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SENATE BILL NO. 479
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on _____)
(Patron Prior to Substitute—Senator Marsden)

A BILL to amend and reenact §§ 13.1-603, 13.1-616, 13.1-619, 13.1-624, 13.1-632, 13.1-639, 13.1-643, 13.1-646, 13.1-671.1, 13.1-672.1, 13.1-672.3, 13.1-672.4, 13.1-672.5, 13.1-689, 13.1-691, 13.1-724, 13.1-741.1, 13.1-754, and 13.1-770 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 13.1-689.1 and by adding in Article 15 of Chapter 9 of Title 13.1 a section numbered 13.1-741.2, relating to Virginia Stock Corporation Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-603, 13.1-616, 13.1-619, 13.1-624, 13.1-632, 13.1-639, 13.1-643, 13.1-646, 13.1-671.1, 13.1-672.1, 13.1-672.3, 13.1-672.4, 13.1-672.5, 13.1-689, 13.1-691, 13.1-724, 13.1-741.1, 13.1-754, and 13.1-770 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 13.1-689.1 and by adding in Article 15 of Chapter 9 of Title 13.1 a section numbered 13.1-741.2 as follows:

§ 13.1-603. Definitions.

As used in this chapter:

"Articles of incorporation" means all documents constituting, at any particular time, the charter of a corporation. It includes the original charter issued by the General Assembly, a court or the Commission and all amendments including certificates of consolidation, serial designation, reduction, correction, and merger. It excludes articles of share exchange filed by an acquiring corporation. When the articles of incorporation have been restated pursuant to any articles of restatement, amendment, domestication, or merger, it includes only the restated articles of incorporation, including any articles of serial designation, without the accompanying articles of restatement, amendment, domestication, or merger. When used with respect to a foreign corporation, the "articles of incorporation" of such entity means the document that is equivalent to the articles of incorporation of a domestic corporation.

"Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

"Beneficial shareholder" means a person that owns the beneficial interest in shares, which may be a record

31 shareholder or a person on whose behalf shares are registered in the name of an intermediary as nominee.

32 "Certificate," when relating to articles filed with the Commission, means the order of the Commission that
33 makes the articles effective, together with the articles.

34 "Commission" means the State Corporation Commission of Virginia.

35 "Conspicuous" means so written, displayed, or presented that a reasonable person against whom the
36 writing is to operate should have noticed it. For example, text that is italicized, is in boldface, contrasting
37 colors, or capitals, or is underlined, is conspicuous.

38 "Corporation" or "domestic corporation" means a corporation authorized by law to issue shares,
39 irrespective of the nature of the business to be transacted, organized under this chapter or existing pursuant to
40 the laws of the Commonwealth on January 1, 1986, or which, by virtue of articles of incorporation,
41 amendment, or merger, has become a domestic corporation of the Commonwealth, even though also being a
42 corporation organized under laws other than the laws of the Commonwealth, or that has become a domestic
43 corporation of the Commonwealth pursuant to Article 12.1 (§ 13.1-722.1:1 et seq.) or Article 12.2
44 (§ 13.1-722.8 et seq.) of this chapter or Article 15 (§ 13.1-1081 et seq.) of Chapter 12.

45 "Deliver" or "delivery" means any method of delivery used in conventional commercial practice,
46 including delivery by hand, mail, commercial delivery, and, if authorized in accordance with § 13.1-610,
47 electronic transmission.

48 "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided
49 in Article 8.1 (§ 13.1-672.1 et seq.), a foreign corporation.

50 "Disinterested director" means, except with respect to Article 14 (§ 13.1-725 et seq.), a director who, at
51 the time action is to be taken under subdivision B 5 of § 13.1-619, § 13.1-672.4, 13.1-691, 13.1-699, or
52 13.1-701, does not have (i) a financial interest in a matter that is the subject of such action or (ii) a familial,
53 financial, professional, employment, or other relationship with a person who has a financial interest in the
54 matter, either of which would reasonably be expected to impair the objectivity of the director's judgment
55 when participating in the action, and if the action is to be taken under § 13.1-699 or 13.1-701, is also not a
56 party to the proceeding. The presence of one or more of the following circumstances shall not, by itself,
57 prevent a person from being a disinterested director: (i) nomination or election of the director to the board of
58 ~~directors by any director person~~ *directors by any person who is not a disinterested director with respect to the matter or by any person*
59 ~~that has a material relationship with that director, acting alone or participating with others, including any~~
60 *defendant in a derivative proceeding or other person against whom action is demanded under subsection B of*
61 *§ 13.1-672.1;* (ii) service as a director of another corporation of which a director who is not a disinterested

62 director with respect to the matter, or any person that has a material relationship with that director, is or was
63 also a director; or (iii) at the time action is to be taken under § 13.1-672.4, status as a named defendant, as a
64 director against whom action is demanded *under subsection B of § 13.1-672.1*, or as a director who approved
65 the act being challenged.

66 "Distribution" means a direct or indirect transfer of cash or other property, except the corporation's own
67 shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of
68 any of its shares. A distribution may be in the form of a payment of a dividend; a purchase, redemption, or
69 other acquisition of shares; a distribution of indebtedness of the corporation; a distribution in liquidation; or
70 otherwise. Distribution does not include an acquisition by a corporation of its shares from the estate or
71 personal representative of a deceased shareholder, or any other shareholder, but only to the extent the
72 acquisition is effected using the proceeds of insurance on the life of such deceased shareholder and the board
73 of directors approved the policy and the terms of the redemption prior to the shareholder's death.

74 "Document" means (i) any tangible medium on which information is inscribed, and includes handwritten,
75 typed, printed, or similar instruments and copies of such instruments, or (ii) an electronic record.

76 "Domestic" with respect to an entity, means an entity governed as to its internal affairs by the organic law
77 of the Commonwealth.

78 "Domestic business trust" has the same meaning as specified in § 13.1-1201.

79 "Domestic limited liability company" has the same meaning as specified in § 13.1-1002.

80 "Domestic limited partnership" has the same meaning as specified in § 50-73.1.

81 "Domestic nonstock corporation" has the same meaning as "domestic corporation" as specified in
82 § 13.1-803.

83 "Domestic partnership" means an association of two or more persons to carry on as co-owners a business
84 for profit formed under § 50-73.88, or predecessor law of the Commonwealth, and includes, for all purposes
85 of the laws of the Commonwealth, a registered limited liability partnership.

86 "Effective date," when referring to a document for which effectiveness is contingent upon issuance of a
87 certificate by the Commission, means the time and date determined in accordance with § 13.1-606.

88 "Effective date of notice" is defined in subdivision A 9 of § 13.1-610.

89 "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,
90 electromagnetic, or similar capabilities.

91 "Electronic record" means information that is stored in an electronic or other nontangible medium and is

92 retrievable in paper form through an automated process used in conventional commercial practice, unless
93 otherwise authorized in accordance with subdivision A 10 of § 13.1-610.

94 "Electronic transmission" or "electronically transmitted" means any form or process of communication,
95 not directly involving the physical transfer of paper or another tangible medium, that (i) is suitable for the
96 retention, retrieval, and reproduction of information by the recipient, and (ii) is retrievable in paper form by
97 the recipient through an automated process used in conventional commercial practice, unless otherwise
98 authorized in accordance with subdivision A 10 of § 13.1-610.

99 "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonstock
100 corporation.

101 "Eligible interests" means interests or memberships.

102 "Employee" includes, unless otherwise provided in the bylaws, an officer but not a director. A director
103 may accept duties that make the director also an employee.

104 "Entity" includes any domestic or foreign corporation; any domestic or foreign nonstock corporation; any
105 domestic or foreign unincorporated entity; any estate or trust; and any state, the United States and any foreign
106 government.

107 "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter.

108 "Filing entity" means an unincorporated entity other than a general partnership.

109 "Foreign," with respect to an entity, means an entity governed as to its internal affairs by the organic law
110 of a jurisdiction other than the Commonwealth.

111 "Foreign business trust" has the same meaning as specified in § 13.1-1201.

112 "Foreign corporation" means a corporation authorized by law to issue shares, organized under laws other
113 than the laws of the Commonwealth.

114 "Foreign limited liability company" has the same meaning as specified in § 13.1-1002.

115 "Foreign limited partnership" has the same meaning as specified in § 50-73.1.

116 "Foreign nonstock corporation" means a corporation that is incorporated under a law other than the law of
117 the Commonwealth and would, based on its public organic record, be a nonstock corporation if incorporated
118 under the law of the Commonwealth.

119 "Foreign partnership" means an association of two or more persons to carry on as co-owners of a business
120 for profit formed under the laws of any state or jurisdiction other than the Commonwealth, and includes, for
121 all purposes of the laws of the Commonwealth, a foreign registered limited liability partnership.

122 "Foreign registered limited liability partnership" has the same meaning as specified in § 50-73.79.

123 "Foreign unincorporated entity" means a foreign partnership, foreign limited liability company, foreign
124 limited partnership, or foreign business trust.

125 "Government subdivision" includes authority, county, district, and municipality.

126 "Governor" means any person under whose authority the powers of an entity are exercised and under
127 whose direction the activities and affairs of the entity are managed pursuant to the organic law governing the
128 entity and its organic rules.

129 "Includes" and "including" denote a partial definition as a nonexclusive list.

130 "Individual" means a natural person.

131 "Interest" means either or both of the following rights under the organic law governing an unincorporated
132 entity:

- 133 1. The right to receive distributions from the entity either in the ordinary course or upon liquidation; or
- 134 2. The right to receive notice or to vote on issues involving its internal affairs, other than as an agent,
135 assignee, proxy or person responsible for managing its business and affairs.

136 "Interest holder" means a person who holds of record an interest.

137 "Interest holder liability" means:

- 138 1. Personal liability for a debt, obligation, or other liability of a domestic or foreign corporation or
139 domestic or foreign eligible entity that is imposed on a person:

- 140 a. Solely by reason of the person's status as a shareholder, member, or interest holder; or
- 141 b. By the articles of incorporation of the domestic corporation or the organic rules of the eligible entity or
142 foreign corporation that make one or more specified shareholders, members, or interest holders, or categories
143 of shareholders, members, or interest holders, liable in their capacity as shareholders, members, or interest
144 holders for all or specified liabilities of the corporation or eligible entity; or

- 145 2. An obligation of a shareholder, member, or interest holder under the articles of incorporation of a
146 domestic corporation or the organic rules of an eligible entity or foreign corporation to contribute to the
147 entity.

148 For purposes of the foregoing, except as otherwise provided in the articles of incorporation of a domestic
149 corporation or the organic law or organic rules of an eligible entity or a foreign corporation, interest holder
150 liability arises under subdivision 1 when the corporation or eligible entity incurs the liability.

151 "Jurisdiction of formation" means the state or country the law of which includes the organic law
152 governing a domestic or foreign corporation or eligible entity.

153 "Means" denotes an exhaustive definition.

154 "Membership" means the rights of a member in a domestic or foreign nonstock corporation or limited
155 liability company.

156 "Merger" means a transaction pursuant to § 13.1-716 or 13.1-766.1.

157 "Notice" is defined in § 13.1-610.

158 "Organic law" means the statute governing the internal affairs of a domestic or foreign corporation or
159 eligible entity.

160 "Organic rules" means the public organic record and private organic rules of a domestic or foreign
161 corporation or eligible entity.

162 "Person" includes an individual and an entity.

163 "Principal office" means the office, in or out of the Commonwealth, where the principal executive offices
164 of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or out of the
165 Commonwealth, so designated by the board of directors. The designation of the principal office in the most
166 recent annual report filed pursuant to § 13.1-775 shall be conclusive for purposes of this chapter.

167 "Private organic rules" means (i) the bylaws of a domestic or foreign corporation or nonstock corporation
168 or (ii) the rules, regardless of whether in writing, that govern the internal affairs of an unincorporated entity,
169 are binding on all its interest holders, and are not part of its public organic record. Where private organic
170 rules have been amended or restated, the term means the private organic rules as last amended or restated.

171 "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

172 "Protected series" has the same meaning as specified in § 13.1-1002.

173 "Public corporation" means a corporation that has shares listed on a national securities exchange or
174 regularly traded in a market maintained by one or more members of a national or affiliated securities
175 association.

176 "Public organic record" means (i) the articles of incorporation of a domestic or foreign corporation or
177 nonstock corporation or (ii) the document, the filing of which is required to create an unincorporated entity.
178 Where a public organic record has been amended or restated, the term means the public organic record as last
179 amended or restated.

180 "Record date" means the date fixed for determining the identity of the corporation's shareholders and their
181 shareholdings for purposes of this chapter. The determinations shall be made as of the close of business at the
182 principal office of the corporation on the record date unless another time for doing so is specified when the
183 record date is fixed.

184 "Record shareholder" means (i) the person in whose name shares are registered in the records of the
185 corporation or (ii) the person identified as the beneficial owner of shares in a beneficial ownership certificate
186 pursuant to § 13.1-664 on file with the corporation to the extent of the rights granted by such certificate.

187 "Registered limited liability partnership" has the same meaning as specified in § 50-73.79.

188 "Secretary" means the corporate officer or other individual to whom the board of directors has delegated
189 responsibility under subsection C of § 13.1-693 for custody of the minutes of the meetings of the board of
190 directors and of the shareholders and for authenticating records of the corporation.

191 "Series limited liability company" has the same meaning as specified in § 13.1-1002.

192 "Share exchange" means a transaction pursuant to § 13.1-717.

193 "Shareholder" means a record shareholder.

194 "Shares" means the units into which the proprietary interests in a corporation are divided.

195 "Sign" or "signature" means, with present intent to authenticate or adopt a document: (i) to execute or
196 adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature; or (ii) to
197 attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and
198 includes an electronic signature in an electronic transmission.

199 "State" when referring to a part of the United States, includes a state, commonwealth, and the District of
200 Columbia, and their agencies and governmental subdivisions; and a territory or insular possession, and their
201 agencies and governmental subdivisions, of the United States.

202 "Subscriber" means a person who subscribes for shares in a corporation, whether before or after
203 incorporation.

204 "Subsidiary" means, as to any corporation, any other corporation of which it owns, directly or indirectly,
205 voting shares entitled to cast a majority of the votes entitled to be cast generally in an election of directors of
206 such other corporation.

207 "Unincorporated entity" or "domestic unincorporated entity" means a domestic partnership, limited
208 liability company, limited partnership or business trust.

209 "United States" includes district, authority, bureau, commission, department, and any other agency of the
210 United States.

211 "Unrestricted voting trust beneficial owner" means, with respect to any shareholder rights, a voting trust
212 beneficial owner whose entitlement to exercise the shareholder right in question is not inconsistent with the
213 voting trust agreement.

214 "Voting group" means all shares of one or more classes or series that under the articles of incorporation or
215 this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders.
216 All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that
217 purpose a single voting group.

218 "Voting power" means the current power to vote in the election of directors.

219 "Voting trust beneficial owner" means an owner of a beneficial interest in shares of the corporation held
220 in a voting trust established pursuant to subsection A of § 13.1-670.

221 "Writing" or "written" means any information in the form of a document.

222 **§ 13.1-616. Fees for filing documents or issuing certificates.**

223 The Commission shall charge and collect the following fees, except as provided in § 12.1-21.2:

224 1. For filing of articles of conversion to convert a corporation to an eligible entity, the fee shall be \$100.

225 2. For filing any one of the following, the fee shall be \$25:

226 a. Articles of incorporation or domestication.

227 b. Articles of conversion to convert an eligible entity to a corporation.

228 c. Articles of amendment or restatement.

229 d. Articles of merger or share exchange.

230 e. Articles of correction.

231 f. Articles of ratification.

232 g. An application of a foreign corporation for a certificate of authority to transact business in the
233 Commonwealth.

234 h. An application of a foreign corporation for an amended certificate of authority to transact business in
235 the Commonwealth.

236 i. A copy of an amendment of the articles of incorporation of a foreign corporation holding a certificate of
237 authority to transact business in the Commonwealth.

238 j. A copy of articles of merger of a foreign corporation holding a certificate of authority to transact
239 business in the Commonwealth.

240 k. A copy of an instrument of conversion of a foreign corporation holding a certificate of authority to
241 transact business in the Commonwealth.

242 l. An application to ~~register or to~~ renew the registration of a corporate name.

243 3. For filing any one of the following, the fee shall be \$10:

244 a. An application to reserve or to renew the reservation of a corporate name.

245 b. A notice of transfer of a reserved corporate name.

246 c. An application for use of an indistinguishable name.

247 d. Articles of dissolution.

248 e. Articles of revocation of dissolution.

249 f. Articles of termination of corporate existence.

250 g. An application for a certificate of withdrawal of a foreign corporation.

251 h. A notice of release of a registered name.

252 4. For issuing a certificate pursuant to § 13.1-781, the fee shall be \$6.

253 **§ 13.1-619. Articles of incorporation.**

254 A. The articles of incorporation shall set forth:

255 1. A corporate name for the corporation that satisfies the requirements of § 13.1-630;

256 2. The number of shares the corporation is authorized to issue;

257 3. If more than one class or series of shares is authorized, the number of authorized shares of each class or
258 series and a distinguishing designation for each class or series; and

259 4. The address of the corporation's initial registered office (including both (i) the post-office address with
260 street and number, if any, and (ii) the name of the city or county in which it is located), and the name of its
261 initial registered agent at that office, and that the agent is either ~~(i)~~ (a) an individual who is a resident of
262 Virginia and ~~either~~ is designated as a director of the corporation in the initial articles of incorporation or a
263 member of the Virginia State Bar or ~~(ii)~~ (b) a domestic or foreign stock or nonstock corporation, limited
264 liability company, or registered limited liability partnership authorized to transact business in the
265 Commonwealth.

266 B. The articles of incorporation may set forth:

267 1. The names and addresses of the individuals who are to serve as the initial directors;

268 2. Any provision defining or denying the preemptive right of shareholders to acquire unissued shares of
269 the corporation;

270 3. Provisions not inconsistent with law regarding:

271 a. The purpose or purposes for which the corporation is organized;

272 b. The management of the business and regulation of the affairs of the corporation;

273 c. Defining, limiting, and regulating the powers of the corporation, its board of directors, and
274 shareholders;

275 d. A par value for authorized shares or classes or series of shares; or

276 e. Imposing interest holder liability on shareholders;

277 4. Any provision that under this chapter is required or permitted to be set forth in the bylaws; and

278 5. A provision limiting or eliminating any duty of a director or any other person to offer the corporation
279 the right to have or participate in any, or one or more classes or categories of, business opportunities, before
280 the pursuit or taking of the opportunity by the director or other person, provided that any application of such a
281 provision to an officer or a related person of that officer (i) also requires approval of that application by the
282 board of directors, subsequent to the effective date of the provision, by action of disinterested directors taken
283 in compliance with the same procedures as are set forth in § 13.1-691, and (ii) may be limited by the
284 approving action of the board of directors.

285 C. The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

286 D. Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable
287 outside the articles of incorporation in accordance with subsection L of § 13.1-604.

288 **§ 13.1-624. Bylaws.**

289 A. The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

290 B. The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles
291 of incorporation.

292 C. The bylaws may contain one or more of the following provisions:

293 1. A requirement that if the corporation solicits proxies or consents with respect to an election of directors,
294 the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject
295 to such procedures or conditions as are provided in the bylaws, one or more individuals nominated by a
296 shareholder in addition to individuals nominated by the board of directors; and

297 2. A requirement that any or all internal corporate claims shall be brought exclusively in a circuit court or

298 a federal district court in the Commonwealth and, if so specified, in any additional courts in the
299 Commonwealth or in any other jurisdictions in which the corporation maintains its principal office. As used
300 in this subdivision, "internal corporate claims" means (i) any derivative ~~action or~~ proceeding brought on
301 behalf of the corporation; (ii) any action for breach of duty to the corporation or the corporation's
302 shareholders by any current or former officer, director, or shareholder of the corporation; (iii) any action
303 asserting a claim arising pursuant to this chapter or the corporation's articles of incorporation or bylaws; or
304 (iv) any action asserting a claim governed by the internal affairs doctrine that is not included in clause (i), (ii),
305 or (iii). Notwithstanding any other provision of this chapter to the contrary, to the extent any provision of this
306 chapter allows or requires an action or proceeding to be brought in the circuit court of the county or city
307 where the corporation's principal office or registered office is located or in any other specified court location,
308 such action or proceeding shall instead be brought in a court in the Commonwealth specified in a bylaw, if
309 any, authorized by this subdivision and adopted prior to the commencement of such action or proceeding.

310 D. A provision of the bylaws adopted under subdivision C 2 shall not have the effect of conferring
311 jurisdiction on any court or over any person or claim, and shall not apply if none of the courts specified by
312 such provision has the requisite personal and subject matter jurisdiction. If the court or courts specified in a
313 provision adopted under subdivision C 2 do not have the requisite personal and subject matter jurisdiction
314 and another court of the Commonwealth does have such jurisdiction, then the internal corporate claim may be
315 brought in such other court of the Commonwealth, notwithstanding that such other court of the
316 Commonwealth is not specified in such provision, and in any other court specified in such provision that has
317 the requisite jurisdiction. No provision of the articles of incorporation or the bylaws may prohibit bringing an
318 internal corporate claim in the courts of the Commonwealth or require any such claim to be determined by
319 arbitration.

320 E. Notwithstanding subdivision B 2 of § 13.1-714, the shareholders in amending, repealing, or adopting a
321 bylaw described in subdivision C 1 may not limit the authority of the board of directors to amend or repeal
322 any condition or procedure set forth in, or to add any procedure or condition to, such a bylaw to provide for a
323 reasonable, practicable, and orderly process.

324 **§ 13.1-632. Registered name.**

325 A. ~~A foreign corporation may register its corporate name, or its corporate name with any addition required~~
326 ~~by § 13.1-762, if the name is distinguishable upon the records of the Commission.~~

327 B. ~~A foreign corporation registers its corporate name, or its corporate name with any addition required by~~

328 § 13.1-762, by filing with the Commission (i) an application setting forth its corporate name, or its corporate
329 name with any addition required by § 13.1-762, the state or country and date of its incorporation, and a brief
330 description of the nature of the business in which it is engaged; and (ii) a certificate setting forth that such
331 corporation is in good standing, or a document of similar import, from the state or country of incorporation,
332 executed by the official who has custody of the records pertaining to corporations.

333 ~~C. Except as provided in subsection F, registration is effective for one year after the date an application is~~
334 ~~filed.~~

335 ~~D. If the Commission finds that the corporate name applied for is available, it shall register the name for~~
336 ~~the applicant's exclusive use.~~

337 ~~E. A foreign corporation whose registration of its name is effective may renew it for the succeeding year~~
338 ~~by filing with the Commission, during the 60-day period preceding the date of expiration of the registration, a~~
339 ~~renewal application that complies with the requirements of subsection B. The renewal application is effective~~
340 ~~when filed in accordance with this section and, except as provided in subsection F C, renews the registration~~
341 ~~for one year after the date the registration would have expired if such subsequent renewal of the registration~~
342 ~~had not occurred.~~

343 ~~B. A foreign corporation renews the registration of its corporate name by filing with the Commission (i)~~
344 ~~an application setting forth its corporate name, or its corporate name with any addition required by~~
345 ~~§ 13.1-762, the state or country and date of its incorporation, and a brief description of the nature of its~~
346 ~~business in which it is engaged and (ii) a certificate setting forth that such corporation is in good standing, or~~
347 ~~a document of similar import, from the state or country of incorporation, executed by the official who has~~
348 ~~custody of the records pertaining to corporations.~~

349 ~~F. C. A foreign corporation whose registration of its name is effective may thereafter obtain a certificate~~
350 ~~of authority to transact business in the Commonwealth under the registered name or consent in writing to the~~
351 ~~use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation~~
352 ~~thereafter authorized to transact business in the Commonwealth. The registration terminates when the~~
353 ~~domestic corporation is incorporated or the foreign corporation obtains a certificate of authority to transact~~
354 ~~business in the Commonwealth or consents to the authorization of another foreign corporation to transact~~
355 ~~business in the Commonwealth under the registered name.~~

356 ~~G. D. A foreign corporation that has in effect a registration of its corporate name may release such name~~
357 ~~by filing a notice of release of a registered name with the Commission.~~

358 **§ 13.1-639. Terms of class or series determined by board of directors.**

359 A. If the articles of incorporation so provide, the board of directors, without shareholder action, may, by
360 adoption of an amendment of the articles of incorporation:

361 1. Classify any unissued shares into one or more classes or into one or more series within one or more
362 classes;

363 2. Reclassify any unissued shares of any class into one or more classes or into one or more series within
364 one or more classes; or

365 3. Reclassify any unissued shares of any series of any class into one or more classes or into one or more
366 series within one or more classes.

367 B. If the board of directors, *or, if authorized by subdivision D 7 of § 13.1-689, a committee of the board of*
368 *directors*, acts pursuant to subsection A, it shall determine the terms, including the preferences, rights and
369 limitations, to the same extent permitted under § 13.1-638, of:

370 1. Any class of shares before the issuance of any shares of that class, or

371 2. Any series within a class before the issuance of any shares of that series.

372 C. Unless the articles of incorporation otherwise provide, the board of directors, without shareholder
373 action, may, by adoption of an amendment of the articles of incorporation, delete from the articles of
374 incorporation any provisions originally adopted by the board of directors without shareholder action fixing
375 the terms, including the preferences, limitations, and rights of any class of shares or series within a class,
376 provided there are no shares of such class or series then outstanding.

377 D. Unless the articles of incorporation otherwise provide, the board of directors of a corporation that is
378 registered as an open-end management investment company under the federal Investment Company Act of
379 1940, without shareholder action, may, by adoption of an amendment of the articles of incorporation:

380 1. Classify any unissued shares into one or more classes or into one or more series within one or more
381 classes; or

382 2. Reclassify any unissued shares of any class into one or more classes or into one or more series within
383 one or more classes; or

384 3. Reclassify any unissued shares of any series of any class into one or more classes or into one or more
385 series within one or more classes.

386 E. When the board of directors has adopted an amendment of the articles of incorporation pursuant to
387 subsection A, C, or D, the corporation shall file with the Commission articles of amendment pursuant to

388 § 13.1-710 with the addition, when the board of directors has acted pursuant to subsection A, of any
389 determination made pursuant to subsection B.

390 If the Commission finds that the articles of amendment comply with the requirements of law and that all
391 required fees have been paid, it shall issue a certificate of amendment. Shares of any class or series that are
392 classified or reclassified under this section by the articles of amendment shall not be issued until the
393 certificate of amendment is effective.

394 F. Whenever the articles of incorporation provide that the board of directors may classify or reclassify
395 unissued shares in the manner prescribed in subsection A, the articles of incorporation shall be deemed to
396 authorize the board of directors to adopt pursuant to this section an amendment to the articles of incorporation
397 without shareholder action unless the articles of incorporation specifically state that shareholder action is
398 required.

399 **§ 13.1-643. Issuance of shares.**

400 A. The powers granted in this section to the board of directors may be reserved to the shareholders by the
401 articles of incorporation.

402 B. Any issuance of shares must be authorized by the board of directors, *or if authorized by subdivision D*
403 *7 of § 13.1-689, a committee of the board of directors, or if authorized by subsection D, one or more officers.*
404 Shares may be issued for consideration consisting of any tangible or intangible property or benefit to the
405 corporation, including cash, promissory notes, services performed, contracts for services to be performed, or
406 other securities of the corporation.

407 C. Before the corporation issues shares, the board of directors, or if authorized by subdivision D 7 of
408 § 13.1-689, a committee of the board of directors ~~or a senior executive officer~~, *or if authorized by subsection*
409 *D, one or more officers*, shall determine that the consideration received or to be received for the shares to be
410 issued is adequate. That determination is conclusive insofar as the adequacy of consideration for the issuance
411 of shares relates to whether the shares are validly issued, fully paid and nonassessable. When such a
412 determination has been made and the corporation has received the consideration, the shares issued therefor
413 are fully paid ~~and nonassessable~~.

414 D. *The board of directors may authorize one or more officers to authorize or approve the issuance of*
415 *shares subject to any such limits as may be prescribed by the board of directors.*

416 E. *The board of directors, committee, or officer resolution authorizing the issuance of shares may provide*
417 *that some or all shares may be issued in one or more transactions, in such numbers and at such times as are*

418 *set forth in or determined by or in the manner set forth in the resolution.*

419 *F.* The corporation may place in escrow shares issued for a contract for future services or benefits or a
420 promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions
421 in respect of the shares against their purchase price, until the services are performed, the benefits are received
422 or the note is paid. If the services are not performed, the benefits are not received, or the note is not paid, the
423 shares escrowed or restricted and the distributions credited may be canceled in whole or part.

424 ~~E.~~ *G.* Where it cannot be determined that outstanding shares are fully paid and nonassessable, there shall
425 be a conclusive presumption that such shares are fully paid and nonassessable if the board of directors makes
426 a good faith determination that there is no substantial evidence that the full consideration for such shares has
427 not been paid.

428 **§ 13.1-646. Share rights, options, warrants, and other awards.**

429 *A.* Subject to the provisions of § 13.1-651, a corporation may issue rights, options or warrants for the
430 purchase of shares or other securities of the corporation. Unless reserved to the shareholders in the articles of
431 incorporation, the board of directors or, if authorized pursuant to subdivision D 7 of § 13.1-689, a committee
432 of the board of directors ~~or a senior executive officer~~, *or if authorized pursuant to subsection C, one or more*
433 *officers*, may authorize the issuance of rights, options, or warrants and determine (i) the terms and conditions
434 upon which the rights, options, or warrants are issued and (ii) the terms, including the consideration for which
435 the shares or other securities are to be issued. The authorization for the corporation to issue such rights,
436 options, or warrants constitutes authorization of the issuance of the shares or other securities for which the
437 rights, options, or warrants are exercisable.

438 *B.* Notwithstanding the provisions of subsection A of § 13.1-638, the terms and conditions of rights,
439 options, or warrants issued by a corporation may include, without limitation, restrictions or conditions that (i)
440 preclude or limit the exercise, transfer, or receipt thereof by designated persons or classes of persons or by
441 any transferee or transferees of such persons or classes of persons or (ii) invalidate or void such rights,
442 options, or warrants held by designated persons or classes of persons or by any transferee or transferees of
443 such persons or classes of persons. Any action or determination by the board of directors or, if authorized
444 pursuant to subdivision D 7 of § 13.1-689, a committee of the board of directors, with respect to the issuance,
445 the terms and conditions of or the redemption of rights, options, or warrants shall be subject to the provisions
446 of § 13.1-690 and shall be valid if taken or determined in compliance therewith.

447 *C.* The board of directors may, subject to such limitations as the board of directors may establish,
448 authorize one or more officers to (i) designate the recipients of rights, options, warrants, or other equity

449 compensation awards that involve the issuance of shares and (ii) determine, within an amount and subject to
450 any other limitations established by the board of directors and, if applicable, the shareholders, the number of
451 such rights, options, warrants, or other equity compensation awards and the terms and conditions thereof to
452 be received by the recipients, provided that an officer may not use such authority to designate himself as a
453 recipient of such rights, options, warrants, or other equity compensation awards.

454 **§ 13.1-671.1. Shareholder agreements.**

455 A. An agreement among the shareholders of a corporation that complies with this section is effective
456 among the shareholders and the corporation, even though it is inconsistent with one or more other provisions
457 of this chapter in that it:

458 1. Eliminates the board of directors or, subject to the requirements of subsection D of § 13.1-647 and
459 subsection A of § 13.1-693, one or more officers or restricts the discretion or powers of the board of
460 directors;

461 2. Governs the authorization or making of distributions, regardless of whether they are in proportion to
462 ownership of shares, subject to the limitations in § 13.1-653;

463 3. Establishes who shall be directors or officers of the corporation, or their terms of office or manner of
464 selection or removal;

465 4. Governs, in general or in regard to specific matters, the exercise or division of voting power by or
466 between the shareholders and directors or by or among any of them, including use of weighted voting rights
467 or director proxies;

468 5. Establishes the terms and conditions of any agreement for the transfer or use of property or the
469 provision of services between the corporation and any shareholder, director, officer or employee of the
470 corporation or among any of them;

471 6. Transfers to one or more shareholders or other persons all or part of the authority to exercise the
472 corporate powers or to manage the business and affairs of the corporation, including the resolution of any
473 issue about which there exists a deadlock among directors or shareholders;

474 7. Requires dissolution of the corporation at the request of one or more of the shareholders or upon the
475 occurrence of a specified event or contingency; or

476 8. Otherwise governs the exercise of the corporate powers or the management of the business and affairs
477 of the corporation or the relationship among the shareholders, the directors and the corporation, or among any

478 of them, and is not contrary to public policy.

479 B. An agreement authorized by this section shall be:

480 1. As set forth (i) in the articles of incorporation or bylaws and approved by all persons who are
481 shareholders at the time of the agreement or (ii) in a written agreement that is signed by all persons who are
482 shareholders at the time of the agreement and is made known to the corporation; and

483 2. Subject to amendment only by all persons who are shareholders at the time of the amendment, unless
484 the agreement provides otherwise.

485 C. The existence of an agreement authorized by this section shall be noted conspicuously on the front or
486 back of each certificate for outstanding shares or on the information statement required by subsection B of
487 § 13.1-648. If at the time of the agreement the corporation has shares outstanding represented by certificates,
488 the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this
489 subsection. The failure to note the existence of the agreement on the certificate or information statement shall
490 not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the
491 time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of
492 the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its
493 existence is noted on the certificate or information statement for the shares in compliance with this subsection
494 and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser
495 at or before the time of purchase of the shares. An action to enforce the right of rescission authorized by this
496 subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement
497 or two years after the time of purchase of the shares.

498 ~~D. An agreement authorized by this section shall cease to be effective when the corporation becomes a~~
499 ~~public corporation. If the~~ *an agreement authorized pursuant to this section* ceases to be effective for any
500 reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of
501 incorporation or bylaws, adopt an amendment of the articles of incorporation or bylaws, without shareholder
502 action, to delete the agreement and any references to it.

503 E. An agreement authorized by this section that limits the discretion or powers of the board of directors
504 shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are
505 vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers
506 of the directors are limited by the agreement.

507 F. The existence or performance of an agreement authorized by this section shall not be a ground for

508 imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement
509 or its performance treats the corporation as if it were a partnership or results in failure to observe the
510 corporate formalities otherwise applicable to the matters governed by the agreement.

511 G. Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized
512 by this section if no shares have been issued when the agreement is made.

513 H. No action taken pursuant to this section shall change any requirement to file articles or other
514 documents with the Commission or affect the rights of any creditors or other third parties.

515 I. Limits, if any, on the duration of an agreement authorized by this section shall be as set forth in the
516 agreement, except that the duration of an agreement that became effective prior to July 1, 2015, remains 10
517 years unless the agreement provided otherwise or is subsequently amended to provide otherwise.

518 J. An agreement among shareholders of a corporation that is consistent with the other provisions of this
519 chapter that does not comply with the provisions of this section shall nonetheless be effective among the
520 shareholders and the corporation.

521 **§ 13.1-672.1. Standing; condition precedent; stay of proceedings.**

522 A. A shareholder shall not commence or maintain a derivative proceeding unless the shareholder:

523 1. Was a shareholder of the corporation at the time of the act or omission complained of, became a
524 shareholder through transfer by operation of law from one who was a shareholder at that time, or became a
525 shareholder before public disclosure and without knowledge of the act or omission complained of;

526 2. Was a shareholder at the time the shareholder made the written demand required by subdivision B 1;
527 and

528 3. Fairly and adequately represents the interests of the corporation in enforcing the right of the
529 corporation.

530 B. No shareholder may commence a derivative proceeding until:

531 1. A written demand has been ~~made on~~ *delivered to* the corporation to take suitable action; and

532 2. Ninety days have expired from the date delivery of the written demand was made on the corporation
533 unless (i) the shareholder has earlier been notified that the demand has been rejected by the corporation or (ii)
534 irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

535 C. *The written demand required by subdivision B 1 shall describe in reasonable detail the reasons for the*
536 *demand and the action being requested and shall state that the shareholder may commence a derivative*

537 *proceeding if the action is not taken. If the shareholder is a beneficial shareholder or an unrestricted voting*
538 *trust beneficial owner, the written demand shall be accompanied by evidence of such beneficial ownership.*

539 *D. If the corporation commences an inquiry into the allegations made in the demand or complaint, the*
540 *court may stay any derivative proceeding for such period as the court deems appropriate.*

541 **§ 13.1-672.3. Foreign corporations.**

542 Notwithstanding the provisions of §§ 13.1-672.1 and 13.1-672.4, in any derivative proceeding in the right
543 of a foreign corporation, subject to the court's determination of whether the courts of the Commonwealth are
544 a convenient forum for such a proceeding, the matters covered by this article shall be governed by the laws of
545 the jurisdiction of formation of the foreign corporation except for matters covered by subsection ~~E~~ D of
546 § 13.1-672.1 and §§ 13.1-672.2 and 13.1-672.5.

547 **§ 13.1-672.4. Dismissal.**

548 A. A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the
549 groups specified in subsection B ~~or E~~ has, *whether before or after the commencement of the derivative*
550 *proceeding:*

551 1. Conducted a review and evaluation, adequately informed in the circumstances, of the allegations made
552 in the demand or complaint;

553 2. Determined in good faith on the basis of that review and evaluation that the maintenance of the
554 derivative proceeding is not in the best interests of the corporation; and

555 3. Submitted in support of the motion a short and concise statement of the reasons for its determination.

556 B. ~~Unless a panel is appointed pursuant to subsection E, the~~ *The* determination in subsection A shall be
557 made by:

558 1. A majority vote of disinterested directors present at a meeting of the board of directors if the
559 disinterested directors constitute a quorum; ~~or~~

560 2. A majority vote of a committee consisting of two or more disinterested directors appointed by a
561 majority vote of disinterested directors present at a meeting of the board of directors, regardless of whether
562 such disinterested directors constituted a quorum; *or*

563 3. *Upon motion by the corporation, a panel of one or more disinterested persons appointed by the court.*

564 C. ~~If a derivative proceeding is commenced after~~ a determination has been made *pursuant to subsection A*
565 *rejecting a demand by a shareholder, in order to contest such determination, the ~~complaint~~ plaintiff shall*
566 *allege with particularity facts establishing that the requirements of subsection A or B have not been met. With*
567 *respect to any allegation that the requirements of subsection A or B have not been met, the plaintiff shall be*

568 entitled to discovery if, and only with respect to, facts that are alleged in the complaint with particularity.

569 D. ~~The~~ *If a determination is made by one of the groups specified in subdivision B 1 or B 2, the plaintiff*
570 *shall have the burden of proving that the requirements of subsection A or B have not been met, except that*
571 *the corporation shall have the burden with respect to the issue of disinterestedness under subsection B if the*
572 *complaint alleges with particularity facts raising a substantial question as to such disinterestedness. If a*
573 *determination is made by a panel appointed pursuant to subdivision B 3, the plaintiff shall have the burden of*
574 *proving that the requirements of subsection A or B have not been met.*

575 E. ~~Upon motion by the corporation, the court may appoint a panel of disinterested persons to make a~~
576 ~~determination whether the maintenance of the derivative proceeding is in the best interests of the corporation.~~

577 **§ 13.1-672.5. Payment of and security for expenses.**

578 On termination of a derivative proceeding, the court may:

579 1. Order the corporation to pay the plaintiff's expenses incurred in the proceeding if it finds that the
580 *derivative* proceeding has resulted in a substantial benefit to the corporation; or

581 2. Order the plaintiff or the plaintiff's attorney to pay the corporation's or any defendant's expenses
582 incurred in *responding to the demand or* defending the *derivative* proceeding if it finds that the *demand was*
583 *made or the derivative* proceeding was commenced or maintained arbitrarily, vexatiously, or not in good
584 faith.

585 **§ 13.1-689. Committees.**

586 A. Unless the articles of incorporation or bylaws provide otherwise, a board of directors may establish one
587 or more committees of the board of directors to perform functions of the board of directors and appoint two
588 or more directors of the board of directors to serve on each committee. ~~While non-board members may also~~
589 ~~be appointed to a committee, they may not vote on any matter for which the committee is performing a~~
590 ~~function of the board of directors.~~ Each committee member serves at the pleasure of the board of directors.

591 B. Unless the articles of incorporation or bylaws provide otherwise, the establishment of a committee and
592 appointment of members to it shall be approved by the greater number of (i) a majority of all the directors in
593 office when the action is taken or (ii) the number of directors required by the articles of incorporation or
594 bylaws to take action under § 13.1-688.

595 C. Sections 13.1-684 through 13.1-688, which govern meetings, action without meetings, notice and
596 waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and
597 their members as well.

598 D. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each

600 committee may exercise the authority of the board of directors under § 13.1-673, except that a committee
601 may not:

- 602 1. Approve or propose to shareholders action that this chapter requires to be approved by shareholders;
- 603 2. Fill vacancies on the board of directors or, subject to subsection E, on any committee;
- 604 3. Amend the articles of incorporation pursuant to § 13.1-706;
- 605 4. Adopt, amend, or repeal the bylaws;
- 606 5. Approve a plan of merger not requiring shareholder approval;
- 607 6. Authorize or approve a distribution, except according to a formula or method, or within limits,
608 prescribed by the board of directors; or
- 609 7. Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation
610 and rights, preferences, and limitations of a class or series of shares, except that the board of directors may (±)
611 authorize a committee to do so subject to such limits, if any, as may be prescribed by the board of directors;
612 and (ii) authorize a senior executive officer of the corporation to do so subject to such limits, if any, as may
613 be prescribed by the board of directors or by subsection C of § 13.1-646.

614 E. The board of directors may appoint one or more directors as alternate members of any committee to
615 replace any absent or disqualified member during the member's absence or disqualification. Unless the
616 articles of incorporation or the bylaws or the resolutions of the board of directors establishing the committee
617 provide otherwise, in the event of the absence or disqualification of a member of a committee and there are
618 no alternate members appointed by the board of directors, the member or members of the committee present
619 at any meeting and not disqualified from voting may by unanimous action appoint another director to act in
620 place of the absent or disqualified member during that member's absence or disqualification.

621 *F. Non-board members may be appointed to a committee but they shall not vote on any matter for which
622 the committee is performing a function of the board of directors, provided however, that a committee
623 authorized to approve or authorize the issuance or sale or contract for sale of shares as provided in
624 subdivision D 7 may consist of one or more officers and is not required to have any directors as members of
625 such committee.*

626 **§ 13.1-689.1. Submission of matters for a shareholder vote.**

627 *A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the
628 matter, the board of directors determines it no longer recommends such matter.*

629 **§ 13.1-691. Interested directors and officers.**

629 A. A ~~conflict of interests transaction~~ is a transaction with the corporation in which a director of the
630 corporation has an interest that precludes the director from being a disinterested director. A conflict of
631 interests transaction is not voidable by the corporation solely because of the director's interest in the
632 transaction if any one of the following is true: *A transaction between the corporation or one or more entities*
633 *controlled by the corporation and one or more of the corporation's directors, officers, or related persons,*
634 *shall not be the subject of equitable relief, or give rise to an award of damages against a director or officers*
635 *of the corporation because of the foregoing circumstances or the receipt of any benefit by any such director,*
636 *officer, or related person or because the director or officer is present at or participates in the meeting of the*
637 *board or committee that authorizes the transaction, or was involved in the initiation, negotiation, or approval*
638 *of the transaction, including by virtue of a director's vote being counted for such purpose, if:*

639 1. The material facts of ~~the transaction~~ and the director's or officer's relationship or interest as to the
640 transaction were disclosed or *are* known to the board of directors or a committee of the board of directors
641 and the board of directors or committee authorized, approved, or ratified the transaction; *or*

642 2. The material facts of the transaction and the director's or officer's relationship or interest as to the
643 transaction were disclosed to the *disinterested* shareholders ~~entitled to vote~~ and they authorized, approved, or
644 ratified the transaction; or

645 3. The transaction ~~was~~ *is* fair to the corporation.

646 B. For purposes of subdivision A 1, a ~~conflict of interests~~ transaction is authorized, approved, or ratified if
647 it receives the affirmative vote of a majority of the disinterested directors on the board of directors, or on the
648 committee. A transaction shall not be authorized, approved, or ratified under this section by a single director.
649 If a majority of the disinterested directors vote to authorize, approve or ratify the transaction, a quorum is
650 present for the purpose of taking action under this section. The presence of, or a vote cast by, a director who
651 is not disinterested does not affect the validity of any action taken under subdivision A 1 if the transaction is
652 otherwise authorized, approved or ratified as provided in that subsection.

653 C. For purposes of subdivision A 2, a ~~conflict of interests~~ transaction is authorized, approved, or ratified if
654 *a quorum exists and* it receives the vote of a majority of the shares entitled to be counted under this
655 subsection. Shares owned by or voted under the control of a director, *officer, or related person who is not*
656 ~~disinterested~~, *in each case, has a material interest in the transaction, other than one which would devolve on*
657 *the corporation or the shareholders generally may* shall not be counted in a vote of shareholders to determine
658 whether to authorize, approve, or ratify a ~~conflict of interests~~ transaction under subdivision A 2: ~~The vote of~~
659 ~~those shares, however,~~ *but such shares* shall be counted in determining whether the transaction is approved

660 under other sections of this chapter. A majority of the shares, ~~whether or not present~~, that are entitled to be
661 counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking
662 action under this section.

663 *D. For purposes of this section, a related person is a person who has a familial, financial, professional, or*
664 *employment relationship with one or more directors or officers of the corporation that would reasonably be*
665 *expected to impair the objectivity of the judgment of one or more of the corporation's directors or officers.*

666 **§ 13.1-724. Shareholder approval of certain dispositions.**

667 A. A sale, lease, exchange or other disposition of the corporation's assets, other than a disposition
668 described in § 13.1-723, requires approval of the corporation's shareholders if the disposition would leave the
669 corporation without a significant continuing business activity. The corporation will conclusively be deemed
670 to have retained a significant continuing business activity if it retains a business activity that represented, for
671 the corporation and its subsidiaries on a consolidated basis, (i) at least 20 percent of total assets at the end of
672 the most recently completed fiscal year, and (ii) at least 20 percent of either (a) income from continuing
673 operations before taxes or (b) revenues from continuing operations, in each case for the most recently
674 completed fiscal year. *The board of directors may base a determination under this subsection either on*
675 *financial statements prepared on the basis of accounting practices and principles that are reasonable in the*
676 *circumstances or on a fair valuation or other method that is reasonable in the circumstances. For any public*
677 *corporation, reliance on the most recent financial statements that have been prepared in accordance with*
678 *generally accepted accounting principles in the United States shall be deemed to be reasonable in the*
679 *circumstances if the financial statements have been audited by independent certified public accountants*
680 *whose certification does not include a going concern qualification.*

681 B. A disposition that requires approval of the shareholders under subsection A shall be initiated by
682 adoption of a resolution by the board of directors authorizing the disposition. After adoption of such a
683 resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval.
684 The board of directors shall also submit to the shareholders a recommendation that the shareholders approve
685 the proposed disposition, unless the board of directors makes a determination that because of conflicts of
686 interest or other special circumstances it should not make such a recommendation, in which case the board of
687 directors shall inform the shareholders of the basis for that determination.

688 C. The board of directors may set conditions for the approval of a disposition by the shareholders or the
689 effectiveness of the disposition.

690 D. If a disposition is required to be approved by the shareholders and if the approval is to be sought at a

691 shareholders' meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the
692 shareholders' meeting at which the disposition is to be submitted for approval in accordance with § 13.1-658.
693 The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the
694 disposition and shall contain or be accompanied by a copy or summary of the agreement pursuant to which
695 the disposition will be effected. If only a summary of the agreement is sent to shareholders, the corporation
696 also shall send a copy of the agreement to any shareholder who requests it.

697 E. Unless the articles of incorporation or board of directors, acting pursuant to subsection C, requires a
698 greater vote or a greater quorum, the approval of a disposition by the shareholders shall require at a meeting
699 at which a quorum exists the approval of the holders of more than two-thirds of all the votes entitled to be
700 cast on the disposition. The articles of incorporation may provide for a greater or lesser vote than that
701 provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less
702 than a majority of all the votes cast on the disposition by each voting group entitled to vote on the disposition
703 at a meeting at which a quorum of the voting group exists.

704 F. Unless the parties to the disposition have agreed otherwise, after a disposition has been approved by the
705 shareholders, and at any time before the disposition has been consummated, it may be abandoned without
706 action by the shareholders, subject to any contractual rights of the parties to the disposition.

707 G. A disposition of assets in the course of dissolution under Article 16 (§ 13.1-742 et seq.) is not governed
708 by this section.

709 H. The assets of a direct or indirect consolidated subsidiary shall be deemed to be the assets of the parent
710 corporation for the purposes of this section.

711 I. Notwithstanding any other provision of this section, no corporation organized to conduct the business of
712 a railroad or other public service or a banking business, or a savings institution, an industrial loan association
713 or a credit union may sell, lease or exchange its properties for the conduct of such business in the
714 Commonwealth except to a corporation of the Commonwealth organized for the same purpose or in the case
715 of a bank to a savings and loan association or a corporation of the United States, and in the case of a savings
716 and loan association to a bank or a corporation of the United States.

717 **§ 13.1-741.1. Limitations on other remedies for fundamental transactions.**

718 A. Except for action taken before the Commission pursuant to § 13.1-614 or as provided in subsection B,
719 the legality of a proposed or completed corporate action described in subsection A of § 13.1-730 may not be
720 contested, nor may the corporate action be enjoined, set aside or rescinded, in a legal or equitable proceeding

721 by a shareholder after the shareholders have approved the corporate action.

722 B. Subsection A does not apply to a corporate action that:

723 1. Was not authorized and approved in accordance with the applicable provisions of:

724 a. Article 11 (§ 13.1-705 et seq.), Article 12 (§ 13.1-715.1 et seq.), Article 12.1 (§ 13.1-722.1:1 et seq.),
725 Article 12.2 (§ 13.1-722.8 et seq.), or Article 13 (§ 13.1-723 et seq.);

726 b. The articles of incorporation or bylaws; or

727 c. The resolution of the board of directors authorizing the corporate action;

728 2. Was procured as a result of fraud, a material misrepresentation, or an omission of a material fact
729 necessary to make statements made, in light of the circumstances in which they were made, not misleading;

730 3. Is ~~an interested~~ a transaction with a director, officer, or related person, unless it has been recommended
731 by the board of directors in the same manner as is provided in subsection B of § 13.1-691 or has been
732 approved by the shareholders in the same manner as is provided in subsection C of § 13.1-691 ~~as if the~~
733 ~~interested transaction were a director's conflict of interests transaction~~; or

734 4. Is adopted or taken by less than unanimous consent of the voting shareholders pursuant to § 13.1-657 if:

735 a. The challenge to the corporate action is brought by a shareholder who did not consent to the corporate
736 action and as to whom notice of the approval of the corporate action was not effective at least 10 days before
737 the corporate action was effected; and

738 b. The proceeding challenging the corporate action is commenced within 10 days after notice of the
739 adoption or taking of the corporate action is effective as to the shareholder bringing the proceeding.

740 C. Any remedial action with respect to corporate action described in subsection A of § 13.1-730 shall not
741 limit the scope of, or be inconsistent with, any provision of § 13.1-614.

742 **§ 13.1-741.2. Dissolution; generally.**

743 *A corporation organized under this chapter is dissolved and its affairs shall be wound up upon the*
744 *happening of the first to occur of the following events:*

745 1. *At the time or on the happening of any events specified in writing in the articles of incorporation or*
746 *bylaws;*

747 2. *Dissolution by directors and shareholders pursuant to § 13.1-742;*

748 3. *The entry of a decree of judicial dissolution under § 13.1-747;*

749 4. *Automatic termination of its existence pursuant to § 13.1-752; or*

750 5. *Involuntary termination of its existence pursuant to § 13.1-753.*

751 **§ 13.1-754. Reinstatement of a corporation that has ceased to exist.**

752 A. A corporation that has ceased to exist pursuant to this article may apply to the Commission for
753 reinstatement within five years thereafter unless the corporate existence was terminated by order of the
754 Commission (i) upon a finding that the corporation has continued to exceed or abuse the authority conferred
755 upon it by law or (ii) entered pursuant to § 13.1-749 and the circuit court's decree directing dissolution
756 contains no provision for reinstatement of corporate existence.

757 B. To have its corporate existence reinstated, the corporation shall provide the Commission with the
758 following:

759 1. An application for reinstatement, which shall include the identification number issued by the
760 Commission to the corporation, and which may be in the form of a letter signed by an officer or director of
761 the corporation, or which may be by affidavit signed by an agent of any shareholder's interests stating that
762 after diligent search by such agent, no officer or director can be found;

763 2. A reinstatement fee of \$100;

764 3. All annual registration fees and penalties that were due before the corporation ceased to exist and that
765 would have been assessed or imposed to the date of reinstatement if the corporation's existence had not been
766 terminated;

767 4. An annual report for the calendar year that corresponds to the calendar year of the latest annual
768 registration fee that was assessed or that would have been assessed to the date of reinstatement;

769 5. If the name of the corporation does not comply with the provisions of § 13.1-630 at the time of
770 reinstatement, articles of amendment to the articles of incorporation to change the corporation's name to a
771 name that satisfies the provisions of § 13.1-630, with the fee required by this chapter for the filing of articles
772 of amendment; and

773 6. If the corporation's registered agent has filed a statement of resignation and a new registered agent has
774 not been appointed, a statement of change pursuant to § 13.1-635.

775 C. If the corporation complies with the provisions of this section, the Commission shall enter an order of
776 reinstatement of corporate existence. Upon entry of the order, the corporate existence shall be deemed to have
777 continued from the date of termination as if the termination had never occurred, and any liability incurred by
778 the corporation or a director, officer, or other agent after the termination and before the reinstatement is
779 determined as if the termination of the corporation's existence had never occurred.

780 **§ 13.1-770. Corporate records.**

781 A. A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of
782 directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a
783 record of all actions taken by a committee of the board of directors in place of the board of directors on behalf
784 of the corporation.

785 B. A corporation shall maintain accounting records in a form that permits preparation of its financial
786 statements.

787 C. A corporation shall maintain a record of its current shareholders in alphabetical order by class and
788 series, if any, of shares showing the address of, and the number and class and series, if any, of shares held by
789 each shareholder. The foregoing shall not require the corporation to maintain, as part of such record of
790 shareholders, beneficial owners whose shares are held by a nominee on the shareholder's behalf except to the
791 extent that the corporation has established and maintains a procedure for registration of such rights under
792 § 13.1-664. Nothing contained in this subsection shall require the corporation to include in such record the
793 electronic mail address or other electronic contact information of a shareholder.

794 D. A corporation shall maintain its records in the form of a document, including an electronic record, or in
795 another form capable of conversion into paper form within a reasonable time.

796 E. A corporation shall maintain the following records:

797 1. A copy of its articles of incorporation as currently in effect, and any notices to shareholders referred to
798 in subdivision L 5 of § 13.1-604 specifying facts on which a filed document is dependent if those facts are not
799 included in the articles of incorporation or otherwise available as specified in subdivision L 5 of § 13.1-604;

800 2. Its bylaws as currently in effect;

801 3. Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing
802 their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are
803 outstanding;

804 4. The minutes of all shareholders' meetings, and records of all action taken by shareholders without a
805 meeting, for the past three years;

806 5. All written communications within the past three years to shareholders generally, ~~including the~~
807 ~~financial statements furnished for the past three years under § 13.1-774;~~

808 6. *A copy of any shareholders agreement under § 13.1-671.1 as currently in effect;*

809 7. A list of the names and business addresses of its current directors and officers; and

810 ~~7.~~ 8. A copy of its most recent annual report filed with the Commission under § 13.1-775.