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:

SECTION 1. Section 102 of the Corporations Code is amended to read:

102. (a) Subject to Chapter 23 (commencing with Section 2300) (transition provisions), this division applies to corporations organized under this division and to domestic corporations that are not subject to Division 1.5 (commencing with Section 2500), and to domestic corporations that are not subject to Division 2 (commencing with Section 5000) or Part 1 (commencing with Section 12000), 2 (commencing with Section 12200), 3 (commencing with Section 13200), or 5 (commencing with Section 14000) of Division 3 on December 31, 1976, and that are not organized or existing under any statute of this state other than this code; this division applies to any other corporation only to the 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

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

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

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

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

~~SEC. 3.~~

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

171.08. “Flexible purpose corporation” means any flexible purpose corporation formed under Division 1.5 (commencing with 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 domestic corporation or foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, upon proof of consent by such domestic or foreign corporation and a finding by the Secretary of State that under the circumstances the public is not likely to be misled.

The use by a 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 therefor 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 therein 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 or corporation; nor shall consecutive reservations be made by or for the use or benefit of the same person, partnership, firm or corporation of names so similar as to fall within the prohibitions of subdivision (b).

~~SEC. 5.~~

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

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

~~SEC. 6.~~

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

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

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

(b) The shareholders of the disappearing 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 disappearing corporation shall have all of the obligations under Chapter 13 (commencing with Section 1300) of a corporation involved in the reorganization.

~~SEC. 7.~~

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

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

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

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

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

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

(1) The terms and conditions of the merger.

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

(3) The amendments, if any, subject to Sections 900 and 907, to the articles of the surviving corporation, if applicable, to be effected by the merger. If any amendment changes the name of the surviving corporation, if applicable, the new name may be, subject to subdivision (b) of Section 201, the same as or similar 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 a domestic limited partnership is a party to the merger, Section ~~15678.2~~ *15911.12*, 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 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 (commencing with Section 1200) and by the other parties to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class and, if applicable, by that other person or persons whose approval is required, or that the merger agreement was entitled to be and was approved by the board alone (as provided in Section 1201, in the case of corporations subject to that section). If equity securities of a parent party (Section 1200) are to be issued in the merger, the officers' certificate of that controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged 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 constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger in the form attached or its principal terms, as required, were approved by a vote of the number of interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section ~~15678.4~~ *15911.14*, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon filing of the agreement of merger with an officer's certificate of each constituent domestic and foreign corporation and a certificate of merger for each constituent other business entity, subject to subdivision (c) of Section 110 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 (Section 5060), mutual benefit

corporation (Section 5059), religious corporation (Section 5061), or 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 (commencing with Section 1200) 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 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 constituent reciprocal insurer's attorney-in-fact. The certificate of merger shall be signed by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth all of the following:

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

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

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

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

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

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

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

(a) of Section ~~15678.4~~ *15909.02* if a foreign limited partnership. Upon the request of a holder of equity securities of a party to the merger, a person with authority to do so on behalf of the surviving other business entity shall promptly deliver to that holder, a copy of the agreement of merger. A waiver by that holder of the rights provided in the foregoing sentence shall be unenforceable. 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 in accordance with Section 1555 of the Insurance Code.

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

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

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

(2) All rights of creditors and all liens upon the property of each of the constituent corporations and other parties to the merger shall be preserved unimpaired, provided that those liens upon property of a disappearing party shall be limited to the property affected 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

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 party is organized, but, except as provided in paragraph (5), the merger shall be effective as to any domestic disappearing 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 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 corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

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

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

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

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

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

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

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

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

(1) The terms and conditions of the merger.

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

(3) The amendments, if any, subject to Sections 900 and 907, to the articles of the surviving corporation, if applicable, to be effected by the merger. If any amendment changes the name of the surviving corporation, if applicable, the new name may be, subject to subdivision (b) of Section 201, the same as or similar 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 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 (commencing with Section 1200) and by the other parties to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class and, if applicable, by that other person or persons whose approval is required, or that the merger agreement was entitled to be and was approved by the board alone (as provided in Section 1201, in the case of corporations subject to that section). If equity securities of a parent party (Section 1200) are to be issued in the merger, the officers' certificate of that controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged 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 constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger in the form attached or its principal terms, as required, were approved by a vote of the number of interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section ~~15678.4 or subdivision (a) of Section 15911.14,~~ *15678.4,* if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon filing of the agreement of merger with an officer's certificate of each constituent domestic and foreign corporation and a certificate of merger for each constituent other business entity, subject to subdivision (c) of Section 110 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 (Section 5060), mutual benefit corporation (Section 5059), religious corporation (Section 5061), or 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 (commencing with Section 1200) 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 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 constituent reciprocal insurer's attorney-in-fact. The certificate of merger shall be signed by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth all of the following:

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

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

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

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

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

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

Unless a future effective date or time is provided in a certificate of merger, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger in the office of the Secretary of State and the several parties thereto shall be one entity. The surviving other business entity shall keep a copy of the agreement of merger at its principal place of business which, for purposes of this subdivision, shall be the office referred to in Section 17057 if a domestic limited liability company, at the business address specified in paragraph (5) of subdivision (a) of Section 17552 if a foreign limited liability company, at the office referred to in subdivision (a) of Section 16403 if a domestic general partnership, at the business address specified in subdivision (f) of Section 16911 if a foreign partnership, at the office referred to in subdivision (a) of Section 15614 ~~or in subdivision (a) of Section 15901.14~~ if a domestic limited partnership, or at the business address specified in paragraph (5) of subdivision (a) of Section 15678.4 ~~or paragraph (3) of subdivision (a) of Section 15909.02~~ if a foreign limited partnership. Upon the request of a holder of equity securities of a party to the merger, a person with authority to do so on behalf of the surviving other business entity shall promptly deliver to that holder, a copy of the agreement of merger. A waiver by that holder of the rights provided in the foregoing sentence shall be unenforceable. 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 in accordance with Section 1555 of the Insurance Code.

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

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

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

(2) All rights of creditors and all liens upon the property of each of the constituent corporations and other parties to the merger shall be preserved unimpaired, provided that those liens upon property of a disappearing party shall be limited to the property affected 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~~, 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

party is organized, but, except as provided in paragraph (5), the merger shall be effective as to any domestic disappearing 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 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, subdivision ~~(a) of Section 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 corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

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

~~SEC. 8.~~

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

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

(1) The terms and conditions of the conversion.

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

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

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

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

(b) The plan of conversion shall be approved by the board of the converting corporation (Section 151), and the principal terms of the plan of the conversion shall be approved by the outstanding shares (Section 152) of each class of the converting corporation. The approval of the outstanding shares may be given before or after approval by the board. Notwithstanding the foregoing, if a converting corporation is a close corporation, the 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; provided, however, that the articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.

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

(d) If the corporation is converting into a flexible purpose 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 the converted entity is a domestic limited partnership or at the office at which records are to be kept under Section 17057 if the converted entity is a domestic limited liability company. Upon the request of a shareholder of a converting corporation, the authorized person on behalf of the converted entity shall promptly deliver to the shareholder, at the expense of the converted entity, a copy of the plan of conversion. A waiver by a shareholder of the rights provided in this subdivision shall be unenforceable.

~~SEC. 9.~~

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

1155. (a) To convert a corporation:

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

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

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

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

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

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

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

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

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

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

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

~~SEC. 10.~~

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

1201. (a) The principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of each class of each corporation the approval of whose board is required under Section 1200, 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 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 (Section 152) is required by subdivision (a) in the case of any corporation if that 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 corporation or a parent party (subdivision (d) of Section 1200) possessing more than five-sixths of the voting power of the surviving or acquiring corporation or parent party. In making the determination of ownership by the shareholders of a corporation, immediately after the reorganization, of equity securities pursuant to the preceding sentence, equity securities which they owned immediately before the reorganization as shareholders of another party to the transaction shall be disregarded. For the purpose of this section only, the voting power of a corporation shall be calculated by assuming the conversion of all equity securities convertible (immediately or at some future time) into shares entitled to vote but not assuming the exercise of any warrant or right to subscribe to or purchase those shares.

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

(d) Notwithstanding subdivision (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 or sale-of-assets reorganization if holders of shares of that class receive shares of the surviving or acquiring corporation or parent party having different rights, preferences, privileges or restrictions than those surrendered. Shares in a foreign corporation received in exchange for shares in a domestic corporation have different rights, preferences, privileges and restrictions within the meaning of the preceding sentence.

(e) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization 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 the outstanding shares (Section 152) of any close corporation if the reorganization would result in their receiving shares of a corporation that is not a close corporation. However, the articles may provide for a lesser vote, but not less than a 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 shall be read to apply, in the same manner, to include the similar "flexible purpose corporation" organized under this division.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2503. "Annual report" means the report required by subdivision (a) of Section 3500, including the information specified in subdivision (b) of Section 3500.

2503.1. "Close flexible purpose corporation" means a flexible purpose corporation that is also a close corporation.

2504. "Constituent flexible purpose corporation" means a flexible purpose corporation that is merged with or into one or more corporations or one or more other business entities and includes a surviving flexible purpose corporation.

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

2506. "Disappearing flexible purpose corporation" means a constituent flexible purpose corporation that is not the surviving entity.

2507. "Domestic flexible purpose corporation" means a corporation organized under this division.

2509. "Flexible purpose corporation," unless otherwise expressly provided, refers only to a corporation organized under this division.

2510. "Flexible purpose corporation subject to the Banking Law" means any of the following:

(a) A 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, the commercial banking business under the Banking Law (Division 1 (commencing with Section 99) of the Financial Code).

(b) 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, the industrial banking business under the Banking Law (Division 1 (commencing with 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, domestic or foreign, may form a flexible purpose corporation under this division by executing and filing articles of incorporation.

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

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

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

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

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

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

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

2601. (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 to the articles. This subdivision does not apply to the articles of any flexible purpose 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 that set forth a name that is likely to mislead the public or that is the same as, or resembles so closely as to tend to deceive, the name of a domestic corporation, the name of a domestic flexible purpose corporation, or the name of a foreign corporation that is authorized to transact intrastate business or has registered its name pursuant to Section 2101, a name that a foreign corporation has assumed under subdivision (b) of Section 2106, a name that will become the record name of a corporation or flexible purpose corporation or a 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 that is under reservation for another corporation or flexible purpose corporation pursuant to this ~~section, Section 5122, 7122, or 9122~~ *title*, except that a flexible purpose corporation may adopt a name that is substantially the same as an existing corporation or flexible purpose corporation, foreign or domestic, which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, upon proof of consent by the domestic or foreign corporation or flexible purpose corporation and a finding by the 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.

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

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

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

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

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

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

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

2603. The articles of incorporation may set forth:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Adopt, amend, and repeal bylaws.

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

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

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

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

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

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

Chapter 3. Directors and Management

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) "Agent" means any person who is or was a director, officer, employee, or other agent of the flexible purpose corporation, or is or was serving at the request of the flexible purpose corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation which was a predecessor corporation of the flexible purpose corporation or of another enterprise at the request of the predecessor corporation.

(2) "Proceeding" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative.

(3) "Expenses" includes without limitation attorneys' fees and any expenses of establishing a right to indemnification under subdivision (b).

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

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

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

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

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

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

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

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

Chapter 4. Shares and Share Certificates

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

“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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 6. Amendment of Articles

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

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

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

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

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

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

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

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

(b) A proposed amendment 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, if the amendment would materially alter any special purpose of the flexible purpose corporation stated in the articles pursuant to paragraph (2) of subdivision (b) of Section 2602, regardless of whether that purpose, as amended, would comply with the provisions of that paragraph.

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

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

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

(b) The amendment of the articles to convert to a nonprofit corporation shall revise the statement of purpose, delete the authorization for shares and any other provisions relating to authorized or issued shares, make other changes as may be necessary or desired, and, if any shares have been issued, provide either for the cancellation of those shares or for the conversion of those shares to memberships of the nonprofit corporation. The amendment of the articles to convert to a cooperative corporation shall revise the statement of purpose, make other changes as may be necessary or desired, and, if any shares have been issued, provide for the cancellation of those shares or for the conversion of those shares to memberships of the cooperative corporation, if necessary.

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

(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.

(e) Notwithstanding subdivision (c), if a flexible purpose corporation is a mutual water company within the meaning of 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

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

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

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

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

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

Chapter 8. Merger

3200. If any disappearing flexible purpose corporation in a merger is a close flexible purpose corporation and the surviving flexible purpose corporation is not a close flexible purpose corporation, the merger 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, of the disappearing flexible purpose corporation. The articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.

3201. If any disappearing corporation in a merger is a flexible purpose corporation and the surviving entity is not a flexible purpose corporation, or is a flexible purpose corporation the articles of incorporation of which set forth materially different purposes, the merger 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, of the disappearing flexible purpose corporation.

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

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

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

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

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

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

(1) The terms and conditions of the merger.

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

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

(4) The manner of converting the shares of each constituent flexible purpose corporation into shares, interests, or other securities of the surviving party. If any shares of any constituent flexible purpose corporation are not to be converted solely into shares, interests, or other securities of the surviving party, the agreement of merger shall state (A) the cash, rights, securities, or other property that 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 (B) 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 domestic corporation is a party to the merger, Section 3203, if a public benefit corporation or a religious corporation is a party to the merger, Section 6019.1, if a mutual benefit corporation is a party to the merger, Section 8019.1, if a consumer cooperative corporation is a party to the merger, Section 12540.1, if a domestic limited partnership is a party to the merger, Section ~~15678.2~~ *15911.12*, if a domestic partnership is a party to the merger, Section 16911, and 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 flexible purpose 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 flexible purpose 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 nonredeemable common shares of a constituent flexible purpose corporation may be converted only into nonredeemable common shares of a surviving flexible purpose corporation or a parent party or nonredeemable equity securities of a surviving party other than a flexible purpose 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 flexible purpose 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 flexible purpose corporation and, if the amendment changes any of the principal terms of the agreement, by the outstanding shares, if required by Chapter 10 (commencing with Section 3400), 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 flexible purpose 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, at any time before the merger is effective.

(f) Each constituent flexible purpose 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 domestic flexible purpose corporation, or if a domestic corporation or a foreign corporation, a public benefit corporation, a mutual benefit corporation, a religious corporation, or a 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 13 (commencing with Section 3400) and by the other parties to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic flexible purpose corporation and foreign flexible purpose corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger, and identifying any other person or persons whose approval is required, that the agreement of merger in the form attached or its principal terms, as required, were approved by that flexible purpose corporation by a vote of a number of shares or membership interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class and, if applicable, by that other person or persons whose approval is required, or that the merger agreement was entitled to be and was approved by the board alone, as provided in Section 3401, in the case of a flexible purpose corporation subject to that section. If equity securities of a parent party are to be issued in the merger, the officers' certificate of that controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all managers of the limited liability company, unless a lesser number is specified in its articles or 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 constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger in the form attached or its principal terms, as required, were approved by a vote of the number of interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section ~~15678.4~~ *15911.14*, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger. The merger and any amendment of the articles of the surviving flexible purpose corporation, if applicable, contained in the agreement of merger shall be effective upon filing of the agreement of merger with an officer's certificate of each constituent domestic corporation and foreign corporation and a certificate of merger for each constituent other business entity, subject to 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

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

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

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

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

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

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

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

Unless a future effective date or time is provided in a certificate of merger, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger with the Secretary of State and the several parties thereto shall be one entity. The surviving other business entity shall keep a copy of the agreement of merger at its principal place of business which, for purposes of this subdivision, shall be the office referred to in Section 17057 if a domestic limited liability company, at the business address specified in paragraph (5) of subdivision (a) of Section 17552 if a foreign limited liability company, at the office referred to in subdivision (a) of Section 16403 if a domestic general partnership, at the business address specified in subdivision (f) of Section 16911 if a foreign partnership, at the office referred to in subdivision (a) of Section ~~15614~~ *15901.14* if a domestic limited partnership, or at the business address specified in paragraph (5) of subdivision (a) of Section ~~15678.4~~ *15911.14* if a foreign limited partnership. Upon the request of a holder of equity securities of a party to the merger, a person with authority to do so on behalf of the surviving other business entity shall promptly deliver to that holder, a copy of the agreement of merger. A waiver by that holder of the rights provided in the foregoing sentence shall be unenforceable. 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 in accordance with Section 1555 of the Insurance Code.

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

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

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

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

(3) Any action or proceeding pending by or against any disappearing flexible purpose 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) Nothing in this section shall be construed 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 flexible purpose 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 flexible purpose corporation or domestic other business entity, the merger proceedings with respect to that party and any domestic disappearing flexible purpose 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), Section 407, Chapter 10 (commencing with Section 3400), and Chapter 13 (commencing with Section 1300) of Division 1, and, if applicable, corresponding provisions of the Nonprofit Corporation Law (Division 2 (commencing with Section 5002)) or the Consumer Cooperative Corporation Law (Part 2 (commencing with Section 12200) of Division 3), 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 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

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

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

Chapter 9. Conversions

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

(a) "Converted flexible purpose corporation" means a flexible purpose corporation that results from a conversion of an other business entity or a foreign other business entity or a foreign corporation pursuant to Section 1158.

(b) "Converted entity" means a domestic other business entity that results from a conversion of a flexible purpose corporation under this chapter.

(c) "Converting flexible purpose corporation" means a flexible purpose corporation that converts into a domestic or foreign other business entity pursuant to this chapter.

(d) "Converting entity" means an other business entity or a foreign other business entity or foreign corporation that converts into a flexible purpose corporation pursuant to Section 3607.

(e) "Domestic other business entity" has the meaning provided in Section 167.7.

(f) "Foreign other business entity" has the meaning provided in Section 171.05.

(g) "Other business entity" has the meaning provided in Section 174.5.

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

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

(2) The conversion is approved by an affirmative vote of at least two-thirds of the outstanding shares (Section 152) 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.

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

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

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

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

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

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

(1) The terms and conditions of the conversion.

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

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

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

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

(b) The plan of conversion shall be approved by the board of the converting flexible purpose corporation, and the principal terms of the plan of the conversion shall be approved by 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 of the converting flexible purpose corporation. The approval of the outstanding shares may be given before or after approval by the board.

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

(d) Upon the effectiveness of the conversion, all shareholders of the converting flexible purpose corporation, except those that exercise dissenters' rights as provided in Section 3305 and Chapter 13 (commencing with Section 1300) of Division 1, 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, regardless of whether 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.

(e) 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 flexible purpose corporation in the same manner and to the same extent as was required for approval of the original plan of conversion.

(f) A plan of conversion may be abandoned by the board of a converting flexible purpose corporation, or by the shareholders of a converting flexible purpose 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 10. Reorganizations

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

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

(b) The acquiring flexible purpose corporation in an exchange 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 shares entitled to vote but not assuming the exercise of any warrant or right to subscribe to or purchase those shares.

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

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

(e) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization 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 the outstanding shares of any flexible purpose corporation that is a close flexible purpose corporation if the reorganization would result in the holders receiving shares or other interests of a corporation or other business entity that is not a close flexible purpose corporation. The articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.

(f) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by a vote of at least two-thirds of the outstanding shares of each class, or a greater vote if required in the articles, of a flexible purpose corporation that is a party to a merger reorganization, regardless of whether that class is entitled to vote thereon by the provisions of the articles, if holders of shares of that class receive interests of a surviving other business entity in the merger that is not a flexible purpose corporation, or receive interests of a surviving flexible purpose corporation the articles of incorporation of which specify a materially different purpose as 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) Identification and discussion of the short-term and long-term objectives of the flexible purpose corporation relating to its special purpose or purposes, and an identification and explanation of any changes made in those special purpose objectives during the fiscal year.

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

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

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

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

(c) Except as may otherwise be excused pursuant to subdivision (h) of Section 1501.5, the reports specified in subdivisions (a) and (b) shall be sent to the shareholders at least 15 days, or, if sent by 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 have been without justification, the court may award an amount sufficient to reimburse the shareholder for the reasonable expenses incurred by the shareholder, including attorney's fees, in connection with the action or proceeding.

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

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

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

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

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

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

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

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

5122. (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.

(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 or 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 pursuant to this ~~section, Section 201, Section 7122, or Section 9122~~ *title*, except that a corporation may adopt a name that is substantially the same as an existing domestic or foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, upon proof of consent by such corporation and a finding by the Secretary of State that under the circumstances the public is not likely to be misled.

The use by a 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 therefor 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 therein 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; nor shall consecutive reservations be made by or for the use or benefit of the same person of names so similar as to fall within the prohibitions of subdivision (b).

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

7122. (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.

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

(c) 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 pursuant to this ~~section, Section 201, Section 5122, or Section 9122~~ *title*, except that a corporation may adopt a name that is substantially the same as an existing domestic or foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, upon proof of consent by such corporation and a finding by the Secretary of State that under the circumstances the public is not likely to be misled.

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

(d) Any applicant may, upon payment of the fee prescribed therefor in the Government Code, obtain from the Secretary of State a certificate of reservation of any name not prohibited by subdivision (c), and upon the issuance of the certificate the name stated therein 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; nor shall consecutive reservations be made by or for the use or benefit of the same person of names so similar as to fall within the prohibitions of subdivision (c).

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

9122. (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.

(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 or 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 pursuant to this ~~section, Section 201, Section 5122, or Section 7122~~ *title*, except that a corporation may adopt a name that is substantially the same as an existing domestic or foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, upon proof of consent by such corporation and a finding by the Secretary of State that under the circumstances the public is not likely to be misled.

The use by a 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 therefor 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 therein 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; nor shall consecutive reservations be made by or for the use or benefit of the same person of names so similar as to fall within the prohibitions of subdivision (b).

SEC. 16. Section 7.5 of this bill incorporates amendments to Section 1113 of the Corporations Code proposed by both this bill and Assembly Bill 1211. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, *2012, (2) each bill amends Section 1113 of the Corporations Code, and (3) this bill is enacted after Assembly Bill 1211, in which case Section 7 of this bill shall not become operative.*

O