

## Assembly Bill No. 1894

### CHAPTER 201

An act to amend Sections 1108, 1113, 2113, 15677.1, 15677.2, 15677.3, 15677.4, 15677.8, 16908, 16914, 16915, 17540.1, 17540.2, 17540.3, 17540.4, 17540.8, 25103, and 25120 of, and to add Section 25005.1 to, the Corporations Code, relating to business entities.

[Approved by Governor July 24, 2000. Filed with  
Secretary of State July 24, 2000.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1894, Ackerman. Business entities: mergers and conversions.

Existing law relating to corporate mergers sets forth procedures and filing requirements for merger transactions and establishes the merger's effect on the surviving and disappearing corporations or other business entities.

This bill would add provisions regarding the date that the merger of a domestic corporation and a foreign corporation or other business entity would be effective and would make other related changes.

Existing law, the Uniform Limited Partnership Act of 1994, the Revised Limited Partnership Act, and the Beverly-Killea Limited Liability Company Act, set forth the procedures and filing requirements for conversion of a partnership, limited liability company, or other business entity, both domestic and foreign, into other business entities.

This bill would provide that the filing with the Secretary of State of an agreement or certificate of merger, a certificate of conversion, a certification of partnership authority, or an organizational document containing a statement of conversion, as applicable, has the effect of filing a certificate of cancellation by the disappearing other business entity, the converting partnership or limited liability company, and, if the disappearing or converting business entity is a foreign corporation, that entity would thereby surrender its right to transact business in California.

This bill would further specify that provisions covering the conversion of business entities apply to foreign other business entities that are either the converting or the converted entity.

Existing law, the Corporate Securities Law of 1968, requires that all offers and sales of securities be qualified in accordance with a procedure that involves filing an application for qualification with the Department of Corporations unless the offer or sale is expressly exempted from the qualifications requirements, including certain exchanges incident to a merger, consolidation, or sale of assets, other



than a rollup transaction, in consideration of the issuance of equity securities if certain requirements are met.

This bill would exempt from these qualifications equity conversion transactions and any exchange of securities in connection with a merger, consolidation, or sale of assets in consideration wholly or in part of the issuance of securities or any equity conversion transaction pursuant to a plan of reorganization or other arrangement under the United States Bankruptcy Code.

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

SECTION 1. Section 1108 of the Corporations Code is amended to read:

1108. (a) The merger of any number of domestic corporations with any number of foreign corporations may be effected if the foreign corporations are authorized by the laws under which they are formed to effect the merger. The surviving corporation may be any one of the constituent corporations and shall continue to exist under the laws of the state or place of its incorporation.

(b) If the surviving corporation is a domestic corporation, the merger proceedings with respect to that corporation and any domestic disappearing corporation shall conform to the provisions of this chapter governing the merger of domestic corporations, but if the surviving corporation is a foreign corporation, then, subject to the requirements of subdivision (d) and of Section 407 and Chapters 12 (commencing with Section 1200) and 13 (commencing with Section 1300) (with respect to any domestic constituent corporations), the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation.

(c) If the surviving corporation is a domestic corporation, the agreement and the officers' certificate of each domestic or foreign constituent corporation shall be filed as provided in Section 1103, or the certificate of ownership shall be filed as provided in Section 1110, and thereupon, subject to subdivision (c) of Section 110, the merger shall be effective as to each domestic constituent corporation; and each foreign disappearing corporation that is qualified for the transaction of intrastate business shall by virtue of the filing, subject to subdivision (c) of Section 110, automatically surrender its right to transact intrastate business.

(d) If the surviving corporation is a foreign corporation, the merger shall become effective in accordance with the law of the jurisdiction in which it is organized, but, except as provided in subdivision (e), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state as required by this subdivision. There shall be filed as to the domestic disappearing corporation or



corporations the documents described in any one of the following paragraphs:

(1) A copy of the agreement, certificate or other document filed by the surviving foreign corporation in the state or place of its incorporation for the purpose of effecting the merger, which copy shall be certified by the public officer having official custody of the original.

(2) An executed counterpart of the agreement, certificate or other document filed by the surviving foreign corporation in the state or place of its incorporation for the purpose of effecting the merger.

(3) A copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent domestic corporation attached, which officers' certificates shall conform to the requirements of Section 1103.

(4) A certificate of ownership pursuant to Section 1110.

(e) If the date of the filing in this state pursuant to subdivision (d) is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of the domestic corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation or corporations as of the date of filing in this state. Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall, by virtue of the filing pursuant to subdivision (d), automatically surrender its right to transact intrastate business as of the date of filing in this state regardless of the time of effectiveness as to a domestic disappearing corporation.

(f) The provisions of the last two sentences of Section 1101 and Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300) apply to the rights of the shareholders of any of the constituent corporations that are domestic corporations and of any domestic corporation that is a parent party of any foreign constituent corporation.

(g) A certificate of satisfaction of the Franchise Tax Board shall be filed when required by Section 1103 or 1110 or when required by Section 23334 of the Revenue and Taxation Code.

SEC. 2. Section 1113 of the Corporations Code is amended to read:

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

(1) In a merger in which a domestic corporation not organized under this division or a domestic other business entity is a party, it is



authorized by the laws under which it is organized to effect the merger.

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

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

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

(1) The terms and conditions of the merger.

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

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

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

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

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



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

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

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

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

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

(g) (1) If the surviving party is a corporation or a foreign corporation, or if a public benefit corporation (Section 5060), a mutual benefit corporation (Section 5059), a religious corporation (Section 5061), or a corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties



to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class and, if applicable, by that other person or persons whose approval is required, or that the merger agreement was entitled to be and was approved by the board alone (as provided in Section 1201, in the case of corporations subject to that section). If equity securities of a parent party (Section 1200) are to be issued in the merger, the officers' certificate of that controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles or organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger in the form attached or its



principal terms, as required, were approved by a vote of the number of interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon filing of the agreement of merger with an officer's certificate of each constituent domestic and foreign corporation and a certificate of merger for each constituent other business entity, subject to subdivision (c) of Section 110 and subject to the provisions of subdivision (j), and the several parties thereto shall be one entity. The agreement of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger taxed under the Bank and Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by that law have been paid or secured. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code. The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(2) If the surviving entity is an other business entity, and no public benefit corporation (Section 5060), mutual benefit corporation (Section 5059), religious corporation (Section 5061), or corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties to the merger, the parties to the merger shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each constituent domestic and foreign corporation by its chairperson of the board, president or a vice president and also by its secretary or an assistant secretary and



by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact. The certificate of merger shall be signed by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth all of the following:

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

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

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

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

(E) Any other information required to be stated in the certificate of merger by the laws under which each party to the merger is organized, including, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552, if a domestic



partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4.

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

Unless a future effective date or time is provided in a certificate of merger, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger in the office of the Secretary of State and the several parties thereto shall be one entity. The certificate of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger that is taxed under the Bank and Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by the Bank and Corporation Tax Law have been paid or secured. The surviving other business entity shall keep a copy of the agreement of merger at its principal place of business which, for purposes of this subdivision, shall be the office referred to in Section 17057 if a domestic limited liability company, at the business address specified in paragraph (5) of subdivision (a) of Section 17552 if a foreign limited liability company, at the office referred to in subdivision (a) of Section 16403 if a domestic general partnership, at the business address specified in subdivision (f) of Section 16911 if a foreign partnership, at the office referred to in subdivision (a) of Section 15614 if a domestic limited partnership, or at the business address specified in paragraph (5) of subdivision (a) of Section 15678.4 if a foreign limited partnership. Upon the request of a holder of equity securities of a party to the merger, a person with authority to do so on behalf of the surviving other business entity shall promptly deliver to that holder, a copy of the agreement of merger. A waiver by that holder of the rights provided in the foregoing sentence shall be unenforceable. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger in accordance with Section 1555 of the Insurance Code.

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

(2) For all purposes for a merger in which the surviving entity is a domestic other business entity and the filing of a certificate of merger is required by paragraph (2) of subdivision (g), a copy of the



certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of the constituent corporations, either by themselves or together with the other parties to the merger, into the surviving other business entity.

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

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

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

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

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

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



partnerships, the merger proceedings may be in accordance with the laws of the state or place of incorporation or organization of the surviving party.

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

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

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

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



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

SEC. 3. Section 2113 of the Corporations Code is amended to read:

2113. (a) The filing of an agreement of merger of a foreign disappearing corporation qualified to transact intrastate business in this state pursuant to Section 1103, or the filing pursuant to subdivision (d) of Section 1108 of an agreement, certificate, or other document as to a merger that includes a disappearing foreign corporation qualified to transact intrastate business, or the filing of a certificate of ownership as to a foreign subsidiary corporation qualified to transact intrastate business in this state pursuant to Section 1110, or the filing by a foreign corporation qualified to transact intrastate business in this state of an organizational document containing a statement of conversion pursuant to Section 15677.8, 16908, or 17540.8, constitutes the surrender by the foreign corporation of its right to engage in intrastate business within this state.

(b) With respect to corporations for which documents have not been filed as provided in subdivision (a), a certificate of surrender as prescribed by Section 2112 shall be filed by a foreign corporation qualified to transact intrastate business upon its merger into another foreign corporation.

(c) In lieu of a signature as prescribed by Section 2112, a certificate of surrender pursuant to subdivision (b) for a merged foreign corporation may be signed in the name of the surviving corporation by an officer thereof. In that case, the certificate of surrender shall be accompanied by a certificate of an authorized public official of the state or place of incorporation of the merged foreign corporation stating that the corporation has been merged into another foreign corporation and setting forth the name and state or place of incorporation of the surviving foreign corporation.

SEC. 4. Section 15677.1 of the Corporations Code is amended to read:

15677.1. For purposes of this article, the following definitions shall apply:

(a) “Converted entity” means the other business entity or foreign other business entity or foreign limited partnership that results from a conversion of a domestic limited partnership under this chapter.

(b) “Converted limited partnership” means a domestic limited partnership that results from a conversion of an other business entity or a foreign other business entity or a foreign limited partnership pursuant to Section 15677.8.

(c) “Converting limited partnership” means a domestic limited partnership that converts to an other business entity or a foreign



other business entity or a foreign limited partnership pursuant to this chapter.

(d) “Converting entity” means an other business entity or a foreign other business entity or a foreign limited partnership that converts to a domestic limited partnership pursuant to the terms of Section 15677.8.

SEC. 5. Section 15677.2 of the Corporations Code is amended to read:

15677.2. A limited partnership may be converted into an other business entity or a foreign other business entity or a foreign limited partnership pursuant to this article if, pursuant to the proposed conversion, each of the partners of the converting limited partnership receives a percentage interest in the profits and capital of the converted entity equal to that partner’s percentage interest in profits and capital of the converting limited partnership as of the effective time of the conversion. The conversion of a limited partnership to an other business entity or a foreign other business entity or a foreign limited partnership may be effected only if both of the following conditions are satisfied:

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

(b) The limited partnership complies with all other requirements of any other law that applies to conversion to the converted entity.

SEC. 6. Section 15677.3 of the Corporations Code is amended to read:

15677.3. (a) A limited partnership that desires to convert to an other business entity or a foreign other business entity or a foreign limited partnership shall approve a plan of conversion. The plan of conversion shall state all of the following:

(1) The terms and conditions of the conversion.

(2) The place of the organization of the converted entity and of the converting limited partnership and the name of the converted entity after conversion.

(3) The manner of converting the limited and general partnership interests of each of the partners into securities of, or interests in, the converted entity.

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

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

(b) The plan of conversion shall be approved by all general partners of the converting limited partnership and by a majority in interest of each class of limited partners of the converting limited partnership, unless a greater or lesser approval is required by the



partnership agreement of the converting limited partnership. However, if the limited partners of the limited partnership would become personally liable for any obligations of the converted entity as a result of the conversion, the plan of conversion shall be approved by all of the limited partners of the converting limited partnership, unless the plan of conversion provides that all limited partners will have dissenters' rights as provided in Article 7.6 (commencing with Section 15679.1).

(c) Upon the effectiveness of the conversion, all partners of the converting limited partnership, except those that exercise dissenters' rights as provided in Article 7.6 (commencing with Section 15679.1), shall be deemed parties to any governing documents for the converted entity adopted as part of the plan of conversion, irrespective of whether or not the partner has executed the plan of conversion or the governing documents for the converted entity. Any adoption of governing documents made pursuant thereto shall be effective at the effective time or date of the conversion.

(d) Notwithstanding its prior approval, a plan of conversion may be amended before the conversion takes effect if the amendment is approved by all general partners of the converting limited partnership and, if the amendment changes any of the principal terms of the plan of conversion, the amendment is approved by the limited partners of the converting limited partnership in the same manner and to the same extent as required for the approval of the original plan of conversion.

(e) The general partners of a converting limited partnership may, by unanimous approval at any time before the conversion is effective, in their discretion, abandon a conversion, without further approval by the limited partners, subject to the contractual rights of third parties other than limited partners.

(f) The converted entity shall keep the plan of conversion at the principal place of business of the converted entity if the converted entity is a domestic partnership or foreign other business entity or at the office at which records are to be kept under Section 17057 if the converted entity is a domestic limited liability company. Upon the request of a partner of a converting limited partnership, the authorized person on behalf of the converted entity shall promptly deliver to the partner or the holder of interests or other securities, at the expense of the converted entity, a copy of the plan of conversion. A waiver by a partner of the rights provided in this subdivision shall be unenforceable.

SEC. 7. Section 15677.4 of the Corporations Code is amended to read:

15677.4. (a) A conversion into an other business entity or a foreign other business entity or a foreign limited partnership shall become effective upon the earliest date that all of the following occur:



(1) The approval of the plan of conversion by the partners of the converting limited partnership as provided in Section 15677.3.

(2) The filing of all documents required by law to create the converted entity, which documents shall also contain a statement of conversion, if required under Section 15677.6.

(3) The occurrence of the effective date, if set forth in the plan of conversion occurs.

(b) A copy of the statement of partnership authority or articles of organization complying with Section 15677.6, if applicable, duly certified by the Secretary of State, is conclusive evidence of the conversion of the limited partnership.

SEC. 8. Section 15677.8 of the Corporations Code is amended to read:

15677.8. (a) An other business entity or a foreign other business entity or a foreign limited partnership may be converted to a domestic limited partnership pursuant to this article only if the converting entity is authorized by the laws under which it is organized to effect the conversion.

(b) An other business entity or a foreign other business entity or a foreign limited partnership that desires to convert into a domestic limited partnership shall approve a plan of conversion or an other instrument as is required to be approved to effect the conversion pursuant to the laws under which that entity is organized.

(c) The conversion of an other business entity or a foreign other business entity or a foreign limited partnership into a domestic limited partnership shall be approved by the number or percentage of the partners, members, or holders of interest of the converting entity as is required by the laws under which that entity is organized, or a greater or lesser percentage, subject to applicable laws, as set forth in the converting entity's partnership agreement, articles of organization, operating agreement, or other governing document.

(d) The conversion by an other business entity or a foreign other business entity or a foreign limited partnership into a domestic limited partnership shall be effective under this article at the time the conversion is effective under the laws under which the converting entity is organized as long as a certificate of limited partnership containing a statement of conversion has been filed with the Secretary of State. If the converting entity's governing law is silent as to the effectiveness of the conversion, the conversion shall be effective upon the completion of all acts required under this title to form a limited partnership.

(e) The filing with the Secretary of State of a certificate of conversion or a certificate of limited partnership containing a statement of conversion pursuant to subdivision (a) shall have the effect of the filing of a certificate of cancellation by the converting foreign limited partnership or foreign limited liability company and no converting foreign limited partnership or foreign limited liability



company that has made the filing is required to file a certificate of cancellation under Section 15696 or 17455 as a result of that conversion. If a converting other business entity is a foreign corporation qualified to transact business in this state, the foreign corporation shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

SEC. 9. Section 16908 of the Corporations Code is amended to read:

16908. (a) A domestic limited partnership or limited liability company or a foreign other business entity may be converted to a domestic partnership pursuant to this article, but only if the converting entity is authorized by the laws under which it is organized to effect the conversion.

(b) An entity that desires to convert into a domestic partnership shall approve a plan of conversion or the instrument that is required to be approved to effect the conversion pursuant to the laws under which the entity is organized.

(c) The conversion of a domestic limited partnership or limited liability company or foreign other business entity shall be approved by the number or percentage of the partners, members, or holders of interest of the converting entity as is required by the law under which the entity is organized, or a greater or lesser percentage (subject to applicable laws) as set forth in the limited partnership agreement, articles of organization, or operating agreement or other governing document for the converting entity.

(d) The conversion by a domestic limited partnership or limited liability company or a foreign other business entity into a partnership shall be effective under this article at the time that the conversion is effective under the laws under which the converting entity is organized.

(e) The filing with the Secretary of State of a certificate of conversion or a statement of partnership authority containing a statement of conversion pursuant to subdivision (a) shall have the effect of the filing of a certificate of cancellation by the converting foreign limited partnership or foreign limited liability company, and no converting foreign limited partnership or foreign limited liability company that has made the filing is required to file a certificate of cancellation under Section 15696 or 17455 as a result of that conversion. If a converting other business entity is a foreign corporation qualified to transact business in this state, the foreign corporation shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

SEC. 10. Section 16914 of the Corporations Code is amended to read:

16914. (a) When a merger takes effect, all of the following apply:

(1) The separate existence of the disappearing partnerships and disappearing other business entities ceases and the surviving



partnership or surviving other business entity shall succeed, without other transfer, act or deed, to all the rights and property whether real, personal, or mixed, of each of the disappearing partnerships and disappearing other business entities and shall be subject to all the debts and liabilities of each in the same manner as if the surviving partnership or surviving other business entity had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent partnerships and constituent other business entities shall be preserved unimpaired and may be enforced against the surviving partnership or the surviving other business entity to the same extent as if the debt, liability or duty that gave rise to that lien had been incurred or contracted by it, provided that those liens upon the property of a disappearing partnership or disappearing other business entity shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing partnership or disappearing other business entity may be prosecuted to judgment, which shall bind the surviving partnership or surviving other business entity, or the surviving partnership or surviving other business entity may be proceeded against or be substituted in the disappearing partnership's or the disappearing other business entity's place.

(b) (1) Unless a certificate of merger has been filed to effect the merger, the surviving foreign entity shall promptly notify the Secretary of State of the mailing address of its agent for service of process, its chief executive office, and of any change of address. To enforce an obligation of a partnership that has merged with a foreign partnership or foreign other business entity, the Secretary of State shall only be the agent for service of process in an action or proceeding against the surviving foreign partnership or foreign other business entity, if the agent designated for the service of process for that entity is a natural person and cannot be located with due diligence or if the agent is a corporation and no person to whom delivery may be made can be located with due diligence, or if no agent has been designated and if no one of the officers, partners, managers, members, or agents of the entity can be located after diligent search, and it is so shown by affidavit to the satisfaction of the court. The court then may make an order that service be made by personal delivery to the Secretary of State or to an assistant or deputy Secretary of State of two copies of the process together with two copies of the order, and the order shall set forth an address to which the process shall be sent by the Secretary of State. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

(2) Upon receipt of the process and order and the fee set forth in Section 12206 of the Government Code, the Secretary of State shall



give notice to the entity of the service of the process by forwarding by certified mail, return receipt requested, a copy of the process and order to the address specified in the order.

(3) The Secretary of State shall keep a record of all process served upon the Secretary of State and shall record therein the time of service and the Secretary of State's action with respect thereto. The certificate of the Secretary of State, under the Secretary of State's official seal, certifying to the receipt of process, the giving of notice thereof to the entity, and the forwarding of the process, shall be competent and prima facie evidence of the matters stated therein.

(c) A partner of the surviving partnership or surviving limited partnership, a member of the surviving limited liability company, a shareholder of the surviving corporation, or a holder of equity securities of the surviving other business entity, is liable for all of the following:

(1) All obligations of a party to the merger for which that person was personally liable before the merger.

(2) All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity.

(3) All obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if that person is a limited partner, a shareholder in a corporation, or, unless expressly provided otherwise in the articles of organization or other constituent documents, a member of a limited liability company or a holder of equity securities in a surviving other business entity.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or surviving other business entity, the general partners of that party immediately before the effective date of the merger, to the extent that party was a partnership or a limited partnership, shall contribute the amount necessary to satisfy that party's obligations to the surviving entity in the manner provided in Section 16807 or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

(e) A partner of a domestic disappearing partnership who does not vote in favor of the merger and does not agree to become a partner, member, shareholder, or holder of interest or equity securities of the surviving partnership or surviving other business entity shall have the right to dissociate from the partnership as of the date the merger takes effect. Within 10 days after the approval of the merger by the partners as required under this article, each domestic disappearing partnership shall send notice of the approval of the merger to each partner that has not approved the merger, accompanied by a copy of Section 16701 and a brief description of the procedure to be followed under that section if the partner wishes to



dissociate from the partnership. A partner that desires to dissociate from a disappearing partnership shall send written notice of that dissociation within 30 days after the date of the notice of the approval of the merger. The disappearing partnership shall cause the partner's interest in the entity to be purchased under Section 16701. The surviving entity is bound under Section 16702 by an act of a general partner dissociated under this subdivision, and the partner is liable under Section 16703 for transactions entered into by the surviving entity after the merger takes effect. The disassociation of a partner in connection with a merger pursuant to the terms of this subdivision shall not be deemed a wrongful disassociation under Section 16602.

SEC. 11. Section 16915 of the Corporations Code is amended to read:

16915. (a) In a merger involving a domestic partnership, in which another partnership or a foreign other business entity is a party, but in which no other domestic other business entity is a party, the surviving partnership or surviving foreign other business entity may file with the Secretary of State a statement that one or more partnerships have merged into the surviving partnership or surviving foreign other business entity, or that one or more partnerships or foreign other business entities have merged into the surviving domestic partnership. A statement of merger shall contain the following:

(1) The name of each partnership or foreign other business entity that is a party to the merger.

(2) The name of the surviving entity into which the other partnerships or foreign other business entities were merged.

(3) The street address of the surviving entity's chief executive office and of an office in this state, if any.

(4) Whether the surviving entity is a partnership or a foreign other business entity, specifying the type of the entity.

(b) In a merger involving a domestic partnership in which a domestic other business entity is also a party, after approval of the merger by the constituent partnerships and any constituent other business entities, the constituent partnerships and constituent other business entities shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State, but if the surviving entity is a domestic corporation or a foreign corporation in a merger in which a domestic corporation is a constituent party, the surviving corporation shall file in the office of the Secretary of State a copy of the agreement of merger and attachments required under paragraph (1) of subdivision (g) of Section 1113. The certificate of merger shall be executed and acknowledged by each domestic constituent partnership by two partners (unless a lesser number is provided in the partnership agreement) and by each foreign constituent partnership by one or more partners, and by each constituent other business entity by those persons required to



execute the certificate of merger by the laws under which the constituent other business entity is organized. The certificate of merger shall set forth all of the following:

(1) The names and the Secretary of State's file numbers, if any, of each of the constituent partnerships and constituent other business entities, separately identifying the disappearing partnerships and disappearing other business entities and the surviving partnership or surviving other business entity.

(2) If a vote of the partners was required under Section 16911, a statement that the principal terms of the agreement of merger were approved by a vote of the partners, which equaled or exceeded the vote required.

(3) If the surviving entity is a domestic partnership and not an other business entity, any change to the information set forth in any filed statement of partnership authority of the surviving partnership resulting from the merger, including any change in the name of the surviving partnership resulting from the merger. The filing of a certificate of merger setting forth any changes to any filed statement of partnership authority of the surviving partnership shall have the effect of the filing of a certificate of amendment of the statement of partnership authority by the surviving partnership, and the surviving partnership need not file a certificate of amendment under Section 16015 to reflect those changes.

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

(5) If the surviving entity is an other business entity or a foreign partnership, the full name, type of entity, legal jurisdiction in which the entity was organized and by whose laws its internal affairs are governed, and the address of the principal place of business of the entity.

(6) Any other information required to be stated in the certificate of merger by the laws under which each constituent other business entity is organized.

(c) A statement of merger or a certificate of merger, as is applicable under subdivision (a) or (b), shall have the effect of the filing of a cancellation for each disappearing partnership of any statement of partnership authority filed by it.

SEC. 12. Section 17540.1 of the Corporations Code is amended to read:

17540.1. For purposes of this chapter, the following definitions shall apply:

(a) "Converted entity" means the other business entity or foreign other business entity or foreign limited liability company that results from a conversion of a domestic limited liability company under this chapter.



(b) “Converted limited liability company” means a domestic limited liability company that results from a conversion of an other business entity or a foreign other business entity or a foreign limited liability company pursuant to Section 17540.8.

(c) “Converting limited liability company” means a domestic limited liability company that converts to an other business entity or a foreign other business entity or a foreign limited liability company pursuant to this chapter.

(d) “Converting entity” means an other business entity or a foreign other business entity or a foreign limited liability company that converts to a domestic limited liability company pursuant to the terms of Section 17540.8.

SEC. 13. Section 17540.2 of the Corporations Code is amended to read:

17540.2. A limited liability company may be converted into an other business entity or a foreign other business entity or a foreign limited liability company pursuant to this chapter if, pursuant to the proposed conversion, each of the members of the converting limited liability company would receive a percentage interest in profits and capital of the converted entity equal to that member’s percentage interest in profits and capital of the converting limited liability company as of the effective time of the conversion. Notwithstanding this section, the conversion of a limited liability company to an other business entity or a foreign other business entity or a foreign limited liability company may be effected only if both of the following conditions are complied with:

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

(b) The limited liability company complies with any and all other requirements of any other law that applies to conversion to the converted entity.

SEC. 14. Section 17540.3 of the Corporations Code is amended to read:

17540.3. (a) A limited liability company that desires to convert to an other business entity or a foreign other business entity or a foreign limited liability company shall approve a plan of conversion.

The plan of conversion shall state all of the following:

(1) The terms and conditions of the conversion.

(2) The place of the organization of the converted entity and of the converting limited liability company and the name of the converted entity after conversion.

(3) The manner of converting the membership interests of each of the members into securities of, or interests in, the converted entity.

(4) The provisions of the governing documents for the converted entity, including the partnership agreement, to which the holders of interests in the converted entity are to be bound.



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

(b) The plan of conversion shall be approved by a vote of a majority in interest of the members of the converting limited liability company, or a greater percentage of the voting interests of members as may be specified in the articles of organization or written operating agreement of the converting limited liability company. However, if the members of the limited liability company would become personally liable for any obligations of the converted entity as a result of the conversion, the plan of conversion shall be approved by all of the members of the converting limited liability company, unless the plan of conversion provides that all members will have dissenters' rights as provided in Chapter 13 (commencing with Section 17600).

(c) If the limited liability company is converting into a limited partnership, then in addition to the approval of the members set forth in subdivision (b), the plan of conversion shall be approved by those members who will become general partners of the converted limited partnership pursuant to the plan of conversion.

(d) Upon the effectiveness of the conversion, all members of the converting limited liability company, except those that exercise dissenters' rights as provided in Chapter 13 (commencing with Section 17600) shall be deemed parties to any governing documents for the converted entity adopted as part of the plan of conversion, irrespective of whether or not a member has executed the plan of conversion or such governing documents for the converted entity. Any adoption of governing documents made pursuant thereto shall be effective at the effective time or date of the conversion.

(e) Notwithstanding its prior approval, a plan of conversion may be amended before the conversion takes effect if the amendment is approved by the members of the converting limited liability company in the same manner as was required for approval of the original plan of conversion.

(f) A plan of conversion may be abandoned by the members of a converting limited liability company in the manner as required for approval of the plan of conversion, subject to the contractual rights of third parties, at any time before the conversion is effective.

(g) The converted entity shall keep the plan of conversion at the principal place of business of the converted entity if the converted entity is a domestic partnership or foreign other business entity or at the office at which records are to be kept under Section 15614 if the converted entity is a domestic limited partnership. Upon the request of a member of a converting limited liability company, the authorized person on behalf of the converted entity shall promptly deliver to the member or the holder of interests or other securities, at the expense of the converted entity, a copy of the plan of



conversion. A waiver by a member of the rights provided in this subdivision shall be unenforceable.

SEC. 15. Section 17540.4 of the Corporations Code is amended to read:

17540.4. (a) A conversion into an other business entity or a foreign other business entity or a foreign limited liability company shall become effective upon the earliest date that all of the following occur:

(1) The approval of the plan of conversion by the members of the converting limited liability company as provided in Section 17540.3.

(2) The filing of all documents required by law to effect the conversion and create the converted entity, which documents shall also contain a statement of conversion, if required under Section 17540.6.

(3) The occurrence of the effective date, if set forth in the plan of conversion.

(b) A copy of the statement of partnership authority or certificate of limited partnership complying with Section 17540.6, if applicable, duly certified by the Secretary of State, is conclusive evidence of the conversion of the limited liability company.

SEC. 16. Section 17540.8 of the Corporations Code is amended to read:

17540.8. (a) An other business entity or a foreign other business entity or a foreign limited liability company may be converted to a domestic limited liability company pursuant to this chapter only if the converting entity is authorized by the laws under which it is organized to effect the conversion.

(b) An other business entity or a foreign other business entity or a foreign limited liability company that desires to convert into a domestic limited liability company shall approve a plan of conversion or an other instrument as is required to be approved to effect the conversion pursuant to the laws under which that entity is organized.

(c) The conversion of an other business entity or a foreign other business entity or a foreign limited liability company into a domestic limited liability company shall be approved by that number or percentage of the partners, members, or holders of interest of the converting entity as is required by the laws under which that entity is organized, or a greater or lesser percentage, subject to applicable laws, as set forth in the converting entity's partnership agreement, articles of organization, operating agreement, or other governing document.

(d) The conversion by an other business entity or a foreign other business entity or a foreign limited liability company into a domestic limited liability company shall be effective under this chapter at the time the conversion is effective under the laws under which the converting entity is organized as long as the articles of organization containing a statement of conversion have been filed with the



Secretary of State. If the converting entity's governing law is silent as to the effectiveness of the conversion, the conversion shall be effective upon the completion of all acts required under this title to form a limited liability company.

(e) The filing with the Secretary of State of a certificate of conversion or articles of organization containing a statement of conversion pursuant to subdivision (a) shall have the effect of the filing of a certificate of cancellation by the converting foreign limited liability company or foreign limited partnership, and no converting foreign limited liability company or foreign limited partnership that has made the filing is required to file a certificate of cancellation under Section 15696 or 17455 as a result of that conversion. If a converting other business entity is a foreign corporation qualified to transact business in this state, the foreign corporation shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

SEC. 17. Section 25005.1 is added to the Corporations Code, to read:

25005.1. "Entity conversion transaction" means a conversion pursuant to Section 15677.2, 15677.8, 16902, 16908, 17540.2, or 17540.8 unless the interests in the entity resulting from the conversion to be held by the equity holders of the entity being converted as a result of the conversion are not securities. For purposes of Sections 25103 and 25120 an entity conversion transaction is not a change in the rights, preferences, privileges, or restrictions of or on outstanding securities or an exchange of securities by the issuer with its existing security holders exclusively.

SEC. 18. Section 25103 of the Corporations Code is amended to read:

25103. The following transactions are exempted from the provisions of Section 25110 and Section 25120:

(a) Any negotiations or agreements prior to general solicitation of approval by the holders of equity securities, and subject to that approval, of (1) a change in the rights, preferences, privileges, or restrictions of or on outstanding securities (2) a merger, consolidation, or sale of assets in consideration of the issuance of securities or (3) an entity conversion transaction.

(b) Any change in the rights, preferences, privileges, or restrictions of or on outstanding securities or any entity conversion transaction, unless the holders of at least 25 percent of the outstanding shares or units of any class of securities which will be directly or indirectly affected substantially and adversely by such change or transaction have addresses in this state according to the records of the issuer.

(c) Any exchange incident to a merger, consolidation, or sale of assets in consideration of the issuance of securities of another issuer, unless at least 25 percent of the outstanding securities of any class, any



holders of which are to receive securities in the exchange, are held by persons who have addresses in this state, according to the records of the issuer of which they are holders. This exemption is not available for a rollup transaction as defined by Section 25014.6. The exemption is also not available for a transaction excluded from the definition of rollup transaction by virtue of paragraph (5) or (6) of subdivision (b) of Section 25014.6 if the transaction is one of a series of transactions that directly or indirectly through acquisition or otherwise involves the combination or reorganization of one or more rollup participants.

(d) For the purposes of subdivision (b) and subdivision (c) of this section, (1) any securities held to the knowledge of the issuer in the names of broker-dealers or nominees of broker-dealers and (2) any securities controlled by any one person who controls directly or indirectly 50 percent or more of the outstanding securities of that class shall not be considered outstanding. The determination of whether 25 percent of the outstanding securities are held by persons having addresses in this state, for the purposes of subdivision (b) and subdivision (c) of this section, shall be made as of the record date for the determination of the security holders entitled to vote on or consent to the action, if approval of those holders is required, or if not as of the date of directors' approval of that action.

(e) Any change (other than a stock split or reverse stock split) in the rights, preferences, privileges, or restrictions of or on outstanding equity securities, except the following if they materially and adversely affect any class of equity securities: (1) to add, change, or delete assessment provisions; (2) to change the rights to dividends thereon; (3) to change the redemption provisions; (4) to make them redeemable; (5) to change the amount payable on liquidation; (6) to change, add, or delete conversion rights; (7) to change, add, or delete voting rights; (8) to change, add, or delete preemptive rights; (9) to change, add, or delete sinking fund provisions; (10) to rearrange the relative priorities of outstanding equity securities; (11) to impose, change, or delete restrictions upon the transfer of equity securities in the organizational documents for the entity; (12) to change the right of holders of equity securities with respect to the calling of special meetings of holders of equity securities; and (13) to change, add, or delete any rights, preferences, privileges, or restrictions of, or on, the outstanding shares or memberships of a mutual water company or other corporation or entity organized primarily to provide services or facilities to its shareholders or members. Changes in the rights, preferences, privileges, or restrictions of or on outstanding equity securities do not materially and adversely affect any class of holders of equity securities within the meaning of this subdivision if they arise from (i) the addition to articles of incorporation of the provisions described or referred to in subdivision (a) of Section 158 upon the conversion of an existing corporation to a close corporation pursuant to subdivision (b) of Section 158, (ii) the



deletion from the articles of incorporation of the provisions described or referred to in subdivision (a) of Section 158 upon the voluntary termination of close corporation status pursuant to subdivisions (c) and (e) of Section 158, (iii) the involuntary cessation of close corporation status pursuant to subdivision (e) of Section 158, or (iv) the termination of a shareholders' agreement pursuant to subdivision (b) of Section 300.

(f) Any stock split or reverse stock split, except the following: (1) any stock split or reverse stock split if the corporation has more than one class of shares outstanding and the split would have a material effect on the proportionate interests of the respective classes as to voting, dividends, or distributions; (2) any stock split of a stock which is traded in the market and its market price as of the date of directors' approval of the stock split adjusted to give effect to the split was less than two dollars (\$2) per share; and (3) any reverse stock split if the corporation has the option of paying cash for any fractional shares created by such reverse split and as a result of such action the proportionate interests of the shareholders would be substantially altered. Any shares issued upon a stock split or reverse stock split exempted by this subdivision shall be subject to any conditions previously imposed by the commissioner applicable to the shares with respect to which they are issued.

(g) Any change in the rights of outstanding debt securities, except the following if they substantially and adversely affect any class of securities: (1) to change the rights to interest thereon; (2) to change their redemption provisions; (3) to make them redeemable; (4) to extend the maturity thereof or to change the amount payable thereon at maturity; (5) to change their voting rights; (6) to change their conversion rights; (7) to change sinking fund provisions; and (8) to make them subordinate to other indebtedness.

(h) Any exchange incident to a merger, consolidation, or sale of assets, other than a rollup transaction (as defined in Section 25014.6), in consideration of the issuance of equity securities of another entity or any entity conversion transaction which meets the following conditions:

(1) The exchange incident to a merger, consolidation, or sale of assets or the entity conversion transaction, had the exchange transaction involved the issuance of a security in a transaction subject to the provisions of Section 25110, would have been exempt from qualification by subdivision (f) of Section 25102, without giving effect to subparagraph (3) thereof, and either of the following is applicable:

(A) (i) Not less than 75 percent of the outstanding equity securities of each constituent or converting entity entitled to vote on the proposed transaction voted in favor of the transaction, (ii) not more than 10 percent of the outstanding equity securities of each constituent or converting entity entitled to vote on the proposed transaction voted against the transaction, and (iii) each constituent



or converting entity whose security holders are entitled to vote on the proposed transaction is subject to a state statute that has provisions for dissenters' rights for holders of equity securities entitled to vote on the proposed transaction that do not vote in favor of or voted against the transaction.

(B) (i) The transaction is solely for the purposes of changing the issuer's state of incorporation or organization, or form of organization, (ii) all the securities of the same class or series, unless all the security holders of the class or series consent, are treated equally, and (iii) the holders of nonredeemable voting equity securities receive nonredeemable voting equity securities.

(2) The commissioner may, by rule, require the acquiring or surviving entity to file a notice of transaction under this section. However, the failure to file the notice or the failure to file the notice within the time specified by the rule of the commissioner shall not affect the availability of this exemption. An acquiring or surviving entity that fails to file the notice as provided by rule of the commissioner shall, within 15 business days after demand by the commissioner, file the notice and pay to the commissioner a fee equal to the fee payable had the transaction been qualified under Section 25110 or 25120.

(i) Any exchange of securities in connection with any merger or consolidation or sale of corporate assets in consideration wholly or in part of the issuance of securities or any entity conversion transaction under, or pursuant to, a plan of reorganization or arrangement which pursuant to the provisions of the United States Bankruptcy Code has been confirmed or is subject to confirmation by the decree or order of a court of competent jurisdiction.

SEC. 19. Section 25120 of the Corporations Code is amended to read:

25120. It is unlawful for any person to offer or sell in this state any security (a) in an issuer transaction in connection with any change in the rights, preferences, privileges, or restrictions of or on outstanding securities or (b) in any exchange of securities by the issuer with its existing security holders exclusively (c) in any exchange in connection with any merger or consolidation or purchase of assets in consideration wholly or in part of the issuance of securities or (d) in an entity conversion transaction, unless the security is qualified for sale under this chapter (and no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to such qualification) or unless such security or transaction is exempted or not subject to qualification under Chapter 1 (commencing with Section 25100) of this part.

