be reserved for a period of 60 days. The
31 Secretary of State shall not, however, issue certificates reserving
32 the same name for two or more consecutive 60-day periods to the
33 same applicant or for the use or benefit of the same person; nor
34 shall consecutive reservations be made by or for the use or benefit
35 of the same person of names so similar as to fall within the
36 prohibitions of subdivision (b).

37 *SEC. 16. Section 7.5 of this bill incorporates amendments to*
38 *Section 1113 of the Corporations Code proposed by both this bill*
39 *and Assembly Bill 1211. It shall only become operative if (1) both*
40 *bills are enacted and become effective on or before January 1,*

- 1 2012, (2) each bill amends Section 1113 of the Corporations Code,
- 2 and (3) this bill is enacted after Assembly Bill 1211, in which case
- 3 Section 7 of this bill shall not become operative.

O