

Introduced by Senator DeSaulnierFebruary 21, 2014

An act to amend Sections 107, 158, 171.08, 1100, 1112.5, 1113, 1151, 1152, 1155, 1201, 2500, 2501, 2502, 2502.01, 2502.03, 2502.04, 2502.05, 2502.06, 2503.1, 2504, 2506, 2507, 2509, 2510, 2510.1, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2600, 2600.5, 2601, 2602, 2603, 2604, 2605, 2700, 2701, 2702, 2800, 2900, 3000, 3001, 3002, 3100, 3200, 3201, 3202, 3203, 3300, 3301, 3302, 3303, 3304, 3305, 3400, 3401, 3500, 3501, 3502, and 3503 of, and to amend the heading of Division 1.5 (commencing with Section 2500) of Title 1 of, the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1301, as introduced, DeSaulnier. Corporate Flexibility Act of 2011: Socially Responsible Corporations Act.

The Corporate Flexibility Act of 2011 authorizes and regulates the formation and operation of flexible purpose corporations.

This bill would rename the act as the Socially Responsible Corporations Act and rename the type of corporation authorized and regulated under that act as a socially responsible corporation.

Under the act, an existing business association organized as a trust under the laws of this state or of a foreign jurisdiction may incorporate under the act 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, and the filing of articles with a certificate.

This bill would revise the approval by the affirmative vote of a majority of the outstanding voting shares of beneficial interest requirement to approval by the affirmative vote of $\frac{2}{3}$ of those shares.

Under the act, the articles of incorporation are required to set forth specified statements, including the name of the corporation.

This bill would revise the statements that are required to be contained in the articles of incorporation. This bill would provide that any reference to a “flexible purpose corporation” or any abbreviation in the articles of incorporation of a corporation formed pursuant to this act before January 1, 2015, is also a reference to “socially responsible corporation.” This bill would provide that a corporation formed pursuant to this act as a “flexible purpose corporation” before January 1, 2015, continues its existence as a socially responsible corporation.

Under the act, the director, in discharging his or her duties, 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 corporation, the best interests of the corporation and its shareholders, and the purposes of the corporation as set forth in its articles.

This bill would require the director to consider those factors.

Under the act, certificates representing the shares of a corporation formed under the act are required to contain specified statements.

This bill would revise the statements required to be on those certificates. This bill would provide that the certificates representing shares of a corporation formed pursuant to this act as a “flexible purpose corporation” before January 1, 2015, continue to be valid, and that any reference to a “flexible purpose corporation” or any abbreviation of that term in those certificates is also a reference to “socially responsible corporation.”

Under the act, a corporation formed under the act may, by amendment of its articles as specified in the act, convert to a domestic corporation.

This bill would provide that if the conversion is approved, shareholders with dissenting shares may exercise dissenters’ rights set forth in the General Corporation Law.

Under the act certain mergers require approval by an affirmative vote of at least $\frac{2}{3}$ 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 corporation.

This bill would provide that if the merger is approved, shareholders with dissenting shares may exercise dissenters’ rights set forth in the General Corporation Law.

Under the act, a corporation formed under the act may be converted into a domestic other business entity if specified conditions are met. The act requires the approval of a plan of conversion.

This bill would provide that if the plan is approved, shareholders with dissenting shares may exercise dissenters’ rights set forth in the General Corporation Law.

Under the act, the principal terms of a reorganization are required to be approved by the outstanding shares of any class of a corporation formed under that act 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 formed under that act or parent party having different rights, preferences, privileges, or restrictions than those surrendered.

This bill would instead require the principal terms of a reorganization to be approved by the affirmative vote of at least 2/3 of each class, or a greater vote if required in the articles, of the outstanding shares of any class of a corporation formed under that act 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 formed under that act or parent party having different rights, preferences, privileges, or restrictions than those surrendered.

This bill would make other changes to correct erroneous cross references.

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

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

- 1 SECTION 1. Section 107 of the Corporations Code is amended
- 2 to read:
- 3 107. No corporation, ~~flexible purpose~~ *socially responsible*
- 4 corporation, association or individual shall issue or put in
- 5 circulation, as money, anything but the lawful money of the United
- 6 States.
- 7 SEC. 2. Section 158 of the Corporations Code is amended to
- 8 read:
- 9 158. (a) “Close corporation” means a corporation, including
- 10 a close ~~flexible purpose~~ *socially responsible* corporation, whose
- 11 articles contain, in addition to the provisions required by Section
- 12 202, a provision that all of the corporation’s issued shares of all

1 classes shall be held of record by not more than a specified number
2 of persons, not exceeding 35, and a statement “This corporation
3 is a close corporation.”

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

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

16 (d) In determining the number of shareholders for the purposes
17 of the provision in the articles authorized by this section, a husband
18 and wife and the personal representative of either shall be counted
19 as one regardless of how shares may be held by either or both of
20 them, a trust or personal representative of a decedent holding shares
21 shall be counted as one regardless of the number of trustees or
22 beneficiaries and a partnership or corporation or business
23 association holding shares shall be counted as one (except that any
24 such trust or entity the primary purpose of which was the
25 acquisition or voting of the shares shall be counted according to
26 the number of beneficial interests therein).

27 (e) A corporation shall cease to be a close corporation upon the
28 filing of an amendment to its articles pursuant to subdivision (c)
29 or if it shall have more than the maximum number of holders of
30 record of its shares specified in its articles as a result of an inter
31 vivos transfer of shares which is not void under subdivision (d) of
32 Section 418, the transfer of shares on distribution by will or
33 pursuant to the laws of descent and distribution, the dissolution of
34 a partnership or corporation or business association or the
35 termination of a trust which holds shares, by court decree upon
36 dissolution of a marriage or otherwise by operation of law.
37 Promptly upon acquiring more than the specified number of holders
38 of record of its shares, a close corporation shall execute and file
39 an amendment to its articles deleting the special provisions referred
40 to in subdivision (a) and deleting any other provisions not

1 permissible for a corporation which is not a close corporation,
2 which amendment shall be promptly approved and filed by the
3 board and need not be approved by the outstanding shares.

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

9 (g) The following sections contain specific references to close
10 corporations: Sections 186, 202, 204, 300, 418, 421, 1111, 1201,
11 1800 and 1904.

12 SEC. 3. Section 171.08 of the Corporations Code is amended
13 to read:

14 171.08. ~~“Flexible purpose~~ “*Socially responsible corporation*”
15 means any ~~flexible purpose~~ *socially responsible* corporation formed
16 under Division 1.5 (commencing with Section 2500).

17 SEC. 4. Section 1100 of the Corporations Code is amended to
18 read:

19 1100. Any two or more corporations may be merged into one
20 of those corporations. A corporation may merge with one or more
21 domestic corporations (Section 167), ~~flexible purpose~~ *socially*
22 *responsible* corporations (Section 171.08), foreign corporations
23 (Section 171), or other business entities (Section 174.5) pursuant
24 to this chapter. Mergers in which a foreign corporation but no other
25 business entity is a constituent party are governed by Section 1108,
26 mergers in which a ~~flexible purpose~~ *socially responsible*
27 corporation but no other business entity is a constituent party are
28 governed by Section 1112.5, and mergers in which an other
29 business entity is a constituent party are governed by Section 1113.

30 SEC. 5. Section 1112.5 of the Corporations Code is amended
31 to read:

32 1112.5. If a disappearing corporation in a merger is a
33 corporation governed by this division and the surviving corporation
34 is a ~~flexible purpose~~ *socially responsible* corporation, both of the
35 following shall apply:

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

1 (b) The shareholders of the disappearing corporation shall have
2 all of the rights under Chapter 13 (commencing with Section 1300)
3 of the shareholders of a corporation involved in a reorganization
4 requiring the approval of its outstanding shares (Section 152), and
5 the disappearing corporation shall have all of the obligations under
6 Chapter 13 (commencing with Section 1300) of a corporation
7 involved in the reorganization.

8 SEC. 6. Section 1113 of the Corporations Code is amended to
9 read:

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

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

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

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

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

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

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

39 (3) The amendments, if any, subject to Sections 900 and 907,
40 to the articles of the surviving corporation, if applicable, to be

1 effected by the merger. If any amendment changes the name of
2 the surviving corporation, if applicable, the new name may be,
3 subject to subdivision (b) of Section 201, the same as or similar
4 to the name of a disappearing party to the merger.

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

15 (5) Any other details or provisions required by the laws under
16 which any party to the merger is organized, including, if a public
17 benefit corporation or a religious corporation is a party to the
18 merger, Section 6019.1, or, if a mutual benefit corporation is a
19 party to the merger, Section 8019.1, or, if a consumer cooperative
20 corporation is a party to the merger, Section 12540.1, or if an
21 unincorporated association is a party to the merger, Section 18370,
22 or, if a domestic limited partnership is a party to the merger,
23 Section 15911.12, or, if a domestic partnership is a party to the
24 merger, Section 16911, or, if a domestic limited liability company
25 is a party to the merger, Section 17710.12.

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

30 (c) Each share of the same class or series of any constituent
31 corporation (other than the cancellation of shares held by a party
32 to the merger or its parent, or a wholly owned subsidiary of either,
33 in another constituent corporation) shall, unless all shareholders
34 of the class or series consent and except as provided in Section
35 407, be treated equally with respect to any distribution of cash,
36 rights, securities, or other property. Notwithstanding paragraph
37 (4) of subdivision (b), the unredeemable common shares of a
38 constituent corporation may be converted only into unredeemable
39 common shares of a surviving corporation or a parent party
40 (Section 1200) or unredeemable equity securities of a surviving

1 party other than a corporation if another party to the merger or its
2 parent owns, directly or indirectly, prior to the merger shares of
3 that corporation representing more than 50 percent of the voting
4 power of that corporation, unless all of the shareholders of the
5 class consent and except as provided in Section 407.

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

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

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

26 (g) (1) If the surviving party is a corporation or a foreign
27 corporation, or if a ~~flexible purpose~~ *socially responsible*
28 corporation (Section 171.08), a public benefit corporation (Section
29 5060), a mutual benefit corporation (Section 5059), a religious
30 corporation (Section 5061), or a corporation organized under the
31 Consumer Cooperative Corporation Law (Section 12200) is a party
32 to the merger, after required approvals of the merger by each
33 constituent corporation through approval of the board (Section
34 151) and any approval of the outstanding shares (Section 152)
35 required by Chapter 12 (commencing with Section 1200) and by
36 the other parties to the merger, the surviving party shall file a copy
37 of the agreement of merger with an officers' certificate of each
38 constituent domestic and foreign corporation attached stating the
39 total number of outstanding shares or membership interests of each
40 class entitled to vote on the merger (and identifying any other

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

1 other business entity was required, a statement setting forth the
2 total number of outstanding interests of each class entitled to vote
3 on the merger and that the agreement of merger in the form
4 attached or its principal terms, as required, were approved by a
5 vote of the number of interests of each class that equaled or
6 exceeded the vote required, specifying each class entitled to vote
7 and the percentage vote required of each class, and any other
8 information required to be set forth under the laws under which
9 the constituent other business entity is organized, including, if a
10 domestic limited partnership is a party to the merger, subdivision
11 (a) of Section 15911.14, if a domestic partnership is a party to the
12 merger, subdivision (b) of Section 16915, and, if a domestic limited
13 liability company is a party to the merger, subdivision (a) of
14 Section 17710.04. The certificate of merger for each constituent
15 foreign other business entity, if any, shall also set forth the statutory
16 or other basis under which that foreign other business entity is
17 authorized by the laws under which it is organized to effect the
18 merger. The merger and any amendment of the articles of the
19 surviving corporation, if applicable, contained in the agreement
20 of merger shall be effective upon filing of the agreement of merger
21 with an officer's certificate of each constituent domestic and
22 foreign corporation and a certificate of merger for each constituent
23 other business entity, subject to subdivision (c) of Section 110 and
24 subject to the provisions of subdivision (j), and the several parties
25 thereto shall be one entity. If a domestic reciprocal insurer
26 organized after 1974 to provide medical malpractice insurance is
27 a party to the merger, the agreement of merger or certificate of
28 merger shall not be filed until there has been filed the certificate
29 issued by the Insurance Commissioner approving the merger
30 pursuant to Section 1555 of the Insurance Code. The Secretary of
31 State may certify a copy of the agreement of merger separate from
32 the officers' certificates and certificates of merger attached thereto.

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

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

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

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

1 vote of the number of shares of each class entitled to vote and the
2 percentage vote required of each class.

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

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

12 (E) Any other information required to be stated in the certificate
13 of merger by the laws under which each party to the merger is
14 organized, including, if a domestic limited liability company is a
15 party to the merger, subdivision (a) of Section 17710.14, if a
16 domestic partnership is a party to the merger, subdivision (b) of
17 Section 16915, and, if a domestic limited partnership is a party to
18 the merger, subdivision (a) of Section 15911.14.

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

20 Unless a future effective date or time is provided in a certificate
21 of merger, in which event the merger shall be effective at that
22 future effective date or time, a merger shall be effective upon the
23 filing of the certificate of merger in the office of the Secretary of
24 State and the several parties thereto shall be one entity. The
25 surviving other business entity shall keep a copy of the agreement
26 of merger at its principal place of business which, for purposes of
27 this subdivision, shall be the office referred to in Section 17710.13
28 if a domestic limited liability company, at the business address
29 specified in paragraph (5) of subdivision (a) of Section 17710.14
30 if a foreign limited liability company, at the office referred to in
31 subdivision (a) of Section 16403 if a domestic general partnership,
32 at the business address specified in subdivision (f) of Section 16911
33 if a foreign partnership, at the office referred to in subdivision (a)
34 of Section 15901.14 if a domestic limited partnership, or at the
35 business address specified in paragraph (3) of subdivision (a) of
36 Section 15909.02 if a foreign limited partnership. Upon the request
37 of a holder of equity securities of a party to the merger, a person
38 with authority to do so on behalf of the surviving other business
39 entity shall promptly deliver to that holder, a copy of the agreement
40 of merger. A waiver by that holder of the rights provided in the

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

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

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

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

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

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

39 (4) If a limited partnership or a general partnership is a party to
40 the merger, nothing in this section is intended to affect the liability

1 a general partner of a disappearing limited partnership or general
2 partnership may have in connection with the debts and liabilities
3 of the disappearing limited partnership or general partnership
4 existing prior to the time the merger is effective.

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

9 (2) If the surviving party is a domestic corporation or domestic
10 other business entity, the merger proceedings with respect to that
11 party and any domestic disappearing corporation shall conform to
12 the provisions of this section. If the surviving party is a foreign
13 corporation or foreign other business entity, then, subject to the
14 requirements of subdivision (c), and of Section 407 and Chapter
15 12 (commencing with Section 1200) and Chapter 13 (commencing
16 with Section 1300), and, if applicable, corresponding provisions
17 of the Nonprofit Corporation Law or the Consumer Cooperative
18 Corporation Law, with respect to any domestic constituent
19 corporations, Article 11 (commencing with Section 17711.01) of
20 Title 2.6 with respect to any domestic constituent limited liability
21 companies, Article 6 (commencing with Section 16601) of Chapter
22 5 of Title 2 with respect to any domestic constituent general
23 partnerships, and Article 11.5 (commencing with Section 15911.20)
24 of Chapter 5.5 of Title 2 with respect to any domestic constituent
25 limited partnerships, the merger proceedings may be in accordance
26 with the laws of the state or place of incorporation or organization
27 of the surviving party.

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

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

1 upon the filing in this state of a copy of the agreement of merger
2 with an officers' certificate of each constituent foreign and
3 domestic corporation and a certificate of merger of each constituent
4 other business entity attached, which officers' certificates and
5 certificates of merger shall conform to the requirements of
6 paragraph (1) of subdivision (g). If one or more domestic other
7 business entities is a disappearing party in a merger pursuant to
8 this subdivision in which a foreign other business entity is the
9 surviving entity, a certificate of merger required by the laws under
10 which that domestic other business entity is organized, including
11 subdivision (a) of Section 15911.14, subdivision (b) of Section
12 16915, or subdivision (a) of Section 17710.14, as is applicable,
13 shall also be filed at the same time as the filing of the agreement
14 of merger.

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

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

34 SEC. 7. Section 1151 of the Corporations Code is amended to
35 read:

36 1151. (a) A corporation may be converted into a domestic
37 other business entity, *including, but not limited to, a limited liability*
38 *company, a partnership or a socially responsible corporation,*
39 pursuant to this chapter if, pursuant to the proposed conversion,
40 (1) each share of the same class or series of the converting

1 corporation shall, unless all the shareholders of the class or series
2 consent, be treated equally with respect to any cash, rights,
3 securities, or other property to be received by, or any obligations
4 or restrictions to be imposed on, the holder of that share, and (2)
5 nonredeemable common shares of the converting corporation shall
6 be converted only into nonredeemable equity securities of the
7 converted entity unless all of the shareholders of the class consent;
8 provided, however, that clause (1) shall not restrict the ability of
9 the shareholders of a converting corporation to appoint one or
10 more managers, if the converted entity is a limited liability
11 company, or one or more general partners, if the converted entity
12 is a limited partnership, in the plan of conversion or in the
13 converted entity's governing documents.

14 (b) Notwithstanding this section, the conversion of a corporation
15 into a domestic other business entity, *including, but not limited to,*
16 *a limited liability company, a partnership or a socially responsible*
17 *corporation,* may be effected only if both of the following
18 conditions are complied with:

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

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

23 SEC. 8. Section 1152 of the Corporations Code is amended to
24 read:

25 1152. (a) A corporation that desires to convert to a domestic
26 other business entity shall approve a plan of conversion. The plan
27 of conversion shall state all of the following:

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

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

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

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

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

4 (b) The plan of conversion shall be approved by the board of
5 the converting corporation (Section 151), and the principal terms
6 of the plan of the conversion shall be approved by the outstanding
7 shares (Section 152) of each class of the converting corporation.
8 The approval of the outstanding shares may be given before or
9 after approval by the board. Notwithstanding the foregoing, if a
10 converting corporation is a close corporation, the conversion shall
11 be approved by the affirmative vote of at least two-thirds of each
12 class, or a greater vote if required in the articles, of outstanding
13 shares (Section 152) of that converting corporation; provided,
14 however, that the articles may provide for a lesser vote, but not
15 less than a majority of the outstanding shares of each class.

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

24 (d) If the corporation is converting into a ~~flexible purpose~~
25 *socially responsible* corporation, both of the following shall apply:

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

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

39 (e) Upon the effectiveness of the conversion, all shareholders
40 of the converting corporation, except those that exercise dissenters'

1 rights as provided in Section 1159 and Chapter 13 (commencing
2 with Section 1300), shall be deemed parties to any agreement or
3 agreements constituting the governing documents for the converted
4 entity adopted as part of the plan of conversion, irrespective of
5 whether or not a shareholder has executed the plan of conversion
6 or those governing documents for the converted entity. Any
7 adoption of governing documents made pursuant thereto shall be
8 effective at the effective time or date of the conversion.

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

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

22 (h) The converted entity shall keep the plan of conversion at
23 (1) the principal place of business of the converted entity if the
24 converted entity is a domestic partnership or (2) at the office at
25 which records are to be kept under Section 15901.11 if the
26 converted entity is a domestic limited partnership or at the office
27 at which records are to be kept under Section 17701.13 if the
28 converted entity is a domestic limited liability company. Upon the
29 request of a shareholder of a converting corporation, the authorized
30 person on behalf of the converted entity shall promptly deliver to
31 the shareholder, at the expense of the converted entity, a copy of
32 the plan of conversion. A waiver by a shareholder of the rights
33 provided in this subdivision shall be unenforceable.

34 SEC. 9. Section 1155 of the Corporations Code is amended to
35 read:

36 1155. (a) To convert a corporation:

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

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

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

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

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

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

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

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

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

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

37 (e) Upon the effectiveness of a conversion pursuant to this
38 chapter, a converted entity that is a ~~flexible purpose~~ *socially*
39 *responsible* corporation, domestic partnership, domestic limited
40 partnership or domestic limited liability company shall be deemed

1 to have assumed the liability of the converting corporation (1) to
2 prepare and file or cause to be prepared and filed all tax and
3 information returns otherwise required of the converting
4 corporation under the Corporation Tax Law (Part 11 (commencing
5 with Section 23001) of Division 2 of the Revenue and Taxation
6 Code) and (2) to pay any tax liability determined to be due pursuant
7 to that law.

8 SEC. 10. Section 1201 of the Corporations Code is amended
9 to read:

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

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

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

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

16 (e) Notwithstanding subdivisions (a) and (b), the principal terms
17 of a reorganization shall be approved by the affirmative vote of at
18 least two-thirds of each class, or a greater vote if required in the
19 articles, of the outstanding shares (Section 152) of any close
20 corporation if the reorganization would result in their receiving
21 shares of a corporation that is not a close corporation. However,
22 the articles may provide for a lesser vote, but not less than a
23 majority of the outstanding shares of each class.

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

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

35 (h) Notwithstanding subdivisions (a) and (b), the principal terms
36 of a reorganization shall be approved by all shareholders of any
37 class or series if, as a result of the reorganization, the holders of
38 that class or series become personally liable for any obligations
39 of a party to the reorganization, unless all holders of that class or

1 series have the dissenters’ rights provided in Chapter 13
 2 (commencing with Section 1300).

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

8 SEC. 11. The heading of Division 1.5 (commencing with
 9 Section 2500) of Title 1 of the Corporations Code is amended to
 10 read:

11
 12 DIVISION 1.5. ~~CORPORATE FLEXIBILITY ACT OF 2011~~
 13 *SOCIALLY RESPONSIBLE CORPORATIONS ACT*

14
 15 SEC. 12. Section 2500 of the Corporations Code is amended
 16 to read:

17 2500. This division shall be known and may be cited as the
 18 ~~Corporate Flexibility Act of 2011~~. *Socially Responsible*
 19 *Corporations Act*.

20 SEC. 13. Section 2501 of the Corporations Code is amended
 21 to read:

22 2501. Except as otherwise expressly stated, the provisions of
 23 Division 1 (commencing with Section 100) shall apply to
 24 corporations organized under this division, and references in that
 25 division to the terms “close corporation,” “constituent corporation,”
 26 “corporation,” “disappearing corporation,” “domestic corporation,”
 27 “foreign corporation,” “surviving corporation,” and similar terms
 28 shall be read to apply, in the same manner, to include the similar
 29 ~~“flexible purpose corporation” organized under this division.~~
 30 *“socially responsible corporation.”*

31 SEC. 14. Section 2502 of the Corporations Code is amended
 32 to read:

33 2502. This division applies only to ~~flexible purpose~~ *socially*
 34 *responsible* corporations organized expressly under this division
 35 whether organized or existing under this division or merged or
 36 converted into a ~~flexible purpose~~ *socially responsible* corporation
 37 in accordance with Chapter 11 (commencing with Section 1100)
 38 of Division 1 or Chapter 11.5 (commencing with Section 1150)
 39 of Division 1.

1 SEC. 15. Section 2502.01 of the Corporations Code is amended
2 to read:

3 2502.01. Every ~~flexible purpose~~ *socially responsible*
4 corporation organized under the laws of this state or similar foreign
5 ~~flexible purpose~~ *socially responsible* corporation, all of the capital
6 stock of which is beneficially owned by the United States, an
7 agency or instrumentality of the United States or any ~~flexible~~
8 ~~purpose~~ *socially responsible* corporation or similar foreign ~~flexible~~
9 ~~purpose~~ *socially responsible* corporation the whole of the capital
10 stock of which is owned by the United States or by an agency or
11 instrumentality of the United States, is conclusively presumed to
12 be an agency and instrumentality of the United States and is entitled
13 to all privileges and immunities to which the holders of all of its
14 stock are entitled as agencies of the United States.

15 SEC. 16. Section 2502.03 of the Corporations Code is amended
16 to read:

17 2502.03. A ~~flexible purpose~~ *socially responsible* corporation
18 may be sued in the same manner as a corporation as provided in
19 the Code of Civil Procedure.

20 SEC. 17. Section 2502.04 of the Corporations Code is amended
21 to read:

22 2502.04. A ~~flexible purpose~~ *socially responsible* corporation
23 formed under this division shall, in respect of its property, as a
24 condition of its existence as a ~~flexible purpose~~ *socially responsible*
25 corporation, be subject, in the same manner as a corporation, to
26 the provisions of the Code of Civil Procedure authorizing the
27 attachment of corporate property.

28 SEC. 18. Section 2502.05 of the Corporations Code is amended
29 to read:

30 2502.05. The fees of the Secretary of State for filing
31 instruments by or on behalf of ~~flexible purpose~~ *socially responsible*
32 corporations shall be the same fees prescribed for corporations in
33 Article 3 (commencing with Section 12180) of Chapter 3 of Part
34 2 of Division 3 of Title 2 of the Government Code.

35 SEC. 19. Section 2502.06 of the Corporations Code is amended
36 to read:

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

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

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

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

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

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

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

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

6 SEC. 20. Section 2503.1 of the Corporations Code is amended
7 to read:

8 2503.1. “Close ~~flexible purpose~~ *socially responsible*
9 corporation” means a ~~flexible purpose~~ *socially responsible*
10 corporation that is also a close corporation.

11 SEC. 21. Section 2504 of the Corporations Code is amended
12 to read:

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

18 SEC. 22. Section 2506 of the Corporations Code is amended
19 to read:

20 2506. “Disappearing ~~flexible purpose~~ *socially responsible*
21 corporation” means a constituent ~~flexible purpose~~ *socially*
22 *responsible* corporation that is not the surviving entity.

23 SEC. 23. Section 2507 of the Corporations Code is amended
24 to read:

25 2507. “Domestic ~~flexible purpose~~ *socially responsible*
26 corporation” means a corporation organized under this division.

27 SEC. 24. Section 2509 of the Corporations Code is amended
28 to read:

29 2509. “~~Flexible purpose corporation,~~” “*Socially responsible*
30 *corporation,*” unless otherwise expressly provided, refers only to
31 a corporation organized under this division.

32 SEC. 25. Section 2510 of the Corporations Code is amended
33 to read:

34 2510. “~~Flexible purpose~~” “*Socially responsible* corporation
35 subject to the Banking Law” means any of the following:

36 (a) A ~~flexible purpose~~ *socially responsible* corporation that,
37 with the approval of the Commissioner of Financial Institutions,
38 is incorporated for the purpose of engaging in, or that is authorized
39 by the Commissioner of Financial Institutions to engage in, the

1 commercial banking business under the Banking Law (Division
2 1 (commencing with Section 99) of the Financial Code).

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

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

16 (d) Any ~~flexible purpose~~ *socially responsible* corporation that
17 is authorized by the Commissioner of Financial Institutions and
18 the Commissioner of Insurance to maintain a title insurance
19 department to engage in title insurance business and a trust
20 department to engage in trust business.

21 (e) Any ~~flexible purpose~~ *socially responsible* corporation that,
22 with the approval of the Commissioner of Financial Institutions,
23 is incorporated for the purpose of engaging in, or that is authorized
24 by the Commissioner of Financial Institutions to engage in,
25 business under Article 1 (commencing with Section 3500) of
26 Chapter 19 of Division 1 of the Financial Code.

27 SEC. 26. Section 2510.1 of the Corporations Code is amended
28 to read:

29 2510.1. ~~“Flexible purpose—~~“*Socially responsible* corporation
30 subject to the Insurance Code as an insurer” means a ~~flexible~~
31 ~~purpose~~ *socially responsible* corporation that has met the
32 requirements of Sections 201.5, 201.6, and 201.7.

33 SEC. 27. Section 2511 of the Corporations Code is amended
34 to read:

35 2511. “Reorganization” means a merger reorganization, an
36 exchange reorganization, or a sale of assets reorganization.

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

1 (b) “Exchange reorganization” means the acquisition by one
2 domestic ~~flexible purpose~~ *socially responsible* corporation, foreign
3 ~~flexible purpose~~ *socially responsible* corporation, or other business
4 entity in exchange, in whole or in part, for its equity securities, or
5 the equity securities of a domestic ~~flexible purpose~~ *socially*
6 *responsible* corporation, a foreign ~~flexible purpose~~ *socially*
7 *responsible* corporation, or an other business entity that is in control
8 of the acquiring entity, of equity securities of another domestic
9 ~~flexible purpose~~ *socially responsible* corporation, foreign ~~flexible~~
10 ~~purpose~~ *socially responsible* corporation, or other business entity
11 if, immediately after the acquisition, the acquiring entity has control
12 of the other entity.

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

29 SEC. 28. Section 2512 of the Corporations Code is amended
30 to read:

31 2512. “Share exchange tender offer” means any acquisition by
32 one ~~flexible purpose~~ *socially responsible* corporation in exchange
33 in whole or in part for its equity securities, or the equity securities
34 of a corporation or a ~~flexible purpose~~ *socially responsible*
35 corporation that is in control of the acquiring ~~flexible purpose~~
36 *socially responsible* corporation, of shares of another corporation
37 or ~~flexible purpose~~ *socially responsible* corporation, other than an
38 exchange reorganization (subdivision (b) of Section 2511).

39 SEC. 29. Section 2513 of the Corporations Code is amended
40 to read:

1 2513. “Special purpose” means the special purpose set forth
2 in a ~~flexible purpose~~ *socially responsible* corporation’s articles
3 pursuant to subdivision (b) of Section 2602.

4 SEC. 30. Section 2514 of the Corporations Code is amended
5 to read:

6 2514. “Special purpose current report” means the report
7 required of a ~~flexible purpose~~ *socially responsible* corporation
8 pursuant to Section 3501.

9 SEC. 31. Section 2515 of the Corporations Code is amended
10 to read:

11 2515. “Special purpose MD&A” means the management
12 discussion and analysis required of a ~~flexible purpose~~ *socially*
13 *responsible* corporation pursuant to subdivision (b) of Section
14 3500.

15 SEC. 32. Section 2516 of the Corporations Code is amended
16 to read:

17 2516. “Special purpose objectives” means those objectives set
18 forth by management and the directors of a ~~flexible purpose~~
19 *socially responsible* corporation for purposes of measuring the
20 impact of the ~~flexible purpose~~ *socially responsible* corporation’s
21 efforts relating to its special purpose in accordance with Section
22 3500.

23 SEC. 33. Section 2517 of the Corporations Code is amended
24 to read:

25 2517. “Surviving ~~flexible purpose~~ *socially responsible*
26 corporation” means a ~~flexible purpose~~ *socially responsible*
27 corporation into which one or more other corporations or one or
28 more other business entities is merged.

29 SEC. 34. Section 2600 of the Corporations Code is amended
30 to read:

31 2600. (a) One or more natural persons, partnerships,
32 associations, ~~flexible purpose~~ *socially responsible* corporations,
33 or corporations, domestic or foreign, may form a ~~flexible purpose~~
34 *socially responsible* corporation under this division by executing
35 and filing articles of incorporation.

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

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

4 SEC. 35. Section 2600.5 of the Corporations Code is amended
5 to read:

6 2600.5. (a) An existing business association organized as a
7 trust under the laws of this state or of a foreign jurisdiction may
8 incorporate under this division upon approval by its board of
9 trustees or similar governing body and approval by the affirmative
10 vote of ~~a majority~~ *two-thirds* of the outstanding voting shares of
11 beneficial interest, or a greater proportion of the outstanding shares
12 of beneficial interest or the vote of those other classes of shares
13 of beneficial interest as may be specifically required by its
14 declaration of trust or bylaws, and the filing of articles with a
15 certificate attached pursuant to this chapter.

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

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

28 (d) Upon the filing of articles pursuant to this section, the
29 ~~flexible-purpose socially responsible~~ corporation shall succeed
30 automatically to all of the rights and property of the association
31 being incorporated and shall be subject to all of its debts and
32 liabilities in the same manner as if the ~~flexible-purpose socially~~
33 *responsible* corporation had itself incurred them. The incumbent
34 trustees of the association shall constitute the initial directors of
35 the ~~flexible-purpose socially responsible~~ corporation and shall
36 continue in office until the next annual meeting of the shareholders
37 or their earlier death, resignation, or removal. All rights of creditors
38 and all liens upon the property of the association shall be preserved
39 unimpaired. Any action or proceeding pending by or against the
40 association may be prosecuted to judgment, which shall bind the

1 ~~flexible purpose~~ *socially responsible* corporation, or the ~~flexible~~
2 ~~purpose~~ *socially responsible* corporation may be proceeded against
3 or substituted in its place.

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

11 SEC. 36. Section 2601 of the Corporations Code is amended
12 to read:

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

21 (b) (1) The Secretary of State shall not file articles that set
22 forth a name that is likely to mislead the public or that is the same
23 as, or resembles so closely as to tend to deceive, the name of a
24 domestic corporation, the name of a domestic ~~flexible purpose~~
25 *socially responsible* corporation, or the name of a foreign
26 corporation that is authorized to transact intrastate business or has
27 registered its name pursuant to Section 2101, a name that a foreign
28 corporation has assumed under subdivision (b) of Section 2106, a
29 name that will become the record name of a corporation or ~~flexible~~
30 ~~purpose~~ *socially responsible* corporation or a foreign corporation
31 upon the effective date of a filed corporate instrument where there
32 is a delayed effective date pursuant to subdivision (c) of Section
33 110 or subdivision (c) of Section 5008, or a name that is under
34 reservation for another corporation or ~~flexible purpose~~ *socially*
35 *responsible* corporation pursuant to this title, except that a ~~flexible~~
36 ~~purpose~~ *socially responsible* corporation may adopt a name that
37 is substantially the same as an existing corporation or ~~flexible~~
38 ~~purpose~~ *socially responsible* corporation, foreign or domestic,
39 which is authorized to transact intrastate business or has registered
40 its name pursuant to Section 2101, upon proof of consent by the

1 domestic or foreign corporation or ~~flexible purpose~~ *socially*
2 *responsible* corporation and a finding by the Secretary of State
3 that under the circumstances the public is not likely to be misled.
4 The use by a ~~flexible purpose~~ *socially responsible* corporation of
5 a name in violation of this section may be enjoined notwithstanding
6 the filing of its articles by the Secretary of State.

7 (2) *A corporation formed pursuant to this division as a “flexible*
8 *purpose corporation” before January 1, 2015, shall continue its*
9 *existence as a socially responsible corporation. A corporation*
10 *formed pursuant to this division before January 1, 2015, may, but*
11 *is not required to, change its name to replace “flexible purpose*
12 *corporation” with “socially responsible corporation” and may,*
13 *but is not required to, amend its articles of incorporation to replace*
14 *the term “flexible purpose corporation” with “socially responsible*
15 *corporation” as applicable in any statements contained in the*
16 *articles. Any reference to a “flexible purpose corporation” or any*
17 *abbreviation of that term in the articles of incorporation of a*
18 *corporation formed pursuant to this division before January 1,*
19 *2015, shall also be a reference to “socially responsible*
20 *corporation.”*

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

34 SEC. 37. Section 2602 of the Corporations Code is amended
35 to read:

36 2602. The articles of incorporation shall set forth:

37 (a) The name of the ~~flexible purpose~~ *socially responsible*
38 corporation that shall contain the words ~~“flexible purpose~~ *“socially*
39 *responsible corporation”* or an abbreviation of those words.

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

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

11 (B) “The purpose of this ~~flexible purpose~~ *socially responsible*
12 corporation is to engage in the profession of ____ (with the
13 insertion of a profession permitted to be incorporated by the
14 California Corporations Code) and any other lawful activities,
15 other than the banking or trust company business, not prohibited
16 to a ~~flexible purpose~~ *socially responsible* corporation engaging in
17 that profession by applicable laws and regulations, for the benefit
18 of the long-term and the short-term interests of the ~~flexible purpose~~
19 *socially responsible* corporation and its shareholders *and in*
20 *furtherance of the following enumerated purposes ____.”*

21 (2) A statement that a purpose of the ~~flexible purpose~~ *socially*
22 *responsible* corporation is to engage in one or more of the
23 following purposes, in addition to the purpose stated pursuant to
24 paragraph (1):

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

27 (B) The purpose of promoting positive short-term or long-term
28 effects of, or minimizing adverse short-term or long-term effects
29 of, the ~~flexible purpose~~ *socially responsible* corporation’s activities
30 upon any of the following:

31 (i) The ~~flexible purpose~~ *socially responsible* corporation’s
32 employees, suppliers, customers, and creditors.

33 (ii) The community and society.

34 (iii) The environment.

35 (3) A statement that the ~~flexible purpose~~ *socially responsible*
36 corporation is organized as a ~~flexible purpose~~ *socially responsible*
37 corporation under the Corporate Flexibility Act of 2011.

38 (4) If the ~~flexible purpose~~ *socially responsible* corporation is a
39 ~~flexible purpose~~ *socially responsible* corporation subject to the
40 Banking Law (Division 1 (commencing with Section 99) of the

1 Financial Code), the articles shall set forth a statement of purpose
2 that is prescribed by the applicable provision of the Banking Law
3 (Division 1 (commencing with Section 99) of the Financial Code).

4 (5) If the ~~flexible purpose~~ *socially responsible* corporation is a
5 ~~flexible purpose~~ *socially responsible* corporation subject to the
6 Insurance Code as an insurer, the articles shall additionally state
7 that the business of the ~~flexible purpose~~ *socially responsible*
8 corporation is to be an insurer.

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

21 (7) If the ~~flexible purpose~~ *socially responsible* corporation is a
22 close ~~flexible purpose~~ *socially responsible* corporation, a statement
23 as required by subdivision (a) of Section 158.

24 (c) The name and street address in this state of the ~~flexible~~
25 ~~purpose~~ *socially responsible* corporation's initial agent for service
26 of process in accordance with subdivision (b) of Section 1502.

27 (d) The initial street address of the corporation.

28 (e) The initial mailing address of the corporation, if different
29 from the initial street address.

30 (f) If the ~~flexible purpose~~ *socially responsible* corporation is
31 authorized to issue only one class of shares, the total number of
32 shares that the ~~flexible purpose~~ *socially responsible* corporation
33 is authorized to issue.

34 (g) If the ~~flexible purpose~~ *socially responsible* corporation is
35 authorized to issue more than one class of shares, or if any class
36 of shares is to have two or more series, the articles shall state:

37 (1) The total number of shares of each class that the ~~flexible~~
38 ~~purpose~~ *socially responsible* corporation is authorized to issue and
39 the total number of shares of each series that the ~~flexible purpose~~

1 *socially responsible* corporation is authorized to issue or that the
2 board is authorized to fix the number of shares of any such series.

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

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

23 SEC. 38. Section 2603 of the Corporations Code is amended
24 to read:

25 2603. The articles of incorporation may set forth:

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

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

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

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

33 (4) A provision limiting the duration of the ~~flexible purpose~~
34 *socially responsible* corporation's existence to a specified date.

35 (5) A provision requiring, for any or all corporate actions, except
36 as provided in Section 303, subdivision (b) of Section 402.5,
37 subdivision (c) of Section 708, and Section 1900, the vote of a
38 larger proportion or of all of the shares of any class or series, or
39 the vote or quorum for taking action of a larger proportion or of

1 all of the directors, than is otherwise required by Division 1
2 (commencing with Section 100) or this division.

3 (6) So long as consistent with the purpose of the ~~flexible purpose~~
4 *socially responsible* corporation as set forth in the articles in
5 accordance with subdivision (b) of Section 2602, a provision
6 limiting or restricting the business in which the ~~flexible purpose~~
7 *socially responsible* corporation may engage or the powers which
8 the ~~flexible purpose~~ *socially responsible* corporation may exercise,
9 or both.

10 (7) A provision conferring upon the holders of any evidences
11 of indebtedness, issued or to be issued by the ~~flexible purpose~~
12 *socially responsible* corporation, the right to vote in the election
13 of the directors and on any other matters on which shareholders
14 may vote.

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

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

21 (10) Provisions eliminating or limiting the personal liability of
22 a director for monetary damages in an action brought by or in the
23 right of the ~~flexible purpose~~ *socially responsible* corporation for
24 breach of a director's duties to the ~~flexible purpose~~ *socially*
25 *responsible* corporation and its shareholders, as set forth in Section
26 2700, subject to the following:

27 (A) The provision may not eliminate or limit the liability of
28 directors (i) for acts or omissions that involve intentional
29 misconduct or a knowing and culpable violation of law, (ii) for
30 acts or omissions that a director believes to be contrary to the best
31 interests of the ~~flexible purpose~~ *socially responsible* corporation
32 or its shareholders and its corporate purposes as expressed in its
33 articles, or that involve the absence of good faith on the part of the
34 director, (iii) for any transaction from which a director derived an
35 improper personal benefit, (iv) for acts or omissions that show a
36 reckless disregard for the director's duty to the ~~flexible purpose~~
37 *socially responsible* corporation or its shareholders in
38 circumstances in which the director was aware, or should have
39 been aware, in the ordinary course of performing a director's duties,
40 of a risk of serious injury to the ~~flexible purpose~~ *socially*

1 *responsible* corporation, its shareholders, or its corporate purposes
2 as expressed in its articles, (v) for acts or omissions that constitute
3 an unexcused pattern of inattention that amounts to an abdication
4 of the director's duty to the ~~flexible purpose~~ *socially responsible*
5 corporation, its shareholders, or its corporate purposes as expressed
6 in its articles pursuant to Section 2602, or (vi) under Section 310
7 or 2701.

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

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

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

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

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

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

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

1 SEC. 39. Section 2604 of the Corporations Code is amended
2 to read:

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

15 SEC. 40. Section 2605 of the Corporations Code is amended
16 to read:

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

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

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

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

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

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

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

1 of the ~~flexible purpose~~ *socially responsible* corporation or any of
2 its subsidiaries or affiliates, and to indemnify and purchase and
3 maintain insurance on behalf of any fiduciary of these plans, trusts,
4 or provisions.

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

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

15 SEC. 41. Section 2700 of the Corporations Code is amended
16 to read:

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

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

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

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

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

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

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

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

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

26 SEC. 42. Section 2701 of the Corporations Code is amended
27 to read:

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

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

37 (2) The distribution of assets to shareholders after institution of
38 dissolution proceedings of the ~~flexible purpose socially responsible~~
39 corporation, without paying or adequately providing for all known
40 liabilities of the ~~flexible purpose socially responsible~~ corporation,

1 excluding any claims not filed by creditors within the time limit
2 set by the court in a notice given to creditors under Chapter 18
3 (commencing with Section 1800) of Division 1, Chapter 20
4 (commencing with Section 1900) of Division 1, and Chapter 20
5 (commencing with Section 2000).

6 (3) The making of any loan or guaranty contrary to Section
7 2715.

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

12 (c) Suit may be brought in the name of the ~~flexible purpose~~
13 *socially responsible* corporation to enforce the liability as follows:

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

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

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

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

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

5 (f) Directors liable under this section shall also be entitled to
6 be subrogated to the rights of the ~~flexible purpose~~ *socially*
7 *responsible* corporation:

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

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

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

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

18 SEC. 43. Section 2702 of the Corporations Code is amended
19 to read:

20 2702. (a) For the purposes of this section:

21 (1) "Agent" means any person who is or was a director, officer,
22 employee, or other agent of the ~~flexible purpose~~ *socially*
23 *responsible* corporation, or is or was serving at the request of the
24 ~~flexible purpose~~ *socially responsible* corporation as a director,
25 officer, employee or agent of another foreign or domestic
26 corporation, partnership, joint venture, trust, or other enterprise,
27 or was a director, officer, employee, or agent of a foreign or
28 domestic corporation which was a predecessor corporation of the
29 ~~flexible purpose~~ *socially responsible* corporation or of another
30 enterprise at the request of the predecessor corporation.

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

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

37 (b) Subject to the standards and restrictions, if any, set forth in
38 its articles or bylaws, and subject to the limitations required by
39 paragraph (11) of subdivision (a) of Section 2603, a ~~flexible~~
40 ~~purpose~~ *socially responsible* corporation may indemnify and hold

1 harmless any agent or any other person from and against any and
2 all claims and demands whatsoever.

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

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

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

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

25 (B) The company issuing the policy provides procedures for
26 processing claims that do not permit that company to be subject
27 to the direct control of the ~~flexible purpose~~ *socially responsible*
28 corporation that purchased that policy.

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

36 (e) This section does not apply to any proceeding against any
37 trustee, investment manager, or other fiduciary of an employee
38 benefit plan in that person's capacity as such, even though the
39 person may also be an agent as defined in subdivision (a) of the
40 employer-~~flexible purpose~~ *socially responsible* corporation. A

1 ~~flexible purpose~~ *socially responsible* corporation shall have power
2 to indemnify a trustee, investment manager, or other fiduciary to
3 the extent permitted by subdivision (f) of Section 2605.

4 SEC. 44. Section 2800 of the Corporations Code is amended
5 to read:

6 2800. (a) All certificates representing shares of a ~~flexible~~
7 ~~purpose~~ *socially responsible* corporation shall contain, in addition
8 to any other statements required by this section, the following
9 conspicuous language on the face of the certificate.

10

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

17

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

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

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

27 (3) The fact that the shares are subject to a voting agreement
28 under subdivision (a) of Section 706 or an irrevocable proxy under
29 subdivision (e) of Section 705 or restrictions upon voting rights
30 contractually imposed by the ~~flexible purpose~~ *socially responsible*
31 corporation.

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

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

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

38 (c) Unless stated on the certificate, the initial transaction
39 statement, and written statements as required by subdivision (a),
40 no restriction upon transfer, no right of redemption and no voting

1 agreement under subdivision (a) of Section 706, no irrevocable
2 proxy under subdivision (e) of Section 705, and no voting
3 restriction imposed by the ~~flexible purpose~~ *socially responsible*
4 corporation shall be enforceable against a transferee of the shares
5 without actual knowledge of the restriction, right, agreement, or
6 proxy. With regard only to liability to assessment or for the unpaid
7 portion of the subscription price, unless stated on the certificate
8 as required by subdivision (a), that liability shall not be enforceable
9 against a transferee of the shares. For the purpose of this
10 subdivision, “transferee” includes a purchaser from the ~~flexible~~
11 ~~purpose~~ *socially responsible* corporation.

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

16
17 “This ~~flexible purpose~~ *socially responsible* corporation is a close
18 ~~flexible purpose~~ *socially responsible* corporation. The number of
19 holders of record of its shares of all classes cannot exceed ____
20 (a number not in excess of 35). Any attempted voluntary inter
21 vivos transfer which would violate this requirement is void. Refer
22 to the articles, bylaws and any agreements on file with the secretary
23 of the ~~flexible purpose~~ *socially responsible* corporation for further
24 restrictions.”

25
26 (e) Any attempted voluntary inter vivos transfer of the shares
27 of a close ~~flexible purpose~~ *socially responsible* corporation that
28 would result in the number of holders of record of its shares
29 exceeding the maximum number specified in its articles is void if
30 the certificate contains the legend required by subdivision (c).

31 (f) *Notwithstanding any other subdivision, the certificates*
32 *representing shares of a corporation formed pursuant to this*
33 *division as a “flexible purpose corporation” before January 1,*
34 *2015, shall continue to be valid even if the certificates reference*
35 *a “flexible purpose corporation.” A corporation formed pursuant*
36 *to this division before January 1, 2015, may, but is not required*
37 *to, reissue certificates to replace “flexible purpose corporation”*
38 *with “socially responsible corporation” as applicable. Any*
39 *reference to a “flexible purpose corporation” or any abbreviation*
40 *of that term in certificates representing shares of a corporation*

1 *formed pursuant to this division before January 1, 2015, shall also*
2 *be a reference to “socially responsible corporation.”*

3 SEC. 45. Section 2900 of the Corporations Code is amended
4 to read:

5 2900. (a) As used in this section:

6 (1) ~~“Flexible purpose—~~*“Socially responsible corporation”*
7 includes an unincorporated association.

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

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

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

14 (b) No action may be instituted or maintained in right of any
15 domestic or foreign ~~flexible purpose~~ *socially responsible*
16 corporation under this section by any party other than a shareholder
17 of the ~~flexible purpose~~ *socially responsible* corporation.

18 (c) No action may be instituted or maintained in right of any
19 domestic or foreign ~~flexible purpose~~ *socially responsible*
20 corporation by any holder of shares or of voting trust certificates
21 of the ~~flexible purpose~~ *socially responsible* corporation unless both
22 of the following conditions exist:

23 (1) The plaintiff alleges in the complaint that plaintiff was a
24 shareholder, of record or beneficially, or the holder of voting trust
25 certificates at the time of the transaction or any part thereof of
26 which plaintiff complains or that plaintiff’s shares or voting trust
27 certificates thereafter devolved upon plaintiff by operation of law
28 from a holder who was a holder at the time of the transaction or
29 any part thereof complained of. Any shareholder who does not
30 meet these requirements may nevertheless be allowed, in the
31 discretion of the court, to maintain the action on a preliminary
32 showing to and determination by the court, by motion and after a
33 hearing, at which the court shall consider the evidence by affidavit
34 or testimony, as it deems material, of all of the following:

35 (A) There is a strong prima facie case in favor of the claim
36 asserted on behalf of the ~~flexible purpose~~ *socially responsible*
37 corporation.

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

1 (C) The plaintiff acquired the shares before there was disclosure
2 to the public or to the plaintiff of the wrongdoing of which plaintiff
3 complains.

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

7 (E) The requested relief will not result in unjust enrichment of
8 the ~~flexible purpose~~ *socially responsible* corporation or any
9 shareholder of the ~~flexible purpose~~ *socially responsible* corporation.

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

18 (d) In any action referred to in subdivision (b), at any time within
19 30 days after service of summons upon the ~~flexible purpose~~ *socially*
20 *responsible* corporation or upon any defendant who is an officer
21 or director of the ~~flexible purpose~~ *socially responsible* corporation,
22 or held that office at the time of the acts complained of, the ~~flexible~~
23 ~~purpose~~ *socially responsible* corporation or the defendant may
24 move the court for an order, upon notice and hearing, requiring
25 the plaintiff to furnish a bond as hereinafter provided. The motion
26 shall be based upon one or both of the following grounds:

27 (1) There is no reasonable possibility that the prosecution of
28 the cause of action alleged in the complaint against the moving
29 party will benefit the ~~flexible purpose~~ *socially responsible*
30 corporation or its shareholders.

31 (2) The moving party, if other than the ~~flexible purpose~~ *socially*
32 *responsible* corporation, did not participate in the transaction
33 complained of in any capacity.

34 The court on application of the ~~flexible purpose~~ *socially*
35 *responsible* corporation or any defendant may, for good cause
36 shown, extend the 30-day period for an additional period or periods
37 not exceeding 60 days.

38 (e) At the hearing upon any motion pursuant to subdivision (c),
39 the court shall consider the evidence, written or oral, by witnesses
40 or affidavit, as may be material to the ground or grounds upon

1 which the motion is based, or to a determination of the probable
2 reasonable expenses, including attorney’s fees, of the ~~flexible~~
3 ~~purpose~~ *socially responsible* corporation and the moving party
4 that will be incurred in the defense of the action. If the court
5 determines, after hearing the evidence adduced by the parties, that
6 the moving party has established a probability in support of any
7 of the grounds upon which the motion is based, the court shall fix
8 the amount of the bond, not to exceed fifty thousand dollars
9 (\$50,000), to be furnished by the plaintiff for reasonable expenses,
10 including attorney’s fees, which may be incurred by the moving
11 party and the ~~flexible~~ ~~purpose~~ *socially responsible* corporation in
12 connection with the action, including expenses for which the
13 ~~flexible~~ ~~purpose~~ *socially responsible* corporation may become
14 liable pursuant to Section 2702. A ruling by the court on the motion
15 shall not be a determination of any issue in the action or of the
16 merits thereof. If the court, upon the motion, makes a determination
17 that a bond shall be furnished by the plaintiff as to any one or more
18 defendants, the action shall be dismissed as to the defendant or
19 defendants, unless the bond required by the court has been
20 furnished within such reasonable time as may be fixed by the court.

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

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

35 SEC. 46. Section 3000 of the Corporations Code is amended
36 to read:

37 3000. (a) A proposed amendment to the articles of a ~~flexible~~
38 ~~purpose~~ *socially responsible* corporation shall be approved by the
39 outstanding shares of a class, regardless of whether that class is

1 entitled to vote thereon by the provisions of the articles, if the
2 amendment would:

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

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

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

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

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

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

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

23 (b) A proposed amendment shall be approved by an affirmative
24 vote of at least two-thirds of the outstanding shares of each class,
25 or a greater vote if required in the articles, regardless of whether
26 that class is entitled to vote thereon by the provisions of the articles,
27 if the amendment would materially alter any special purpose of
28 the ~~flexible purpose~~ *socially responsible* corporation stated in the
29 articles pursuant to paragraph (2) of subdivision (b) of Section
30 2602, regardless of whether that purpose, as amended, would
31 comply with the provisions of that paragraph.

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

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

39 SEC. 47. Section 3001 of the Corporations Code is amended
40 to read:

1 3001. (a) A ~~flexible purpose~~ *socially responsible* corporation
2 may, by amendment of its articles pursuant to this section, convert
3 to a nonprofit public benefit corporation, nonprofit mutual benefit
4 corporation, nonprofit religious corporation, or cooperative
5 corporation.

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

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

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

30 (e) Notwithstanding subdivision (c), if a ~~flexible purpose~~ *socially*
31 *responsible* corporation is a mutual water company within the
32 meaning of Section 2705 of the Public Utilities Code and under
33 the terms of the conversion each outstanding share is converted to
34 a membership of a nonprofit mutual benefit corporation, an
35 amendment to convert to a nonprofit mutual benefit corporation
36 shall be approved by the outstanding shares of each class regardless
37 of limitations or restrictions on their voting rights.

38 SEC. 48. Section 3002 of the Corporations Code is amended
39 to read:

1 3002. (a) A ~~flexible purpose~~ *socially responsible* corporation
2 may, by amendment of its articles pursuant to this section, convert
3 to a domestic corporation.

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

8 (c) If shares have been issued, an amendment to convert to a
9 domestic corporation shall be approved by an affirmative vote of
10 at least two-thirds of the outstanding shares of each class, or a
11 greater vote if required in the articles, regardless of whether that
12 class is entitled to vote thereon by the provisions of the articles. *If*
13 *the conversion is approved, shareholders with dissenting shares,*
14 *as defined in subdivision (b) of Section 1300, may exercise*
15 *dissenters' rights pursuant to Section 3305 and Chapter 13*
16 *(commencing with Section 1300) of Division 1.*

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

22 SEC. 49. Section 3100 of the Corporations Code is amended
23 to read:

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

1 (b) Notwithstanding approval of *two-thirds* of the outstanding
2 shares, the board may abandon the proposed transaction without
3 further action by the shareholders, subject to the contractual rights,
4 if any, of third parties.

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

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

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

29 SEC. 50. Section 3200 of the Corporations Code is amended
30 to read:

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

1 *responsible* corporation. The articles may provide for a lesser vote,
2 but not less than a majority of the outstanding shares of each class.

3 SEC. 51. Section 3201 of the Corporations Code is amended
4 to read:

5 3201. If any disappearing corporation in a merger is a ~~flexible~~
6 ~~purpose~~ *socially responsible* corporation and the surviving entity
7 is not a ~~flexible~~ ~~purpose~~ *socially responsible* corporation, or is a
8 ~~flexible~~ ~~purpose~~ *socially responsible* corporation the articles of
9 incorporation of which set forth materially different purposes, the
10 merger shall be approved by an affirmative vote of at least
11 two-thirds of the outstanding shares of each class, or a greater vote
12 if required in the articles, regardless of whether that class is entitled
13 to vote thereon by the provisions of the articles, of the disappearing
14 ~~flexible~~ ~~purpose~~ ~~corporation~~. *socially responsible corporation. If*
15 *the merger is approved, shareholders with dissenting shares, as*
16 *defined in subdivision (b) of Section 1300, may exercise dissenters'*
17 *rights pursuant to Section 3305 and Chapter 13 (commencing with*
18 *Section 1300) of Division 1.*

19 SEC. 52. Section 3202 of the Corporations Code is amended
20 to read:

21 3202. If a disappearing ~~flexible~~ ~~purpose~~ *socially responsible*
22 corporation in a merger is a ~~flexible~~ ~~purpose~~ *socially responsible*
23 corporation governed by this division and the surviving corporation
24 is a nonprofit public benefit corporation, a nonprofit mutual benefit
25 corporation, or a nonprofit religious corporation, the merger shall
26 be approved by all of the outstanding shares of all classes of the
27 disappearing ~~flexible~~ ~~purpose~~ *socially responsible* corporation,
28 regardless of limitations or restrictions on their voting rights,
29 notwithstanding any provision of Chapter 10 (commencing with
30 Section 3400).

31 SEC. 53. Section 3203 of the Corporations Code is amended
32 to read:

33 3203. (a) Any one or more ~~flexible~~ ~~purpose~~ *socially*
34 *responsible* corporations may merge with one or more other
35 business entities. One or more domestic ~~flexible~~ ~~purpose~~ *socially*
36 *responsible* corporations not organized under this division and one
37 or more foreign corporations may be parties to the merger.
38 Notwithstanding this section, the merger of any number of ~~flexible~~
39 ~~purpose~~ *socially responsible* corporations with any number of
40 other business entities may be effected only if:

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

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

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

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

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

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

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

31 (4) The manner of converting the shares of each constituent
32 ~~flexible purpose~~ *socially responsible* corporation into shares,
33 interests, or other securities of the surviving party. If any shares
34 of any constituent ~~flexible purpose~~ *socially responsible* corporation
35 are not to be converted solely into shares, interests, or other
36 securities of the surviving party, the agreement of merger shall
37 state (A) the cash, rights, securities, or other property that the
38 holders of those shares are to receive in exchange for the shares,
39 which cash, rights, securities, or other property may be in addition

1 to or in lieu of shares, interests, or other securities of the surviving
2 party, or (B) that the shares are canceled without consideration.

3 (5) Any other details or provisions required by the laws under
4 which any party to the merger is organized, including, if a domestic
5 corporation is a party to the merger, Section 3203, if a public
6 benefit corporation or a religious corporation is a party to the
7 merger, Section 6019.1, if a mutual benefit corporation is a party
8 to the merger, Section 8019.1, if a consumer cooperative
9 corporation is a party to the merger, Section 12540.1, if a domestic
10 limited partnership is a party to the merger, Section 15911.12, if
11 a domestic partnership is a party to the merger, Section 16911,
12 and if a domestic limited liability company is a party to the merger,
13 Section 17551.

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

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

38 (d) Notwithstanding its prior approval, an agreement of merger
39 may be amended prior to the filing of the agreement of merger or
40 the certificate of merger, as is applicable, if the amendment is

1 approved by the board of each constituent ~~flexible purpose~~ *socially*
2 *responsible* corporation and, if the amendment changes any of the
3 principal terms of the agreement, by the outstanding shares, if
4 required by Chapter 10 (commencing with Section 3400), in the
5 same manner as the original agreement of merger. If the agreement
6 of merger as so amended and approved is also approved by each
7 of the other parties to the agreement of merger, the agreement of
8 merger as so amended shall then constitute the agreement of
9 merger.

10 (e) The board of a constituent ~~flexible purpose~~ *socially*
11 *responsible* corporation may, in its discretion, abandon a merger,
12 subject to the contractual rights, if any, of third parties, including
13 other parties to the agreement of merger, without further approval
14 by the outstanding shares, at any time before the merger is
15 effective.

16 (f) Each constituent ~~flexible purpose~~ *socially responsible*
17 corporation shall sign the agreement of merger by its chairperson
18 of the board, president, or a vice president and also by its secretary
19 or an assistant secretary acting on behalf of their respective
20 corporations.

21 (g) (1) If the surviving party is a domestic ~~flexible purpose~~
22 *socially responsible* corporation, or if a domestic corporation or a
23 foreign corporation, a public benefit corporation, a mutual benefit
24 corporation, a religious corporation, or a corporation organized
25 under the Consumer Cooperative Corporation Law (Part 2
26 (commencing with Section 12200) of Division 3) is a party to the
27 merger, after required approvals of the merger by each constituent
28 ~~flexible purpose~~ *socially responsible* corporation through approval
29 of the board and any approval of the outstanding shares required
30 by Chapter ~~13~~ 10 (commencing with Section 3400) and by the
31 other parties to the merger, the surviving party shall file a copy of
32 the agreement of merger with an officers' certificate of each
33 constituent domestic ~~flexible purpose~~ *socially responsible*
34 corporation and foreign ~~flexible purpose~~ *socially responsible*
35 corporation attached stating the total number of outstanding shares
36 ~~or membership interests~~ of each class entitled to vote on the merger,
37 and identifying any other person or persons whose approval is
38 required, that the agreement of merger in the form attached or its
39 principal terms, as required, were approved by that ~~flexible purpose~~
40 *socially responsible* corporation by a vote of a number of shares

1 ~~or membership~~ interests of each class that equaled or exceeded the
2 vote required, specifying each class entitled to vote and the
3 percentage vote required of each class and, if applicable, by that
4 other person or persons whose approval is required, or that the
5 merger agreement was entitled to be and was approved by the
6 board alone, as provided in Section 3401, in the case of a ~~flexible~~
7 ~~purpose~~ *socially responsible* corporation subject to that section.
8 If equity securities of a parent party are to be issued in the merger,
9 the officers' certificate of that controlled party shall state either
10 that no vote of the shareholders of the parent party was required
11 or that the required vote was obtained. In lieu of an officers'
12 certificate, a certificate of merger, on a form prescribed by the
13 Secretary of State, shall be filed for each constituent other business
14 entity. The certificate of merger shall be executed and
15 acknowledged by each domestic constituent limited liability
16 company by all managers of the limited liability company, unless
17 a lesser number is specified in its articles or organization or
18 operating agreement, and by each domestic constituent limited
19 partnership by all general partners, unless a lesser number is
20 provided in its certificate of limited partnership or partnership
21 agreement, and by each domestic constituent general partnership
22 by two partners, unless a lesser number is provided in its
23 partnership agreement, and by each foreign constituent limited
24 liability company by one or more managers and by each foreign
25 constituent general partnership or foreign constituent limited
26 partnership by one or more general partners, and by each
27 constituent reciprocal insurer by the chairperson of the board,
28 president, or vice president, and by the secretary or assistant
29 secretary, or, if a constituent reciprocal insurer has not appointed
30 those officers, by the chairperson of the board, president, or vice
31 president, and by the secretary or assistant secretary of the
32 constituent reciprocal insurer's attorney-in-fact, and by each other
33 party to the merger by those persons required or authorized to
34 execute the certificate of merger by the laws under which that party
35 is organized, specifying for that party the provision of law or other
36 basis for the authority of the signing persons. The certificate of
37 merger shall set forth, if a vote of the shareholders, members,
38 partners, or other holders of interests of the constituent other
39 business entity was required, a statement setting forth the total
40 number of outstanding interests of each class entitled to vote on

1 the merger and that the agreement of merger in the form attached
2 or its principal terms, as required, were approved by a vote of the
3 number of interests of each class that equaled or exceeded the vote
4 required, specifying each class entitled to vote and the percentage
5 vote required of each class, and any other information required to
6 be set forth under the laws under which the constituent other
7 business entity is organized, including, if a domestic limited
8 partnership is a party to the merger, subdivision (a) of Section
9 15911.14, if a domestic partnership is a party to the merger,
10 subdivision (b) of Section 16915, and, if a domestic limited liability
11 company is a party to the merger, subdivision (a) of Section 17552.
12 The certificate of merger for each constituent foreign other business
13 entity, if any, shall also set forth the statutory or other basis under
14 which that foreign other business entity is authorized by the laws
15 under which it is organized to effect the merger. The merger and
16 any amendment of the articles of the surviving ~~flexible purpose~~
17 *socially responsible* corporation, if applicable, contained in the
18 agreement of merger shall be effective upon filing of the agreement
19 of merger with an officer's certificate of each constituent domestic
20 corporation and foreign corporation and a certificate of merger for
21 each constituent other business entity, subject to subdivision (c)
22 of Section ~~153 110~~ and subject to the provisions of subdivision
23 (j), and the several parties thereto shall be one entity. If a domestic
24 reciprocal insurer organized after 1974 to provide medical
25 malpractice insurance is a party to the merger, the agreement of
26 merger or certificate of merger shall not be filed until there has
27 been filed the certificate issued by the Insurance Commissioner
28 approving the merger pursuant to Section 1555 of the Insurance
29 Code. The Secretary of State may certify a copy of the agreement
30 of merger separate from the officers' certificates and certificates
31 of merger attached thereto.

32 (2) If the surviving entity is an other business entity, and no
33 public benefit corporation, mutual benefit corporation, religious
34 corporation, or corporation organized under the Consumer
35 Cooperative Corporation Law (Part 2 (commencing with Section
36 12200) of Division 3) is a party to the merger, after required
37 approvals of the merger by each constituent ~~flexible purpose~~
38 *socially responsible* corporation through approval of the board and
39 any approval of the outstanding shares required by Chapter 10
40 (commencing with Section 3400) and by the other parties to the

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

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

34 (B) If the approval of the outstanding shares of a constituent
35 ~~flexible purpose~~ *socially responsible* corporation was required by
36 Chapter 10 (commencing with Section 3400), a statement setting
37 forth the total number of outstanding shares of each class entitled
38 to vote on the merger and that the principal terms of the agreement
39 of merger were approved by a vote of the number of shares of each

1 class entitled to vote and the percentage vote required of each
2 class.

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

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

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

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

20 Unless a future effective date or time is provided in a certificate
21 of merger, in which event the merger shall be effective at that
22 future effective date or time, a merger shall be effective upon the
23 filing of the certificate of merger with the Secretary of State and
24 the several parties thereto shall be one entity. The surviving other
25 business entity shall keep a copy of the agreement of merger at its
26 principal place of business which, for purposes of this subdivision,
27 shall be the office referred to in Section 17057 if a domestic limited
28 liability company, at the business address specified in paragraph
29 (5) of subdivision (a) of Section 17552 if a foreign limited liability
30 company, at the office referred to in subdivision (a) of Section
31 16403 if a domestic general partnership, at the business address
32 specified in subdivision (f) of Section 16911 if a foreign
33 partnership, at the office referred to in subdivision (a) of Section
34 15901.14 if a domestic limited partnership, or at the business
35 address specified in paragraph (5) of subdivision (a) of Section
36 15911.14 if a foreign limited partnership. Upon the request of a
37 holder of equity securities of a party to the merger, a person with
38 authority to do so on behalf of the surviving other business entity
39 shall promptly deliver to that holder, a copy of the agreement of
40 merger. A waiver by that holder of the rights provided in the

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

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

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

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

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

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

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

6 (j) (1) The merger of domestic ~~flexible purpose~~ *socially*
7 *responsible* corporations with foreign corporations or foreign other
8 business entities in a merger in which one or more other business
9 entities is a party shall comply with subdivision (a) and this
10 subdivision.

11 (2) If the surviving party is a domestic ~~flexible purpose~~ *socially*
12 *responsible* corporation or domestic other business entity, the
13 merger proceedings with respect to that party and any domestic
14 disappearing ~~flexible purpose~~ *socially responsible* corporation
15 shall conform to the provisions of this section. If the surviving
16 party is a foreign corporation or foreign other business entity, then,
17 subject to the requirements of subdivision (c), Section 407, Chapter
18 10 (commencing with Section 3400), and Chapter 13 (commencing
19 with Section 1300) of Division 1, and, if applicable, corresponding
20 provisions of the Nonprofit Corporation Law (Division 2
21 (commencing with Section 5002)) or the Consumer Cooperative
22 Corporation Law (Part 2 (commencing with Section 12200) of
23 Division 3), with respect to any domestic constituent corporations,
24 Chapter 13 (commencing with Section 17600) of Title 2.5 with
25 respect to any domestic constituent limited liability companies,
26 Article 6 (commencing with Section 16601) of Chapter 5 of Title
27 2 with respect to any domestic constituent general partnerships,
28 and Article 11.5 (commencing with Section 15911.20) of Chapter
29 5.5 of Title 2 with respect to any domestic constituent limited
30 partnerships, the merger proceedings may be in accordance with
31 the laws of the state or place of incorporation or organization of
32 the surviving party.

33 (3) If the surviving party is a domestic ~~flexible purpose~~ *socially*
34 *responsible* corporation or domestic other business entity, the
35 certificate of merger or the agreement of merger with attachments
36 shall be filed as provided in subdivision (g) and thereupon, subject
37 to subdivision (c) of Section ~~153 110~~ or paragraph (2) of
38 subdivision (g), as applicable, the merger shall be effective as to
39 each domestic constituent ~~flexible purpose~~ *socially responsible*
40 corporation and domestic constituent other business entity.

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

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

30 (6) In a merger described in paragraph (3) or (4), each foreign
31 disappearing ~~flexible purpose~~ *socially responsible* corporation that
32 is qualified for the transaction of intrastate business shall by virtue
33 of the filing pursuant to this subdivision, subject to subdivision
34 (c) of Section ~~2508, 110~~, automatically surrender its right to
35 transact intrastate business in this state. The filing of the agreement
36 of merger or certificate of merger, as is applicable, pursuant to this
37 subdivision, by a disappearing foreign other business entity
38 registered for the transaction of intrastate business in this state
39 shall, by virtue of that filing, subject to subdivision (c) of Section
40 ~~2508, 110~~, automatically cancel the registration for that foreign

1 other business entity, without the necessity of the filing of a
2 certificate of cancellation.

3 SEC. 54. Section 3300 of the Corporations Code is amended
4 to read:

5 3300. For purposes of this chapter, the following definitions
6 shall apply:

7 (a) “Converted—flexible—purpose *socially responsible*
8 corporation” means a ~~flexible—purpose~~ *socially responsible*
9 corporation that results from a conversion of an other business
10 entity or a foreign other business entity or a foreign corporation
11 pursuant to Section 1158.

12 (b) “Converted entity” means a domestic other business entity
13 that results from a conversion of a ~~flexible—purpose~~ *socially*
14 *responsible* corporation under this chapter.

15 (c) “Converting—flexible—purpose *socially responsible*
16 corporation” means a ~~flexible—purpose~~ *socially responsible*
17 corporation that converts into a domestic or foreign other business
18 entity pursuant to this chapter.

19 (d) “Converting entity” means an other business entity or a
20 foreign other business entity or foreign corporation that converts
21 into a ~~flexible—purpose~~ *socially responsible* corporation pursuant
22 to Section 3607.

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

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

27 (g) “Other business entity” has the meaning provided in Section
28 174.5.

29 SEC. 55. Section 3301 of the Corporations Code is amended
30 to read:

31 3301. (a) A ~~flexible—purpose~~ *socially responsible* corporation
32 may be converted into a domestic other business entity pursuant
33 to this chapter if, pursuant to the proposed conversion, each of the
34 following conditions is met:

35 (1) Each share of the same class or series of the converting
36 ~~flexible—purpose~~ *socially responsible* corporation shall, unless all
37 the shareholders of the class or series consent, be treated equally
38 with respect to any cash, rights, securities, or other property to be
39 received by, or any obligations or restrictions to be imposed on,
40 the holder of that share.

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

5 (3) Nonredeemable common shares of the converting ~~flexible~~
6 ~~purpose~~ *socially responsible* corporation shall be converted only
7 into nonredeemable equity securities of the converted entity unless
8 all of the shareholders of the class consent.

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

15 (b) Notwithstanding subdivision (a), the conversion of a ~~flexible~~
16 ~~purpose~~ *socially responsible* corporation into a domestic other
17 business entity may be effected only if both of the following
18 conditions are met:

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

21 (2) The ~~flexible purpose~~ *socially responsible* corporation
22 complies with any and all other requirements of any other law that
23 applies to conversion to the converted entity.

24 SEC. 56. Section 3302 of the Corporations Code is amended
25 to read:

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

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

31 (2) The jurisdiction of the organization of the converted entity
32 and of the converting ~~flexible purpose~~ *socially responsible*
33 corporation and the name of the converted entity after conversion.

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

37 (4) The provisions of the governing documents for the converted
38 entity, including the articles and bylaws, partnership agreement
39 or limited liability company articles of organization and operating

1 agreement, to which the holders of interests in the converted entity
2 are to be bound.

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

6 (b) The plan of conversion shall be approved by the board of
7 the converting ~~flexible purpose~~ *socially responsible* corporation,
8 and the principal terms of the plan of the conversion shall be
9 approved by at least two-thirds of the outstanding shares of each
10 class, or a greater vote if required in the articles, regardless of
11 whether that class is entitled to vote thereon by the provisions of
12 the articles of the converting ~~flexible purpose~~ *socially responsible*
13 corporation. The approval of *at least two-thirds of* the outstanding
14 shares may be given before or after approval by the board. *If the*
15 *plan is approved, shareholders with dissenting shares, as defined*
16 *in subdivision (b) of Section 1300, may exercise dissenters' rights*
17 *pursuant to Section 3305 and Chapter 13 (commencing with*
18 *Section 1300) of Division 1.*

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

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

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

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

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

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

26 SEC. 57. Section 3303 of the Corporations Code is amended
27 to read:

28 3303. (a) After the approval, as provided in Section 3302, of
29 a plan of conversion by the board and the outstanding shares of a
30 ~~flexible purpose socially responsible~~ corporation converting into
31 a domestic other business entity, the converting ~~flexible purpose~~
32 ~~socially responsible~~ corporation shall cause the filing of all
33 documents required by law to effect the conversion and create the
34 converted entity, which documents shall include a certificate of
35 conversion or a statement of conversion as required by Section
36 3304, and the conversion shall thereupon be effective.

37 (b) A copy of the statement of partnership authority, certificate
38 of limited partnership, or articles of organization complying with
39 Section ~~H56, 1155~~, duly certified by the Secretary of State on or

1 after the effective date, shall be conclusive evidence of the
2 conversion of the ~~flexible purpose~~ *socially responsible* corporation.

3 SEC. 58. Section 3304 of the Corporations Code is amended
4 to read:

5 3304. (a) To convert a ~~flexible purpose~~ *socially responsible*
6 corporation:

7 (1) If the ~~flexible purpose~~ *socially responsible* corporation is
8 converting into a domestic limited partnership, a statement of
9 conversion shall be completed on the certificate of limited
10 partnership for the converted entity.

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

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

20 (4) If the ~~flexible purpose~~ *socially responsible* corporation is
21 converting into a domestic corporation, a statement of conversion
22 shall be completed on the articles for the converted entity.

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

28 (1) The name and the Secretary of State's file number of the
29 converting ~~flexible purpose~~ *socially responsible* corporation.

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

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

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

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

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

21 SEC. 59. Section 3305 of the Corporations Code is amended
22 to read:

23 3305. The shareholders *with dissenting rights, as defined in*
24 *subdivision (b) of Section 1300*, of a converting ~~flexible~~ ~~purpose~~
25 *socially responsible* corporation shall have all of the rights under
26 Chapter 13 (commencing with Section 1300) of Division 1 of the
27 shareholders of a corporation involved in a reorganization requiring
28 the approval of its outstanding shares, and the converting ~~flexible~~
29 ~~purpose~~ *socially responsible* corporation shall have all of the
30 obligations under Chapter 13 (commencing with Section 1300) of
31 Division 1 of a corporation involved in the reorganization. Solely
32 for purposes of applying the provisions of Chapter 13 (commencing
33 with Section 1300) of Division 1, and not for purposes of this
34 chapter, a conversion pursuant to Section 3301 or ~~H58 1157~~ shall
35 be deemed to constitute a reorganization.

36 SEC. 60. Section 3400 of the Corporations Code is amended
37 to read:

38 3400. A reorganization or a share exchange tender offer shall
39 be approved by the board of all of the following:

1 (a) Each constituent ~~flexible purpose~~ *socially responsible*
2 corporation in a merger reorganization.

3 (b) The acquiring ~~flexible purpose~~ *socially responsible*
4 corporation in an exchange reorganization.

5 (c) The acquiring ~~flexible purpose~~ *socially responsible*
6 corporation and the ~~flexible purpose~~ *socially responsible*
7 corporation whose property and assets are acquired in a
8 sale-of-assets reorganization.

9 (d) The acquiring ~~flexible purpose~~ *socially responsible*
10 corporation in a share exchange tender offer.

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

17 SEC. 61. Section 3401 of the Corporations Code is amended
18 to read:

19 3401. (a) The principal terms of a reorganization shall be
20 approved by the outstanding shares of each class of each ~~flexible~~
21 ~~purpose~~ *socially responsible* corporation the approval of whose
22 board is required under Section 3400, except as provided in
23 subdivision (b) and except that, unless otherwise provided in the
24 articles, no approval of any class of outstanding preferred shares
25 of the surviving or acquiring ~~flexible purpose~~ *socially responsible*
26 corporation or parent party shall be required if the rights,
27 preferences, privileges, and restrictions granted to or imposed upon
28 that class of shares remain unchanged, subject to the provisions
29 of subdivision (c). For the purpose of this subdivision, two classes
30 of common shares differing only as to voting rights shall be
31 considered as a single class of shares.

32 (b) No approval of the outstanding shares is required by
33 subdivision (a) if the ~~flexible purpose~~ *socially responsible*
34 corporation, or its shareholders immediately before the
35 reorganization, or both, shall own, immediately after the
36 reorganization, equity securities, other than any warrant or right
37 to subscribe to or purchase those equity securities, of the surviving
38 or acquiring ~~flexible purpose~~ *socially responsible* corporation or
39 a parent party possessing more than five-sixths of the voting power
40 of the surviving or acquiring ~~flexible purpose~~ *socially responsible*

1 corporation or parent party. In making the determination of
2 ownership by the shareholders of a ~~flexible purpose~~ *socially*
3 *responsible* corporation, immediately after the reorganization, of
4 equity securities pursuant to the preceding sentence, equity
5 securities that they owned immediately before the reorganization
6 as shareholders of another party to the transaction shall be
7 disregarded. For the purpose of this section, the voting power of
8 a ~~flexible purpose~~ *socially responsible* corporation shall be
9 calculated by assuming the conversion of all equity securities
10 convertible, immediately or at some future time, into shares entitled
11 to vote but not assuming the exercise of any warrant or right to
12 subscribe to or purchase those shares.

13 (c) Notwithstanding subdivisions (a) and (b), the principal terms
14 of a reorganization shall be approved by the outstanding shares of
15 the surviving ~~flexible purpose~~ *socially responsible* corporation in
16 a merger reorganization, as otherwise required by Chapter ~~H 10~~
17 (commencing with Section ~~3500~~) 3400), if any amendment is made
18 to its articles that would otherwise require that approval.

19 (d) Notwithstanding subdivisions (a) and (b), the principal terms
20 of a reorganization shall be approved by the *affirmative vote of at*
21 *least two-thirds of each class, or a greater vote if required in the*
22 *articles, of the* outstanding shares of any class of a ~~flexible purpose~~
23 *socially responsible* corporation that is a party to a merger or
24 sale-of-assets reorganization if holders of shares of that class
25 receive shares of the surviving or acquiring ~~flexible purpose~~
26 *socially responsible* corporation or parent party having different
27 rights, preferences, privileges, or restrictions than those
28 surrendered. Shares in a foreign corporation received in exchange
29 for shares in a domestic ~~flexible purpose~~ *socially responsible*
30 corporation shall be deemed to have different rights, preferences,
31 privileges, and restrictions within the meaning of the preceding
32 sentence.

33 (e) Notwithstanding subdivisions (a) and (b), the principal terms
34 of a reorganization shall be approved by the affirmative vote of at
35 least two-thirds of each class, or a greater vote if required in the
36 articles, of the outstanding shares of any ~~flexible purpose~~ *socially*
37 *responsible* corporation that is a close ~~flexible purpose~~ *socially*
38 *responsible* corporation if the reorganization would result in the
39 holders receiving shares or other interests of a corporation or other
40 business entity that is not a close ~~flexible purpose~~ *socially*

1 *responsible* corporation. The articles may provide for a lesser vote,
2 but not less than a majority of the outstanding shares of each class.

3 (f) Notwithstanding subdivisions (a) and (b), the principal terms
4 of a reorganization shall be approved by a vote of at least two-thirds
5 of the outstanding shares of each class, or a greater vote if required
6 in the articles, of a ~~flexible purpose~~ *socially responsible* corporation
7 that is a party to a merger reorganization, regardless of whether
8 that class is entitled to vote thereon by the provisions of the articles,
9 if holders of shares of that class receive interests of a surviving
10 other business entity in the merger that is not a ~~flexible purpose~~
11 *socially responsible* corporation, or receive interests of a surviving
12 ~~flexible purpose~~ *socially responsible* corporation the articles of
13 incorporation of which specify a materially different purpose as
14 part of the reorganization.

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

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

27 SEC. 62. Section 3500 of the Corporations Code is amended
28 to read:

29 3500. (a) The board of a ~~flexible purpose~~ *socially responsible*
30 corporation shall cause an annual report to be sent to the
31 shareholders not later than 120 days after the close of the fiscal
32 year. The annual report shall contain (1) a balance sheet as of the
33 end of that fiscal year and an income statement and a statement of
34 cashflows for that fiscal year, accompanied by any report thereon
35 of independent accountants or, if there is no report, the certificate
36 of an authorized officer of the ~~flexible purpose~~ *socially responsible*
37 corporation that the statements were prepared without audit from
38 the books and records of the corporation, and (2) the information
39 required by subdivision (b).

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

18 (1) Identification and discussion of the short-term and long-term
19 objectives of the ~~flexible purpose~~ *socially responsible* corporation
20 relating to its special purpose or purposes, and an identification
21 and explanation of any changes made in those special purpose
22 objectives during the fiscal year.

23 (2) Identification and discussion of the material actions taken
24 by the ~~flexible purpose~~ *socially responsible* corporation during the
25 fiscal year to achieve its special purpose objectives, the impact of
26 those actions, including the causal relationships between the actions
27 and the reported outcomes, and the extent to which those actions
28 achieved the special purpose objectives for the fiscal year.

29 (3) Identification and discussion of material actions, including
30 the intended impact of those actions, that the ~~flexible purpose~~
31 *socially responsible* corporation expects to take in the short term
32 and long term with respect to achievement of its special purpose
33 objectives.

34 (4) A description of the process for selecting, and an
35 identification and description of, the financial, operating, and other
36 measures used by the ~~flexible purpose~~ *socially responsible*
37 corporation during the fiscal year for evaluating its performance
38 in achieving its special purpose objectives, including an explanation
39 of why the ~~flexible purpose~~ *socially responsible* corporation
40 selected those measures and identification and discussion of the

1 nature and rationale for any material changes in those measures
2 made during the fiscal year.

3 (5) Identification and discussion of any material operating and
4 capital expenditures incurred by the ~~flexible purpose~~ *socially*
5 *responsible* corporation during the fiscal year in furtherance of
6 achieving the special purpose objectives, a good faith estimate of
7 any additional material operating or capital expenditures the
8 ~~flexible purpose~~ *socially responsible* corporation expects to incur
9 over the next three fiscal years in order to achieve its special
10 purpose objectives, and other material expenditures of resources
11 incurred by the ~~flexible purpose~~ *socially responsible* corporation
12 during the fiscal year, including employee time, in furtherance of
13 achieving the special purpose objectives, including a discussion
14 of the extent to which that capital or use of other resources serves
15 purposes other than and in addition to furthering the achievement
16 of the special purpose objectives.

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

24 (d) If no annual report for the last fiscal year has been sent to
25 shareholders, the ~~flexible purpose~~ *socially responsible* corporation
26 shall, upon the written request of any shareholder made more than
27 120 days after the end of that fiscal year, deliver or mail to the
28 person making the request within 30 days following the request,
29 the statements required by subdivisions (a) and (b) for that fiscal
30 year.

31 (e) A shareholder or shareholders holding at least 5 percent of
32 the outstanding shares of any class of a ~~flexible purpose~~ *socially*
33 *responsible* corporation may make a written request to the ~~flexible~~
34 ~~purpose~~ *socially responsible* corporation for an income statement
35 of the ~~flexible purpose~~ *socially responsible* corporation for the
36 three-month, six-month, or nine-month period of the current fiscal
37 year ended more than 30 days prior to the date of the request and
38 a balance sheet of the ~~flexible purpose~~ *socially responsible*
39 corporation as at the end of that period and, in addition, if no annual
40 report for the most recent fiscal year has been sent to the

1 shareholders, the statements referred to in subdivisions (a) and (b)
2 relating to that fiscal year. The statements shall be delivered or
3 mailed to the person making the request within 30 days following
4 the request. A copy of the statements shall be kept on file in the
5 principal office of the ~~flexible purpose~~ *socially responsible*
6 corporation for 12 months and shall be exhibited at all reasonable
7 times to any shareholder demanding an examination of the
8 statements or a copy shall be mailed to the shareholder. The
9 quarterly income statements and balance sheets referred to in this
10 subdivision shall be accompanied by the report thereon, if any, of
11 any independent accountants engaged by the ~~flexible purpose~~
12 *socially responsible* corporation or the certificate of an authorized
13 officer of the ~~flexible purpose~~ *socially responsible* corporation
14 that the financial statements were prepared without audit from the
15 books and records of the ~~flexible purpose~~ *socially responsible*
16 corporation.

17 SEC. 63. Section 3501 of the Corporations Code is amended
18 to read:

19 3501. (a) The board shall cause a special purpose current report
20 to be sent to the shareholders not later than 45 days following the
21 occurrence of any one or more of the events specified in
22 subdivision (b) or (c), and, to the extent consistent with reasonable
23 confidentiality requirements, shall cause the special purpose current
24 report to be made publicly available by posting it on the ~~flexible~~
25 ~~purpose~~ *socially responsible* corporation's Internet Web site or
26 providing it through similar electronic means.

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

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

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

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

21 SEC. 64. Section 3502 of the Corporations Code is amended
22 to read:

23 3502. (a) Nothing contained in subdivision (b) of Section 3500
24 or Section 3501 shall require a detailing or itemization of every
25 relevant expenditure incurred, or planned or action taken or
26 planned, by the corporation. Management and the board shall use
27 their discretion in providing that information, including the
28 reasonable detail that a reasonable investor would consider
29 important in understanding the corporation's objectives, actions,
30 impacts, measures, rationale, and results of operations as they
31 relate to the nature and achievement of the special purpose
32 objectives.

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

1 (c) Notwithstanding subdivision (b) of Section 3500 and Section
2 3501, under no circumstances shall the ~~flexible purpose~~ *socially*
3 *responsible* corporation be required to provide information that
4 would result in a violation of state or federal securities laws or
5 other applicable laws.

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

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

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

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

31 (h) Any corporation with fewer than 100 holders of record of
32 its shares, determined as provided in Section 605, shall not be
33 required to prepare and furnish the reports required by subdivision
34 (b) of Section 3500 and Section 3501, if and only if, the ~~flexible~~
35 ~~purpose~~ *socially responsible* corporation holds unrevoked waivers
36 of such compliance executed by shareholders holding two-thirds
37 of the outstanding shares. That waiver shall remain valid and in
38 effect for each fiscal year that the ~~flexible purpose~~ *socially*
39 *responsible* corporation provides each waiving shareholder with
40 notice, prior to the end of that year, that the shareholder may revoke

1 the waiver and, on the 30th day following the end of the fiscal
2 year, the ~~flexible purpose~~ *socially responsible* corporation holds
3 unrevoked waivers to that compliance executed by shareholders
4 holding two-thirds of the outstanding shares. The shareholder
5 notice may be sent by electronic transmission pursuant to Section
6 20.

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

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

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

29 (l) In any action or proceeding with respect to Section 3500 or
30 3501, if the court finds the failure of the ~~flexible purpose~~ *socially*
31 *responsible* corporation to comply with the requirements of those
32 sections to have been without justification, the court may award
33 an amount sufficient to reimburse the shareholder for the reasonable
34 expenses incurred by the shareholder, including attorney's fees,
35 in connection with the action or proceeding.

36 (m) Subdivision (b) of Section 3500 and Section 3501 apply to
37 any domestic ~~flexible purpose~~ *socially responsible* corporation
38 and also to a foreign ~~flexible purpose~~ *socially responsible*
39 corporation having its principal executive office in this state or
40 customarily holding meetings of its board in this state.

1 (n) All reports and notices required by subdivision (b) of Section
2 3500 and Section 3501 shall be maintained by the ~~flexible purpose~~
3 *socially responsible* corporation, in an electronic form for a period
4 of not less than 10 years.

5 SEC. 65. Section 3503 of the Corporations Code is amended
6 to read:

7 3503. Any officers, directors, employees, or agents of a ~~flexible~~
8 ~~purpose~~ *socially responsible* corporation who do any of the
9 following shall be liable jointly and severally for all the damages
10 resulting therefrom to the ~~flexible purpose~~ *socially responsible*
11 corporation or any person injured by those actions who relied on
12 those actions or to both:

13 (a) Make, issue, deliver or publish any prospectus, report,
14 including the reports required pursuant to subdivision (b) of Section
15 3500 and Section 3501, circular, certificate, financial statement,
16 balance sheet, public notice, or document respecting the ~~flexible~~
17 ~~purpose~~ *socially responsible* corporation or its shares, assets,
18 liabilities, capital, dividends, business, earnings, or accounts which
19 is false in any material respect, knowing it to be false, or participate
20 in the making, issuance, delivery, or publication thereof with
21 knowledge that the same is false in a material respect.

22 (b) Make or cause to be made in the books, minutes, records or
23 accounts of a ~~flexible purpose~~ *socially responsible* corporation
24 any entry that is false in any material particular knowing it to be
25 false.

26 (c) Remove, erase, alter, or cancel any entry in any books or
27 records of the ~~flexible purpose~~ *socially responsible* corporation,
28 with intent to deceive.

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