

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 19-0470.01 Thomas Morris x4218

SENATE BILL 19-086

SENATE SPONSORSHIP

Lee,

HOUSE SPONSORSHIP

Bird,

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING UPDATES TO THE LAWS GOVERNING BUSINESS ENTITIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill makes the following changes to the "Colorado Business Corporation Act" (CBCA) and conforming changes to the "Colorado Corporations and Associations Act" (CCAA):

- ! Deletes definitions in the CCAA that are no longer necessary (**section 1**);
- ! Updates provisions in the CCAA to clarify conversions and mergers of entities and exchanges of owners' interests in entities (**sections 2 through 18**);

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- ! Updates provisions in the CCAA addressing the requirements for the name of an entity formed under Colorado law or qualified to do business in Colorado as a foreign entity (**sections 19 through 21**);
- ! Updates provisions in the CCAA regarding court proceedings that may be filed by a dissolved Colorado entity for a determination of the amount and form of security to be provided for payment of claims that are contingent or unknown or that arose from events occurring after dissolution (**sections 22 through 24**);
- ! Adds definitions to and updates definitions in the CBCA (**section 25**);
- ! Reorganizes certain provisions that are optional to include in the articles of incorporation of a Colorado corporation so that they appear in a single location to avoid confusion (**section 28**);
- ! Adds an optional forum selection provision similar to that found in other states and the "Model Business Corporation Act" (**section 29**);
- ! Adds a provision for ratification of defective corporate actions similar to that found in other states and the "Model Business Corporation Act" (**section 31**);
- ! Updates provisions for proxies and treatment for voting purposes of shares held by intermediaries and nominees (**sections 32 and 33**);
- ! Updates provisions for the general standards of conduct for directors and officers and standards of liabilities for directors (**section 36**);
- ! Updates provisions dealing with conflicting interest transactions and corporate opportunities (**section 37**);
- ! Updates provisions dealing with indemnification of directors, officers, employees, fiduciaries, and agents, and advancement of expenses (**sections 39 through 47**);
- ! Updates provisions dealing with corporate mergers, conversions, and exchanges by reference to the updated provisions in the CCAA (**sections 48 through 56**);
- ! Repeals and reenacts, with amendments, former article 113 of title 7, Colorado Revised Statutes, relating to dissenters' rights and substitutes provisions to define the procedure to obtain appraisal rights in lieu of dissenters' rights (**section 57**); and
- ! Updates the provisions providing for the grounds and procedures for seeking judicial dissolution and providing for an election by one or more shareholders to purchase shares owned by the petitioning shareholders in lieu of

proceeding with judicial dissolution (**sections 58 through 61**).

The bill also updates certain provisions of articles 55 and 56 of title 7, Colorado Revised Statutes, regarding various forms of cooperatives, as well as articles 41 (domestic associations organized as savings and loan associations) and 103 (state banks) of title 11, Colorado Revised Statutes, to be consistent with changes made in the CBCA (**sections 64 through 66, 69, and 70**).

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 7-90-102, **amend** the
3 introductory portion; and **repeal** (3.5) and (9.5) as follows:

4 **7-90-102. Definitions.** As used in this ~~title~~ TITLE 7, except as
5 otherwise defined for the purpose of any section, subpart, part, or article
6 of this ~~title~~ TITLE 7, or unless the context otherwise requires:

7 (3.5) ~~"Business development corporation" means a corporation~~
8 ~~incorporated under the "Colorado Business Development Corporation~~
9 ~~Act", article 48 of this title.~~

10 (9.5) ~~"Cooperative housing corporation" means a corporation~~
11 ~~formed pursuant to article 33.5 of title 38, C.R.S.~~

12 **SECTION 2.** In Colorado Revised Statutes, **amend** 7-90-201 as
13 follows:

14 **7-90-201. Conversion of an entity.** (1) Pursuant to a plan of
15 conversion THAT COMPLIES WITH SECTION 7-90-201.3 AND IS approved in
16 accordance with section 7-90-201.4:

17 (a) A domestic entity of one form may ~~be converted~~ CONVERT into
18 any other form of domestic entity.

19 (b) A domestic entity may ~~be converted~~ CONVERT into any form
20 of foreign entity recognized in the jurisdiction under the law of which the
21 entity will be considered to have been formed after the conversion.

1 (2) A foreign entity may ~~be converted~~ CONVERT into a domestic
2 entity if the conversion is not prohibited by the constituent documents or
3 organic statutes OF THE FOREIGN ENTITY and if the foreign entity complies
4 with all of the requirements, if any, of its constituent documents and
5 organic statutes in effecting the conversion.

6 **SECTION 3.** In Colorado Revised Statutes, 7-90-201.3, **amend**
7 (1) introductory portion and (1)(c) as follows:

8 **7-90-201.3. Plan of conversion.** (1) A plan of conversion ~~shall~~
9 MUST state:

10 (c) The terms and conditions of the conversion, including the
11 manner and basis of changing the owners' interests of ~~each~~ THE
12 converting entity into owners' interests or obligations of the resulting
13 entity or into money or other property in whole or in part.

14 **SECTION 4.** In Colorado Revised Statutes, **amend** 7-90-201.4
15 as follows:

16 **7-90-201.4. Approval of plan of conversion.** (1) In the case of
17 domestic entities described in this subsection (1), the plan of conversion
18 ~~shall~~ MUST be approved:

19 (a) In the case of a corporation, as provided in section
20 ~~7-111-101.5~~ 7-111-103;

21 (b) In the case of a nonprofit corporation, as provided in section
22 ~~7-131-101.5~~ 7-131-102;

23 (c) In the case of a cooperative formed under, or subject to, article
24 56 of this ~~title~~ TITLE 7, as provided in section 7-56-602; and

25 (d) In the case of a cooperative formed under article 55 of this ~~title~~
26 TITLE 7, as provided in section 7-55-112.

27 (2) In the case of a domestic entity other than an entity described

1 in subsection (1) of this section, the plan of conversion ~~shall~~ MUST be
2 approved as follows:

3 (a) If the ~~organic statutes or~~ primary constituent documents
4 expressly provide for the approval of the PLAN OF conversion, ~~the terms~~
5 ~~and conditions of the conversion shall~~ IT MUST be approved in accordance
6 with those provisions.

7 (b) If ~~neither the primary constituent documents nor the organic~~
8 ~~statutes expressly provide for the approval of the plan of conversion~~
9 SUBSECTION (2)(a) OF THIS SECTION DOES NOT APPLY, the plan of
10 conversion ~~shall~~ MUST be approved in accordance with the provisions of
11 the primary constituent documents that contain the most stringent terms
12 for THE approval of a PLAN OF merger.

13 (c) If ~~the primary constituent documents do not expressly provide~~
14 ~~for the approval of a merger~~ SUBSECTIONS (2)(a) AND (2)(b) OF THIS
15 SECTION DO NOT APPLY, the plan of conversion ~~shall~~ MUST be approved
16 in accordance with the provisions of the ~~entity's~~ PRIMARY CONSTITUENT
17 DOCUMENTS THAT CONTAIN THE MOST STRINGENT TERMS FOR THE
18 APPROVAL OF AN AMENDMENT TO THE PRIMARY CONSTITUENT
19 DOCUMENTS OR, IF NO SUCH PROVISIONS EXIST, THE PROVISIONS OF THE
20 organic statutes that contain the most stringent terms for the approval of
21 ~~a merger~~ AN AMENDMENT TO THE PRIMARY CONSTITUENT DOCUMENTS.

22 (d) If ~~neither the primary constituent documents nor the entity's~~
23 ~~organic statutes expressly provide for the approval of a merger, the plan~~
24 ~~of conversion shall be approved in accordance with the provisions for~~
25 ~~amendment of the primary constituent documents set forth in the organic~~
26 ~~statutes and the primary constituent documents.~~

27 (e) (d) If ~~neither the primary constituent documents nor the~~

1 ~~organic statutes expressly provide for the approval of a plan of~~
2 ~~conversion, for the approval of a merger, or for the approval of an~~
3 ~~amendment to the primary constituent documents~~ SUBSECTIONS (2)(a),
4 (2)(b), AND (2)(c) OF THIS SECTION DO NOT APPLY, the plan of conversion
5 ~~shall~~ MUST be approved by all of the owners of the converting entity.

6 (3) For purposes of this section, the provisions of the organic
7 statutes and constituent documents applicable to approval include
8 provisions relating to any preliminary approval by managers for
9 submission to the owners, notices, quorum, voting, and consent by
10 owners or third parties. References in this section to the most stringent
11 provisions of the primary constituent documents or organic statutes are
12 references to those provisions of ~~such~~ THE documents or statutes that
13 establish the highest voting requirements. ~~for approval of a merger.~~
14 ~~Nothing in this section shall be deemed to permit any primary constituent~~
15 ~~document to contain merger provisions that are proscribed by the entity's~~
16 ~~organic statutes.~~

17 (4) NOTHING IN THIS SECTION PERMITS A PRIMARY CONSTITUENT
18 DOCUMENT TO CONTAIN ANY PROVISION PROSCRIBED BY THE ORGANIC
19 STATUTES.

20 **SECTION 5.** In Colorado Revised Statutes, 7-90-201.7, **amend**
21 (2) introductory portion and (3)(a) introductory portion as follows:

22 **7-90-201.7. Statement of conversion - when conversion**
23 **effective.** (2) After the conversion of an entity is approved in accordance
24 with section ~~7-90-201~~ 7-90-201.4, if neither the resulting entity nor the
25 converting entity is or will be an entity that will have a constituent filed
26 document filed in the records of the secretary of state, either the resulting
27 entity or the converting entity may deliver to the secretary of state, for

1 filing pursuant to part 3 of this ~~article~~ ARTICLE 90, a statement of
2 conversion stating:

3 (3) (a) After the conversion of an entity is approved in accordance
4 with section ~~7-90-201~~ 7-90-201.4, if the resulting entity will be an entity
5 for which a constituent filed document is to be filed in the records of the
6 secretary of state, the converting entity shall deliver to the secretary of
7 state, for filing pursuant to part 3 of this ~~article~~ ARTICLE 90, a combined
8 statement of conversion and the constituent filed document that complies
9 with the requirements of the organic statutes. In addition to complying
10 with the requirements of the organic statutes for the constituent filed
11 document, a combined statement of conversion and constituent filed
12 document ~~shall~~ MUST state:

13 **SECTION 6.** In Colorado Revised Statutes, 7-90-202, **amend** (1)
14 as follows:

15 **7-90-202. Effect of conversion - entity unchanged.** (1) ~~At the~~
16 ~~time the~~ WHEN A conversion ~~becomes effective~~ TAKES EFFECT, the
17 converting entity ~~shall be~~ IS converted into the resulting entity, and the
18 resulting entity ~~shall~~ IS thereafter ~~be~~ subject to all of the provisions of the
19 organic statutes.

20 **SECTION 7.** In Colorado Revised Statutes, 7-90-203, **amend** (1)
21 and (2) as follows:

22 **7-90-203. Merger of entities.** (1) One or more domestic entities
23 may merge into a domestic entity of a form the same as or different from
24 any of the merging entities pursuant to a plan of merger COMPLYING WITH
25 SECTION 7-90-203.3 AND approved pursuant to section 7-90-203.4.

26 (2) One or more domestic entities may merge into a foreign entity
27 of a form the same as or different from that of any of the merging entities,

1 or one or more foreign entities may merge into a domestic entity of a form
2 the same as or different from that of any of the merging entities, pursuant
3 to a plan of merger COMPLYING WITH SECTION 7-90-203.3 AND approved,
4 in the case of a domestic entity, pursuant to section 7-90-203.4, if:

5 (a) The merger is not prohibited by the constituent documents or
6 organic statutes of each foreign entity;

7 (b) ~~and~~ if Each foreign entity complies with all of the
8 requirements, if any, of its constituent documents and organic statutes in
9 effecting the merger; AND

10 (c) ANY FOREIGN ENTITY THAT IS THE SURVIVING ENTITY OF THE
11 MERGER COMPLIES WITH SECTION 7-90-204.5.

12 **SECTION 8.** In Colorado Revised Statutes, **add** 7-90-203.1 as
13 follows:

14 **7-90-203.1. Exchange of owner's interest.** (1) ONE OR MORE
15 DOMESTIC ENTITIES MAY ACQUIRE ALL OWNERS' INTERESTS OF ANY OTHER
16 ENTITY OR ALL OF ONE OR MORE CLASSES, SERIES, OR TYPES, IN EXCHANGE
17 FOR OWNERS' INTERESTS OR OTHER SECURITIES, OBLIGATIONS, RIGHTS TO
18 ACQUIRE OWNERS' INTERESTS, OR OTHER SECURITIES, CASH, PROPERTY, OR
19 ANY COMBINATION PURSUANT TO A PLAN OF EXCHANGE COMPLYING WITH
20 SECTION 7-90-203.3 AND APPROVED PURSUANT TO SECTION 7-90-203.4.

21 (2) A FOREIGN ENTITY MAY BE PARTY TO AN EXCHANGE PURSUANT
22 TO A PLAN OF EXCHANGE COMPLYING WITH SECTION 7-90-203.3 AND
23 APPROVED, IN THE CASE OF A DOMESTIC ENTITY, PURSUANT TO SECTION
24 7-90-203.4, IF:

25 (a) THE EXCHANGE IS NOT PROHIBITED BY THE CONSTITUENT
26 DOCUMENTS OR ORGANIC STATUTES OF THE FOREIGN ENTITY;

27 (b) THE FOREIGN ENTITY COMPLIES WITH ALL OF THE

1 REQUIREMENTS, IF ANY, OF ITS CONSTITUENT DOCUMENTS AND ORGANIC
2 STATUTES IN EFFECTING THE EXCHANGE; AND

3 (c) ANY FOREIGN ENTITY THAT IS THE ACQUIRING ENTITY IN THE
4 EXCHANGE COMPLIES WITH SECTION 7-90-204.5.

5 (3) THIS SECTION DOES NOT LIMIT THE POWER OF A DOMESTIC
6 ENTITY TO ACQUIRE THE OWNERS' INTERESTS OF ANY OTHER ENTITY IN A
7 TRANSACTION OTHER THAN AN EXCHANGE.

8 **SECTION 9.** In Colorado Revised Statutes, 7-90-203.3, **add** (2)
9 as follows:

10 **7-90-203.3. Plan of merger - plan of exchange.** (2) (a) A PLAN
11 OF EXCHANGE MUST STATE:

12 (I) THE ENTITY NAME OF EACH PARTY TO THE EXCHANGE;

13 (II) THE TERMS AND CONDITIONS OF THE EXCHANGE; AND

14 (III) THE MANNER AND BASIS OF EXCHANGING THE OWNERS'
15 INTERESTS TO BE ACQUIRED.

16 (b) THE PLAN OF EXCHANGE MAY STATE OTHER PROVISIONS
17 RELATING TO THE EXCHANGE.

18 **SECTION 10.** In Colorado Revised Statutes, **amend** 7-90-203.4
19 as follows:

20 **7-90-203.4. Approval of plan of merger or exchange.** (1) In the
21 case of domestic entities described in this subsection (1), the plan of
22 merger ~~shall~~ OR PLAN OF EXCHANGE MUST, IF REQUIRED, be approved:

23 (a) In the case of a corporation, as provided in section ~~7-111-101~~
24 7-111-103;

25 (b) In the case of a nonprofit corporation, as provided in section
26 ~~7-131-101~~ 7-131-102 FOR MERGER; EXCEPT THAT, IF THE TRANSACTION IS
27 AN OWNER'S INTEREST EXCHANGE AND THE PRIMARY CONSTITUENT

1 DOCUMENTS EXPRESSLY PROVIDE FOR THE APPROVAL OF A PLAN OF
2 EXCHANGE, THE TRANSACTION MUST BE APPROVED IN ACCORDANCE WITH
3 THOSE PROVISIONS;

4 (c) In the case of a cooperative formed under, or subject to, article
5 56 of this ~~title~~ TITLE 7, as provided in section 7-56-602 ~~and~~ FOR
6 APPROVAL OF A PLAN OF MERGER, CONVERSION, CONSOLIDATION, OR
7 SHARE OR EQUITY CAPITAL EXCHANGE;

8 (d) In the case of a cooperative formed under article 55 of this ~~title~~
9 TITLE 7, as provided in section 7-55-112 FOR MERGER; EXCEPT THAT, IF
10 THE TRANSACTION IS AN OWNER'S INTEREST EXCHANGE AND THE PRIMARY
11 CONSTITUENT DOCUMENTS EXPRESSLY PROVIDE FOR THE APPROVAL OF A
12 PLAN OF EXCHANGE, THE TRANSACTION MUST BE APPROVED IN
13 ACCORDANCE WITH THOSE PROVISIONS; AND

14 (e) IN THE CASE OF A COOPERATIVE FORMED UNDER ARTICLE 58 OF
15 THIS TITLE 7, AS PROVIDED IN SECTION 7-58-1606 FOR MERGER; EXCEPT
16 THAT, IF THE TRANSACTION IS AN OWNER'S INTEREST EXCHANGE AND THE
17 PRIMARY CONSTITUENT DOCUMENTS EXPRESSLY PROVIDE FOR THE
18 APPROVAL OF A PLAN OF EXCHANGE, THE TRANSACTION MUST BE
19 APPROVED IN ACCORDANCE WITH THOSE PROVISIONS.

20 (2) In the case of a domestic entity other than an entity described
21 in subsection (1) of this section, the plan of merger ~~shall~~ OR PLAN OF
22 EXCHANGE MUST be approved AS FOLLOWS:

23 (a) IF THE PRIMARY CONSTITUENT DOCUMENTS EXPRESSLY
24 PROVIDE FOR THE APPROVAL OF THE PLAN OF MERGER OR PLAN OF
25 EXCHANGE, in accordance with the RESPECTIVE provisions of the primary
26 constituent documents; ~~dealing with mergers of the type, and with entities~~
27 ~~of the forms, described in the plan of merger;~~

1 (b) ~~If there are no such provisions, in accordance with the~~
2 ~~provisions of the primary constituent documents that contain the most~~
3 ~~stringent terms for approval of a merger;~~ DO NOT EXPRESSLY PROVIDE FOR
4 APPROVAL:

5 (I) OF A PLAN OF MERGER BUT DO PROVIDE FOR APPROVAL OF A
6 PLAN OF EXCHANGE, THEN A PLAN OF MERGER IS GOVERNED BY THE
7 APPROVAL REQUIREMENTS FOR A PLAN OF EXCHANGE; AND

8 (II) OF A PLAN OF EXCHANGE BUT DO PROVIDE FOR APPROVAL OF
9 A PLAN OF MERGER, THEN A PLAN OF EXCHANGE IS GOVERNED BY THE
10 APPROVAL REQUIREMENTS FOR A PLAN OF MERGER;

11 (c) ~~If there are no such provisions~~ SUBSECTIONS (2)(a) AND (2)(b)
12 OF THIS SECTION DO NOT APPLY BECAUSE THE PRIMARY CONSTITUENT
13 DOCUMENTS DO NOT EXPRESSLY PROVIDE FOR THE APPROVAL OF A PLAN
14 OF MERGER OR A PLAN OF EXCHANGE, in accordance with the provisions
15 of the entity's organic statutes ~~dealing with mergers of the type, and with~~
16 ~~entities of the forms, described in the plan of merger~~ THAT CONTAIN THE
17 MOST STRINGENT TERMS FOR APPROVAL OF THE OTHER TYPE OF
18 TRANSACTION IN THIS SECTION;

19 (d) ~~If there are no such provisions~~ SUBSECTIONS (2)(a), (2)(b),
20 AND (2)(c) OF THIS SECTION DO NOT APPLY, in accordance with the
21 provisions of the entity's organic statutes that contain the most stringent
22 terms for approval of ~~a merger~~ AN AMENDMENT TO THE PRIMARY
23 CONSTITUENT DOCUMENTS OR, IF NO SUCH PROVISIONS EXIST, THE
24 PROVISIONS OF THE ORGANIC STATUTES THAT CONTAIN THE MOST
25 STRINGENT TERMS FOR THE APPROVAL OF AN AMENDMENT TO THE
26 PRIMARY CONSTITUENT DOCUMENTS; OR

27 (e) ~~If neither the primary constituent documents nor the organic~~

1 ~~statutes expressly provide for the approval of the merger, in accordance~~
2 ~~with the provisions for amendment of the primary constituent documents~~
3 ~~set forth in the organic statutes and the primary constituent documents; or~~

4 (f) (e) ~~If neither the primary constituent documents nor the organic~~
5 ~~statutes expressly provide for a merger or for the approval of an~~
6 ~~amendment to the primary constituent documents~~ SUBSECTIONS (2)(a),
7 (2)(b), (2)(c), AND (2)(d) OF THIS SECTION DO NOT APPLY, by all of the
8 owners of the merging entity.

9 (3) For purposes of this section, the provisions of the ~~entity's~~
10 organic statutes and ~~primary~~ constituent documents applicable to approval
11 ~~of the plan of merger~~ include provisions relating to any preliminary
12 approval by managers for submission to the owners, notices, quorum,
13 voting, and consent by owners or third parties. References in this section
14 to the most stringent provisions of the primary constituent documents or
15 organic statutes are references to those provisions of ~~such~~ THE documents
16 or statutes that establish the highest voting requirements. ~~for approval of~~
17 ~~a merger.~~

18 (4) Nothing in this section shall be deemed to permit ~~any~~ A
19 primary constituent document to contain ~~merger provisions~~ ANY
20 PROVISION that ~~are~~ IS proscribed by the ~~entity's~~ organic statutes.

21 **SECTION 11.** In Colorado Revised Statutes, 7-90-203.7, **amend**
22 (1) introductory portion and (2) introductory portion as follows:

23 **7-90-203.7. Statement of merger - when merger effective.**

24 (1) After a merger is approved in accordance with section ~~7-90-203.4~~
25 7-90-203, if any merging entity is an entity for which a constituent filed
26 document has been filed by the secretary of state, the surviving entity
27 shall deliver to the secretary of state, for filing pursuant to part 3 of this

1 ~~article~~ ARTICLE 90, a statement of merger that ~~shall state~~ STATES:

2 (2) After a merger is approved in accordance with section
3 ~~7-90-203.4~~ 7-90-203, if no merging entity is an entity for which a
4 constituent filed document has been filed by the secretary of state, the
5 surviving entity may deliver to the secretary of state, for filing pursuant
6 to part 3 of this ~~article~~ ARTICLE 90, a statement of merger that ~~shall state~~
7 STATES:

8 **SECTION 12.** In Colorado Revised Statutes, **add with amended**
9 **and relocated provisions** 7-90-203.8 as follows:

10 **7-90-203.8. [Formerly 7-111-105 (1)] Statement of owner's**
11 **interest exchange.** (1) After a plan of ~~share~~ exchange is approved by the
12 ~~shareholders~~ PURSUANT TO SECTION 7-90-203.4, the acquiring ~~corporation~~
13 ENTITY shall deliver to the secretary of state, for filing pursuant to part 3
14 of THIS article 90, ~~of this title~~, a statement of ~~share~~ OWNER'S INTEREST
15 exchange stating:

16 (a) The entity name of each ~~corporation~~, ENTITY whose ~~shares~~
17 OWNERS' INTERESTS will be acquired, and the principal office address of
18 its principal office;

19 (b) The entity name of the acquiring ~~corporation~~, ENTITY and the
20 principal office address of its principal office; and

21 (c) A statement that the acquiring ~~corporation~~ ENTITY acquires
22 shares of the other ~~corporations~~ ENTITY OR ENTITIES.

23 ~~(d) and (e) (Deleted by amendment, L. 2004, p. 1503, § 275,~~
24 ~~effective July 1, 2004.)~~

25 **SECTION 13.** In Colorado Revised Statutes, 7-90-204, **amend**
26 (1) introductory portion and (1)(a) as follows:

27 **7-90-204. Effect of merger.** (1) When a merger is ~~effective~~

1 TAKES EFFECT:

2 (a) Every merging entity merges into the surviving entity and the
3 separate existence of every merging entity ceases. All of the rights,
4 privileges, including specifically the attorney-client privilege, and powers
5 of each of the merging entities; all real, personal, and mixed property; and
6 all obligations due to each of the merging entities, as well as all other
7 things and causes of action of each of the merging entities, vest as a
8 matter of law in the surviving entity and are thereafter the rights,
9 privileges, powers, and property of, and obligations due to, the surviving
10 entity. Title to any property vested in any of the merging entities does not
11 revert and is not in any way impaired by reason of the merger; except that
12 all rights of creditors in and all liens upon any property of any of the
13 merging entities are preserved unimpaired in the same property, however
14 held. All obligations of the merging entities attach as a matter of law to
15 the surviving entity and may be fully enforced against the surviving
16 entity. A merger does not constitute a conveyance, transfer, ~~sale of assets,~~
17 or assignment. Nothing in this section affects the validity of contract
18 provisions or of reversions or other forms of title limitations that attach
19 conditions or consequences specifically to mergers.

20 **SECTION 14.** In Colorado Revised Statutes, **add with amended**
21 **and relocated provisions** 7-90-204.3 as follows:

22 **7-90-204.3. [Formerly 7-111-106 (2)] Effect of an exchange.**
23 When ~~a share~~ AN exchange takes effect, the ~~shares~~ OWNERS' INTERESTS
24 of each acquired ~~corporation~~ ENTITY are exchanged as provided in the
25 plan, and the former holders of the ~~shares~~ OWNERS' INTERESTS are entitled
26 only to the exchange rights provided in the ~~articles of share~~ STATEMENT
27 OF OWNER'S INTEREST exchange or to their rights under ~~article 113 of this~~

1 ~~title~~ THE ORGANIC STATUTES.

2 **SECTION 15.** In Colorado Revised Statutes, **amend** 7-90-204.5
3 as follows:

4 **7-90-204.5. Foreign entity resulting from conversion or**
5 **surviving merger.** (1) Upon ~~the~~ A conversion of a domestic entity into
6 a foreign entity, ~~or the~~ A merger of a domestic entity and a foreign entity
7 in which the foreign entity is the surviving entity, OR AN EXCHANGE
8 BETWEEN A DOMESTIC ENTITY AND A FOREIGN ENTITY IN WHICH THE
9 FOREIGN ENTITY IS THE ACQUIRING ENTITY, the foreign entity:

10 (a) Shall either:

11 (I) Appoint a registered agent if the foreign entity has no
12 registered agent and maintain a registered agent pursuant to part 7 of this
13 ~~article~~ ARTICLE 90, whether or not the foreign entity is otherwise required
14 to do so, to accept service in any proceeding to enforce any obligation or
15 rights of ~~dissenting owners of~~ SHAREHOLDERS SEEKING APPRAISAL RIGHTS
16 IN any domestic entity party to the conversion, ~~or~~ merger, OR EXCHANGE
17 or in any proceeding based on a cause of action arising with respect to
18 any domestic entity party to the conversion, ~~or~~ merger, OR EXCHANGE; or

19 (II) Be deemed to have authorized service of process on it in
20 connection with such causes of action by mailing in accordance with
21 section 7-90-704 (2);

22 (b) Shall promptly pay to ~~the dissenting owners of~~ SHAREHOLDERS
23 SEEKING APPRAISAL RIGHTS IN each domestic entity party to the
24 conversion, ~~or~~ merger, OR EXCHANGE the amount, if any, to which they
25 are entitled under the organic statutes; and

26 (c) Shall comply with part 8 of this ~~article~~ ARTICLE 90 if it is to
27 transact business or conduct activities in this state.

1 **SECTION 16.** In Colorado Revised Statutes, **repeal** 7-90-205 as
2 follows:

3 **7-90-205. Scope of article - article not exclusive.** ~~The provisions~~
4 ~~of this article are not exclusive.~~

5 **SECTION 17.** In Colorado Revised Statutes, **add** 7-90-205.5 as
6 follows:

7 **7-90-205.5. Abandonment or amendment of plan of merger,**
8 **plan of conversion, or plan of exchange.** (1) AFTER A PLAN OF MERGER,
9 A PLAN OF CONVERSION, OR A PLAN OF EXCHANGE IS AUTHORIZED, AND AT
10 ANY TIME BEFORE THE MERGER, CONVERSION, OR EXCHANGE TAKES
11 EFFECT:

12 (a) THE TRANSACTION MAY BE ABANDONED, SUBJECT TO ANY
13 CONTRACTUAL RIGHTS, IN ACCORDANCE WITH THE PROCEDURE STATED IN
14 THE PLAN OF MERGER, PLAN OF CONVERSION, OR PLAN OF EXCHANGE. IF
15 A MERGER, CONVERSION, OR EXCHANGE IS ABANDONED AFTER A PLAN OF
16 MERGER HAS BEEN FILED BY THE SECRETARY OF STATE PURSUANT TO
17 SECTION 7-90-203.7, A PLAN OF CONVERSION HAS BEEN FILED BY THE
18 SECRETARY OF STATE PURSUANT TO SECTION 7-90-201.7, OR A PLAN OF
19 EXCHANGE HAS BEEN FILED BY THE SECRETARY OF STATE PURSUANT TO
20 SECTION 7-90-203.8 STATING A DELAYED EFFECTIVE DATE, THE
21 TRANSACTION MAY BE PREVENTED FROM BECOMING EFFECTIVE BY
22 DELIVERING TO THE SECRETARY OF STATE, FOR FILING PURSUANT TO PART
23 3 OF ARTICLE 90 OF THIS TITLE 7, BEFORE THE DATE THE TRANSACTION
24 BECOMES EFFECTIVE PURSUANT TO SECTION 7-90-304, A STATEMENT OF
25 CHANGE THAT STATES THAT, BY APPROPRIATE ACTION, THE TRANSACTION
26 HAS BEEN ABANDONED.

27 (b) THE PLAN OF MERGER, PLAN OF CONVERSION, OR PLAN OF

1 EXCHANGE MAY BE AMENDED IN ACCORDANCE WITH THE PROCEDURE
2 STATED IN THE PLAN, BUT THE PLAN MAY NOT BE AMENDED TO CHANGE:

3 (I) THE AMOUNT OR KIND OF OWNERS' INTERESTS OR OTHER
4 SECURITIES, ELIGIBLE INTERESTS, OBLIGATIONS, RIGHTS TO ACQUIRE
5 OWNERS' INTERESTS, OTHER SECURITIES OR ELIGIBLE INTERESTS, CASH, OR
6 OTHER PROPERTY TO BE RECEIVED UNDER THE PLAN BY THE OWNERS OF
7 ELIGIBLE INTERESTS IN ANY PARTY TO THE MERGER, CONVERSION, OR
8 EXCHANGE;

9 (II) THE PRIMARY CONSTITUENT DOCUMENTS OF AN ENTITY THAT
10 IS PARTY TO THE MERGER, CONVERSION, OR EXCHANGE, EXCEPT FOR
11 CHANGES PERMITTED BY THE ORGANIC STATUTES OF THE ENTITY; OR

12 (III) ANY OF THE OTHER TERMS OR CONDITIONS OF THE PLAN IF
13 THE CHANGE WOULD ADVERSELY AFFECT THE OWNERS IN ANY MATERIAL
14 RESPECT.

15 **SECTION 18.** In Colorado Revised Statutes, **amend** 7-90-206 as
16 follows:

17 **7-90-206. Appraisal rights, prohibitions, restrictions, and**
18 **requirements.** (1) To the extent that any organic statute or the common
19 law expressly prohibits or restricts the right of any entity to convert into
20 ~~or merge with~~ any other form of entity OR MERGE WITH OR BE PARTY TO
21 AN EXCHANGE WITH ANY OTHER ENTITY, ~~grants dissenter's~~ APPRAISAL
22 rights with respect to ~~such~~ THE merger, ~~or~~ conversion, OR EXCHANGE, or
23 imposes ~~requirements~~ ANY REQUIREMENT on ~~such~~ THE conversion, ~~or~~
24 merger, OR EXCHANGE, any merger, ~~or~~ conversion, OR EXCHANGE of ~~such~~
25 THE entity under this ~~article shall be~~ PART 2 IS subject to ~~such~~ THE
26 restriction, ~~entitle~~ ENTITLES its owners to ~~such dissenter's~~ THE APPRAISAL
27 rights, and ~~be~~ IS subject to ~~such requirements~~ THE REQUIREMENT.

1 (2) If THE PRIMARY CONSTITUENT DOCUMENTS OR ORGANIC
2 STATUTES DO NOT PROVIDE an owner of a converting entity, ~~would be~~
3 ~~entitled under the organic statutes to dissenter's~~ MERGING ENTITY, OR
4 ENTITY PARTY TO AN EXCHANGE WITH APPRAISAL RIGHTS OR DO NOT
5 EXPRESSLY DENY AN OWNER OF A CONVERTING ENTITY, MERGING ENTITY,
6 OR ENTITY PARTY TO AN EXCHANGE WITH APPRAISAL RIGHTS, BUT AN
7 OWNER WOULD BE ENTITLED UNDER THE ORGANIC STATUTES OR PRIMARY
8 CONSTITUENT DOCUMENTS TO APPRAISAL rights if the ~~converting~~ entity
9 were merged into an entity of the same form as the converting OR
10 ACQUIRING ENTITY, WERE PARTY TO AN EXCHANGE WITH AN ENTITY OF
11 THE SAME FORM AS THE CONVERTING OR SURVIVING ENTITY, OR WERE
12 CONVERTED INTO AN ENTITY OF THE SAME FORM AS THE ACQUIRING OR
13 SURVIVING entity, then ~~such~~ THE owner ~~shall be~~ IS entitled to ~~dissenter's~~
14 APPRAISAL rights with respect to the conversion, MERGER, OR EXCHANGE:

15 (a) On the same basis as the owner would be so entitled under the
16 organic statutes OR PRIMARY CONSTITUENT DOCUMENTS if the ~~converting~~
17 entity were being merged into an entity of the same form as the
18 converting OR ACQUIRING entity;

19 (b) IF NO PROVISIONS SPECIFIED IN SUBSECTION (2)(a) OF THIS
20 SECTION EXIST, ON THE SAME BASIS AS THE OWNER WOULD BE SO
21 ENTITLED UNDER THE ORGANIC STATUTES OR PRIMARY CONSTITUENT
22 DOCUMENTS IF THE ENTITY WERE PARTY TO AN EXCHANGE WITH AN
23 ENTITY OF THE SAME FORM AS THE CONVERTING OR ACQUIRING ENTITY; OR

24 (c) IF NO PROVISIONS SPECIFIED IN SUBSECTIONS (2)(a) AND (2)(b)
25 OF THIS SECTION EXIST, ON THE SAME BASIS AS THE OWNER WOULD BE SO
26 ENTITLED UNDER THE ORGANIC STATUTES OR PRIMARY CONSTITUENT
27 DOCUMENTS IF THE ENTITY WERE BEING CONVERTED INTO AN ENTITY OF

1 THE SAME FORM AS THE SURVIVING OR ACQUIRING ENTITY.

2 (3) Unless otherwise provided in the plan of conversion, ~~or~~ plan
3 of merger, ~~if~~ OR PLAN OF EXCHANGE, AN OWNER OF an entity THAT is
4 converted into another form of entity or merged into ANY OTHER ENTITY,
5 OR WHOSE OWNER'S INTEREST IS EXCHANGED WITH another ~~form of~~ entity
6 PURSUANT TO AN OWNER'S INTEREST EXCHANGE WHO CONSENTS TO THE
7 CONVERSION, MERGER, OR EXCHANGE, OR, in a transaction in which
8 ~~dissenters'~~ APPRAISAL rights are applicable, ~~an owner of the converting or~~
9 ~~merged entity who consents to the conversion or merger or~~ who does not
10 consent to the conversion, ~~or~~ merger, OR EXCHANGE and who does not
11 exercise ~~dissenters'~~ APPRAISAL rights ~~shall become~~ BECOMES an owner of
12 the resulting or surviving entity and shall be deemed to be a party to, and
13 to be bound by, the constituent operating document of the resulting or
14 surviving entity.

15 **SECTION 19.** In Colorado Revised Statutes, 7-90-301, **amend**
16 (8) as follows:

17 **7-90-301. Filing requirements.** (8) The document ~~shall~~ MUST
18 state the true name or true names, and mailing address or mailing
19 addresses, of any one or more of the individuals who cause the document
20 to be delivered for filing, but the document need not state the true name
21 and MAILING address of more than one such individual.

22 **SECTION 20.** In Colorado Revised Statutes, 7-90-601, **amend**
23 (3)(g), (7)(a) introductory portion, and (7)(a)(I) as follows:

24 **7-90-601. Entity name.** (3) In addition to the requirements of
25 subsection (2) of this section:

26 (g) An entity name ~~need not be in English if written in English~~
27 ~~letters or arabic or roman numerals~~ MUST MEET THE REQUIREMENTS OF

1 SECTION 7-90-301 (5).

2 (7) (a) ~~No~~ A person shall NOT use the word "cooperative" or an
3 abbreviation or derivation of it as a part of its business or domestic entity
4 name or as a trade name, trademark, service mark, brand, or designation
5 except:

6 (I) An entity incorporated under or subject to article 55, ~~or~~ 56, OR
7 58 of this ~~title~~ TITLE 7, part 10 of article 16 of title 10, ~~C.R.S.~~, article 33.5
8 of title 38, ~~C.R.S.~~, or a similar law of another jurisdiction;

9 **SECTION 21.** In Colorado Revised Statutes, 7-90-604, **amend**
10 (2) and (3) as follows:

11 **7-90-604. Registered true name of a foreign entity.** (2) A
12 foreign entity may register a true name pursuant to this section by
13 delivering to the secretary of state, for filing pursuant to part 3 of this
14 ~~article~~ ARTICLE 90, a statement of registration of true name that complies
15 with the requirements of this subsection (2). When filed, the statement of
16 registration of true name registers the true name. The statement of
17 registration of true name ~~shall~~ MUST state:

18 (a) ~~Its~~ THE FOREIGN ENTITY'S true name;

19 (b) The jurisdiction under the law of which ~~it~~ THE FOREIGN ENTITY
20 is formed;

21 (c) The form of the FOREIGN entity as that form is recognized by
22 the jurisdiction under the law of which the entity is formed; and

23 (d) The principal office address of ~~its~~ THE FOREIGN ENTITY'S
24 principal office.

25 (e) ~~(Deleted by amendment, L. 2006, p. 875, § 60, effective July~~
26 ~~1, 2006.)~~

27 (3) A foreign entity that has in effect a registration of its true name

1 pursuant to this section may renew ~~such~~ THE registration by delivering to
2 the secretary of state, for filing pursuant to part 3 of this ~~article~~ ARTICLE
3 90, on or before December 31 of the year of registration, a statement of
4 renewal of registration of true name that complies with this subsection
5 (3). When filed, the statement of renewal of registration renews the
6 registration for the following year. The statement of renewal of
7 registration of true name ~~shall~~ MUST state:

8 (a) The FOREIGN entity's true name, the registration of which is to
9 be renewed;

10 (b) The form of entity and the jurisdiction under the law of which
11 ~~it~~ THE FOREIGN ENTITY is formed; and

12 (c) ~~(Deleted by amendment, L. 2009, (HB 09-1248), ch. 252, p.~~
13 ~~1133, § 15, effective December 1, 2009.)~~

14 ~~(d)~~ (c) The principal office address of the FOREIGN entity's
15 principal office.

16 **SECTION 22.** In Colorado Revised Statutes, 7-90-907 **repeal** (2)
17 as follows:

18 **7-90-907. Dissolution upon expiration of term.** (2) ~~A domestic~~
19 ~~entity shall automatically dissolve upon the expiration of the period of~~
20 ~~duration, if any, stated in its constituent filed document.~~

21 **SECTION 23.** In Colorado Revised Statutes, **amend** 7-90-910 as
22 follows:

23 **7-90-910. Effect of dissolution under section 7-90-908.** A
24 domestic entity that is dissolved pursuant to section ~~7-90-907~~ or 7-90-908
25 continues its existence but may not carry on any business except as is
26 appropriate to wind up and liquidate its business and affairs, and to give
27 notice to claimants, in accordance with the organic statutes.

1 **SECTION 24.** In Colorado Revised Statutes, **add** 7-90-914 and
2 7-90-915 as follows:

3 **7-90-914. Court proceedings.** (1) (a) A DISSOLVED DOMESTIC
4 ENTITY THAT HAS PUBLISHED A NOTICE UNDER SECTION 7-90-912 MAY
5 FILE AN APPLICATION WITH THE COURT FOR THE COUNTY IN THIS STATE IN
6 WHICH THE STREET ADDRESS OF THE DOMESTIC ENTITY'S PRINCIPAL OFFICE
7 OR THE STREET ADDRESS OF ITS REGISTERED AGENT IS LOCATED FOR A
8 DETERMINATION OF THE AMOUNT AND FORM OF SECURITY TO BE PROVIDED
9 FOR PAYMENT OF CLAIMS THAT:

10 (I) ARE CONTINGENT;

11 (II) HAVE NOT BEEN MADE KNOWN TO THE DISSOLVED DOMESTIC
12 ENTITY; OR

13 (III) ARISE FROM AN EVENT THAT HAD NOT OCCURRED AS OF THE
14 EFFECTIVE DATE OF DISSOLUTION BUT, BASED ON THE FACTS KNOWN TO
15 THE DISSOLVED DOMESTIC ENTITY, IS REASONABLY ANTICIPATED TO
16 OCCUR AFTER THE EFFECTIVE DATE OF DISSOLUTION.

17 (b) PROVISION NEED NOT BE MADE FOR ANY CLAIM THAT IS, OR IS
18 REASONABLY ANTICIPATED TO BE, BARRED UNDER SECTION 7-90-912 (3).

19 (2) WITHIN TEN DAYS AFTER THE FILING OF THE APPLICATION, THE
20 DISSOLVED DOMESTIC ENTITY SHALL GIVE NOTICE OF THE PROCEEDING TO
21 EACH CLAIMANT HOLDING A CONTINGENT CLAIM WHOSE CONTINGENT
22 CLAIM IS SHOWN ON THE RECORDS OF THE DISSOLVED DOMESTIC ENTITY.

23 (3) THE COURT MAY APPOINT A GUARDIAN AD LITEM TO
24 REPRESENT ALL CLAIMANTS WHOSE IDENTITIES ARE UNKNOWN IN ANY
25 PROCEEDING BROUGHT UNDER THIS SECTION. THE DISSOLVED ENTITY
26 SHALL PAY THE REASONABLE FEES AND EXPENSES OF THE GUARDIAN AD
27 LITEM, INCLUDING ALL REASONABLE EXPERT WITNESS FEES.

1 (4) PROVISION BY THE DISSOLVED ENTITY FOR SECURITY IN THE
2 AMOUNT AND THE FORM ORDERED BY THE COURT UNDER SUBSECTION (1)
3 OF THIS SECTION SATISFIES THE DISSOLVED ENTITY'S OBLIGATIONS WITH
4 RESPECT TO CLAIMS THAT ARE CONTINGENT, HAVE NOT BEEN MADE
5 KNOWN TO THE DISSOLVED ENTITY, OR ARISE FROM AN EVENT OCCURRING
6 AFTER THE EFFECTIVE DATE OF DISSOLUTION, AND THE CLAIMS MAY NOT
7 BE ENFORCED AGAINST AN OWNER WHO RECEIVED ASSETS IN LIQUIDATION.

8 **7-90-915. Manager duties.** (1) A MANAGER SHALL CAUSE THE
9 DISSOLVED DOMESTIC ENTITY TO DISCHARGE OR MAKE REASONABLE
10 PROVISION FOR THE PAYMENT OF CLAIMS AND MAKE DISTRIBUTIONS OF
11 ASSETS TO OWNERS AFTER PAYMENT OR PROVISION FOR CLAIMS.

12 (2) A MANAGER OF A DISSOLVED DOMESTIC ENTITY THAT HAS
13 DISPOSED OF CLAIMS UNDER SECTION 7-90-911, 7-90-912, OR 7-90-914 IS
14 NOT LIABLE FOR BREACH OF SUBSECTION (1) OF THIS SECTION WITH
15 RESPECT TO CLAIMS AGAINST THE DISSOLVED DOMESTIC ENTITY THAT ARE
16 BARRED OR SATISFIED UNDER SECTION 7-90-911, 7-90-912, OR 7-90-914.

17 **SECTION 25.** In Colorado Revised Statutes, 7-101-401, **amend**
18 the introductory portion and (30); and **add** (5.5) and (28.6) as follows:

19 **7-101-401. General definitions.** As used in articles 101 to 117 of
20 this ~~title~~ TITLE 7, unless the context otherwise requires:

21 (5.5) "BENEFICIAL OWNER" MEANS A PERSON THAT OWNS THE
22 BENEFICIAL INTEREST IN SHARES. THE BENEFICIAL OWNER MAY BE A
23 SHAREHOLDER INCLUDED IN THE RECORDS OF THE CORPORATION OR A
24 PERSON ON WHOSE BEHALF SHARES ARE REGISTERED IN THE NAME OF AN
25 INTERMEDIARY, A NOMINEE, OR A VOTING TRUST OF WHICH THE PERSON IS
26 A BENEFICIARY.

27 (28.6) "RELATED PERSON" MEANS, WITH RESPECT TO AN

1 INDIVIDUAL:

2 (a) THE INDIVIDUAL'S SPOUSE;

3 (b) A CHILD, STEPCHILD, GRANDCHILD, PARENT, STEPPARENT,
4 GRANDPARENT, SIBLING, STEPSIBLING, HALF-SIBLING, AUNT, UNCLE, NIECE,
5 OR NEPHEW, OR SPOUSE OF ANY OF THEM, OF THE INDIVIDUAL OR OF THE
6 INDIVIDUAL'S SPOUSE;

7 (c) AN INDIVIDUAL LIVING IN THE SAME HOME AS THE INDIVIDUAL;

8 (d) AN ENTITY, OTHER THAN A CORPORATION OR AN ENTITY
9 CONTROLLED BY THE CORPORATION, CONTROLLED BY THE INDIVIDUAL, OR
10 ANY PERSON SPECIFIED IN THIS SUBSECTION (28.6);

11 (e) A DOMESTIC OR FOREIGN:

12 (I) BUSINESS OR NONPROFIT CORPORATION, OTHER THAN A
13 CORPORATION OR AN ENTITY CONTROLLED BY THE CORPORATION, OF
14 WHICH THE INDIVIDUAL IS A DIRECTOR;

15 (II) UNINCORPORATED ENTITY OF WHICH THE INDIVIDUAL IS A
16 GENERAL PARTNER OR A MEMBER OF THE GOVERNING BODY; OR

17 (III) INDIVIDUAL, TRUST, OR ESTATE FOR WHOM OR OF WHICH THE
18 INDIVIDUAL IS A TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, OR
19 SIMILAR FIDUCIARY; OR

20 (f) A PERSON THAT IS, OR AN ENTITY THAT IS CONTROLLED BY, AN
21 EMPLOYER OF THE INDIVIDUAL.

22 (30) "Shareholder" means either the person in whose name shares
23 are registered in the records of a corporation or the beneficial owner of
24 shares to the extent ~~recognized pursuant to section 7-107-204~~ OF THE
25 RIGHTS GRANTED BY A BENEFICIAL OWNERSHIP CERTIFICATE THAT MEETS
26 THE REQUIREMENTS OF SECTION 7-107-204 AND IS ON FILE WITH THE
27 CORPORATION.

1 **SECTION 26.** In Colorado Revised Statutes, 7-101-402, **amend**
2 (2); and **add** (9) as follows:

3 **7-101-402. Notice.** (2) Notice may be given in person; by
4 telephone, telegraph, teletype, electronically transmitted facsimile, or
5 other form of wire or wireless ~~communication~~ DELIVERY; or by mail or
6 private carrier.

7 (9) (a) A DOMESTIC CORPORATION HAS GIVEN WRITTEN NOTICE OR
8 ANY OTHER REPORT OR STATEMENT UNDER ARTICLES 101 TO 117 OF THIS
9 TITLE 7, THE ARTICLES OF INCORPORATION, OR THE BYLAWS TO ALL
10 SHAREHOLDERS WHO SHARE A COMMON ADDRESS IF:

11 (I) THE DOMESTIC CORPORATION DELIVERS ONE COPY OF THE
12 NOTICE, REPORT, OR STATEMENT TO THE COMMON ADDRESS;

13 (II) THE DOMESTIC CORPORATION ADDRESSES THE NOTICE,
14 REPORT, OR STATEMENT TO THOSE SHAREHOLDERS EITHER AS A GROUP OR
15 TO EACH OF THOSE SHAREHOLDERS INDIVIDUALLY OR TO THE
16 SHAREHOLDERS IN A FORM TO WHICH EACH OF THOSE SHAREHOLDERS HAS
17 CONSENTED; AND

18 (III) EACH OF THOSE SHAREHOLDERS CONSENTS TO DELIVERY OF
19 A SINGLE COPY OF THE NOTICE, REPORT, OR STATEMENT TO THE
20 SHAREHOLDERS' COMMON ADDRESS.

21 (b) THE CONSENT DESCRIBED IN SUBSECTIONS (9)(a)(II) AND
22 (9)(a)(III) OF THIS SECTION IS REVOCABLE BY A SHAREHOLDER WHO
23 DELIVERS WRITTEN NOTICE OF REVOCATION TO THE DOMESTIC
24 CORPORATION. IF THE WRITTEN NOTICE OF REVOCATION IS DELIVERED, THE
25 DOMESTIC CORPORATION SHALL BEGIN PROVIDING INDIVIDUAL NOTICES,
26 REPORTS, OR OTHER STATEMENTS TO THE REVOKING SHAREHOLDER NO
27 LATER THAN THIRTY DAYS AFTER DELIVERY OF THE WRITTEN NOTICE OF

1 REVOCATION.

2 (c) A SHAREHOLDER WHO FAILS TO OBJECT BY WRITTEN NOTICE TO
3 THE DOMESTIC CORPORATION WITHIN SIXTY DAYS AFTER WRITTEN NOTICE
4 BY THE CORPORATION OF ITS INTENTION TO DELIVER SINGLE COPIES OF
5 NOTICES, REPORTS, OR STATEMENTS TO SHAREHOLDERS WHO SHARE A
6 COMMON ADDRESS AS PERMITTED BY SUBSECTION (9)(a) OF THIS SECTION
7 IS DEEMED TO HAVE CONSENTED TO RECEIVING A SINGLE COPY AT THE
8 COMMON ADDRESS IF THE NOTICE OF INTENTION EXPLAINS THAT CONSENT
9 MAY BE REVOKED AND THE METHOD FOR REVOKING.

10 **SECTION 27.** In Colorado Revised Statutes, 7-101-504, **amend**
11 (3) as follows:

12 **7-101-504. Certain amendments and mergers - votes required**
13 **- appraisal rights.** (3) A shareholder of a corporation that is not a public
14 benefit corporation is entitled to exercise the right to ~~dissent~~ SEEK
15 APPRAISAL RIGHTS pursuant to article 113 of this ~~title~~ TITLE 7 if the
16 shareholder:

17 (a) Has neither CONSENTED IN WRITING PURSUANT TO SECTION
18 7-107-104 NOR voted in favor of an amendment, merger, or conversion
19 specified in this subsection (3); ~~nor consented thereto in writing pursuant~~
20 ~~to section 7-107-104 and~~

21 (b) Holds shares of ~~such~~ THE corporation immediately before the
22 effective time of:

23 ~~(a)~~ (I) An amendment to the corporation's articles of incorporation
24 to include a provision authorized by section 7-101-503 (1)(a);

25 ~~(b)~~ (II) A conversion into a domestic or foreign public benefit
26 corporation or similar entity; or

27 ~~(c)~~ (III) A merger that would result in the conversion of the

1 corporation's shares into, or exchange of the corporation's shares for, the
2 right to receive shares or other equity interests in a domestic or foreign
3 public benefit corporation or similar entity.

4 **SECTION 28.** In Colorado Revised Statutes, 7-102-102, **amend**
5 (2)(b)(V); and **add** (2)(d) and (2)(e) as follows:

6 **7-102-102. Articles of incorporation.** (2) The articles of
7 incorporation may, but need not, state:

8 (b) Provisions not inconsistent with law regarding:

9 (V) The imposition of personal liability on shareholders for the
10 debts of the corporation to a stated extent and upon stated conditions; ~~and~~

11 (d) A PROVISION ELIMINATING OR LIMITING THE LIABILITY OF A
12 DIRECTOR TO THE CORPORATION OR ITS SHAREHOLDERS FOR MONEY
13 DAMAGES FOR ANY ACTION TAKEN, OR ANY FAILURE TO TAKE ANY ACTION,
14 AS A DIRECTOR, EXCEPT LIABILITY FOR:

15 (I) THE AMOUNT OF A FINANCIAL BENEFIT RECEIVED BY A
16 DIRECTOR TO WHICH THE DIRECTOR IS NOT ENTITLED;

17 (II) AN INTENTIONAL INFLICTION OF HARM ON THE CORPORATION
18 OR THE SHAREHOLDERS;

19 (III) A VIOLATION OF SECTION 7-108-405; OR

20 (IV) AN INTENTIONAL VIOLATION OF CRIMINAL LAW; AND

21 (e) A PROVISION LIMITING OR ELIMINATING A DUTY OF A DIRECTOR
22 OR ANY OTHER PERSON TO OFFER THE CORPORATION THE RIGHT TO HAVE
23 OR PARTICIPATE IN ANY, OR ONE OR MORE CLASSES OR CATEGORIES OF,
24 BUSINESS OPPORTUNITIES, BEFORE THE PURSUIT OR TAKING OF THE
25 OPPORTUNITY BY THE DIRECTOR OR OTHER PERSON IF ANY APPLICATION
26 OF THE PROVISION TO AN OFFICER OR A RELATED PERSON OF THAT OFFICER:

27 (I) REQUIRES A DETERMINATION BY THE BOARD OF DIRECTORS BY

1 ACTION OF THE DISINTERESTED DIRECTORS TAKEN IN COMPLIANCE WITH
2 THE PROCEDURES SET FORTH IN SECTION 7-108-402 AFTER THE EFFECTIVE
3 DATE OF THE PROVISION APPLYING THE PROVISION TO A PARTICULAR
4 OFFICER OR ANY RELATED PERSON OF THAT OFFICER; AND

5 (II) MAY BE LIMITED BY THE AUTHORIZING ACTION OF THE BOARD.

6 **SECTION 29.** In Colorado Revised Statutes, **add** 7-102-108 as
7 follows:

8 **7-102-108. Forum selection - definition.** (1) THE ARTICLES OF
9 INCORPORATION OR THE BYLAWS MAY REQUIRE THAT ANY OR ALL
10 INTERNAL CORPORATE CLAIMS MUST BE BROUGHT EXCLUSIVELY IN ANY
11 SPECIFIED COURT OF THIS STATE AND, IF SO SPECIFIED, IN ANY ADDITIONAL
12 COURTS IN THIS STATE OR IN ANY OTHER JURISDICTION WITH WHICH THE
13 CORPORATION HAS A REASONABLE RELATIONSHIP.

14 (2) A PROVISION OF THE ARTICLES OF INCORPORATION OR BYLAWS
15 SPECIFIED IN SUBSECTION (1) OF THIS SECTION DOES NOT CONFER
16 JURISDICTION ON ANY COURT OR OVER ANY PERSON OR CLAIM AND DOES
17 NOT APPLY IF NONE OF THE COURTS SPECIFIED BY THE PROVISION HAS THE
18 REQUISITE PERSONAL AND SUBJECT-MATTER JURISDICTION. IF A COURT
19 SPECIFIED IN A PROVISION SPECIFIED IN SUBSECTION (1) OF THIS SECTION
20 DOES NOT HAVE THE REQUISITE PERSONAL AND SUBJECT-MATTER
21 JURISDICTION AND ANOTHER COURT OF THIS STATE DOES HAVE THAT
22 JURISDICTION, THE INTERNAL CORPORATE CLAIM MAY BE BROUGHT:

23 (a) IN THE OTHER COURT OF THIS STATE, NOTWITHSTANDING THAT
24 THE OTHER COURT IS NOT SPECIFIED IN THE PROVISION; AND

25 (b) IN ANY OTHER COURT SPECIFIED IN THE PROVISION THAT HAS
26 THE REQUISITE JURISDICTION.

27 (3) NO PROVISION OF THE ARTICLES OF INCORPORATION OR THE

1 BYLAWS MAY PROHIBIT BRINGING AN INTERNAL CORPORATE CLAIM IN THE
2 COURTS OF THIS STATE OR REQUIRE THE CLAIMS TO BE DETERMINED BY
3 ARBITRATION.

4 (4) "INTERNAL CORPORATE CLAIM" MEANS:

5 (a) ANY CLAIM THAT IS BASED UPON A VIOLATION OF A DUTY
6 UNDER THE LAWS OF THIS STATE BY A CURRENT OR FORMER DIRECTOR,
7 OFFICER, OR SHAREHOLDER IN THAT CAPACITY;

8 (b) A DERIVATIVE ACTION OR PROCEEDING BROUGHT ON BEHALF
9 OF THE CORPORATION;

10 (c) AN ACTION ASSERTING A CLAIM ARISING PURSUANT TO ANY
11 PROVISION OF ARTICLES 101 TO 117 OF THIS TITLE 7, THE ARTICLES OF
12 INCORPORATION, OR BYLAWS; OR

13 (d) AN ACTION ASSERTING A CLAIM GOVERNED BY THE INTERNAL
14 AFFAIRS DOCTRINE THAT IS NOT INCLUDED IN SUBSECTIONS (4)(a) TO
15 (4)(c) OF THIS SECTION.

16 **SECTION 30.** In Colorado Revised Statutes, 7-103-102, **amend**
17 (1)(p), (1)(q), and (1)(r); and **add** (1)(s) as follows:

18 **7-103-102. General powers.** (1) Unless otherwise provided in
19 the articles of incorporation, every corporation has perpetual duration and
20 succession in its domestic entity name and has the same powers as an
21 individual to do all things necessary or convenient to carry out its
22 business and affairs, including the power:

23 (p) To limit the liability of its directors as provided in section
24 ~~7-108-402 (1)~~ 7-102-102 (2)(d);

25 (q) To cease its corporate activities and dissolve; ~~and~~

26 (r) To impose restrictions on the transfer of its shares; AND

27 (s) TO RENOUNCE IN ITS ARTICLES OF INCORPORATION OR BY

1 ACTION OF ITS BOARD OF DIRECTORS ANY SPECIFIED CORPORATE
2 OPPORTUNITIES OR SPECIFIED CLASSES OR CATEGORIES OF CORPORATE
3 OPPORTUNITIES THAT MAY BE PRESENTED TO THE CORPORATION OR ONE
4 OR MORE OF ITS OFFICERS, DIRECTORS, OR SHAREHOLDERS AS PROVIDED
5 IN SECTION 7-102-102 (2)(e).

6 **SECTION 31.** In Colorado Revised Statutes, **add** 7-103-106 as
7 follows:

8 **7-103-106. Ratification of defective corporate actions -**
9 **definitions. (1) Defective corporate actions. (a)** A DEFECTIVE
10 CORPORATE ACTION IS NOT VOID OR VOIDABLE IF RATIFIED IN
11 ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION OR VALIDATED IN
12 ACCORDANCE WITH SUBSECTION (7) OF THIS SECTION.

13 (b) RATIFICATION UNDER SUBSECTION (2) OF THIS SECTION OR
14 VALIDATION UNDER SUBSECTION (7) OF THIS SECTION IS NOT THE
15 EXCLUSIVE MEANS OF RATIFYING OR VALIDATING ANY DEFECTIVE
16 CORPORATE ACTION, AND THE ABSENCE OR FAILURE OF RATIFICATION IN
17 ACCORDANCE WITH THIS SECTION DOES NOT, OF ITSELF, AFFECT THE
18 VALIDITY OR EFFECTIVENESS OF ANY CORPORATE ACTION PROPERLY
19 RATIFIED UNDER COMMON LAW OR OTHERWISE, NOR DOES IT CREATE A
20 PRESUMPTION THAT THE CORPORATE ACTION IS OR WAS A DEFECTIVE
21 CORPORATE ACTION OR VOID OR VOIDABLE.

22 (c) IN THE CASE OF AN OVERISSUE, PUTATIVE SHARES ARE VALID
23 SHARES EFFECTIVE AS OF THE DATE ORIGINALLY ISSUED OR PURPORTEDLY
24 ISSUED UPON:

25 (I) THE EFFECTIVENESS UNDER THIS SECTION AND UNDER ARTICLE
26 110 OF THIS TITLE 7 OF AN AMENDMENT TO THE ARTICLES OF
27 INCORPORATION AUTHORIZING, DESIGNATING, OR CREATING THE SHARES;

1 OR

2 (II) THE EFFECTIVENESS OF ANY OTHER CORPORATE ACTION UNDER
3 THIS SECTION RATIFYING THE AUTHORIZATION, DESIGNATION, OR
4 CREATION OF THE SHARES.

5 (2) **Ratification.** (a) TO RATIFY A DEFECTIVE CORPORATE ACTION
6 UNDER THIS SECTION OTHER THAN THE RATIFICATION OF AN ELECTION OF
7 THE INITIAL BOARD OF DIRECTORS UNDER SUBSECTION (2)(b) OF THIS
8 SECTION, THE BOARD OF DIRECTORS MUST TAKE ACTION RATIFYING THE
9 ACTION IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION, STATING:

10 (I) THE DEFECTIVE CORPORATE ACTION TO BE RATIFIED AND, IF
11 THE DEFECTIVE CORPORATE ACTION INVOLVED THE ISSUANCE OF PUTATIVE
12 SHARES, THE NUMBER AND TYPE OF PUTATIVE SHARES PURPORTEDLY
13 ISSUED;

14 (II) THE DATE OF THE DEFECTIVE CORPORATE ACTION;

15 (III) THE NATURE OF THE FAILURE OF AUTHORIZATION WITH
16 RESPECT TO THE DEFECTIVE CORPORATE ACTION TO BE RATIFIED; AND

17 (IV) THAT THE BOARD OF DIRECTORS APPROVES THE RATIFICATION
18 OF THE DEFECTIVE CORPORATE ACTION.

19 (b) IF A DEFECTIVE CORPORATE ACTION TO BE RATIFIED RELATES
20 TO THE ELECTION OF THE INITIAL BOARD OF DIRECTORS OF THE
21 CORPORATION UNDER SECTION 7-102-105 (1)(a), A MAJORITY OF THE
22 PERSONS WHO, AT THE TIME OF THE RATIFICATION, ARE EXERCISING THE
23 POWERS OF DIRECTORS MAY TAKE AN ACTION STATING:

24 (I) THE NAME OF THE PERSON OR PERSONS WHO FIRST TOOK
25 ACTION IN THE NAME OF THE CORPORATION AS THE INITIAL BOARD OF
26 DIRECTORS OF THE CORPORATION;

27 (II) THE EARLIER OF THE DATE ON WHICH THOSE PERSONS FIRST

1 TOOK THE ACTION OR WERE PURPORTED TO HAVE BEEN ELECTED AS THE
2 INITIAL BOARD OF DIRECTORS; AND

3 (III) THAT THE RATIFICATION OF THE ELECTION OF THE PERSON OR
4 PERSONS AS THE INITIAL BOARD OF DIRECTORS IS APPROVED.

5 (c) IF ANY PROVISION OF ARTICLES 101 TO 117 OF THIS TITLE 7, THE
6 ARTICLES OF INCORPORATION OR BYLAWS, OR A CORPORATE RESOLUTION
7 OR PLAN OR AGREEMENT TO WHICH THE CORPORATION IS A PARTY IN
8 EFFECT AT THE TIME ACTION UNDER SUBSECTION (2)(a) OF THIS SECTION
9 IS TAKEN REQUIRES SHAREHOLDER APPROVAL OR WOULD HAVE REQUIRED
10 SHAREHOLDER APPROVAL AT THE DATE OF THE OCCURRENCE OF THE
11 DEFECTIVE CORPORATE ACTION, THE RATIFICATION OF THE DEFECTIVE
12 CORPORATE ACTION APPROVED IN THE ACTION TAKEN BY THE DIRECTORS
13 UNDER SUBSECTION (2)(a) OF THIS SECTION SHALL BE SUBMITTED TO THE
14 SHAREHOLDERS FOR APPROVAL IN ACCORDANCE WITH SUBSECTION (3) OF
15 THIS SECTION.

16 (d) UNLESS OTHERWISE PROVIDED IN THE ACTION TAKEN BY THE
17 BOARD OF DIRECTORS UNDER SUBSECTION (2)(a) OF THIS SECTION, AFTER
18 THE ACTION BY THE BOARD OF DIRECTORS HAS BEEN TAKEN AND, IF
19 REQUIRED, APPROVED BY THE SHAREHOLDERS, THE BOARD OF DIRECTORS
20 MAY ABANDON THE RATIFICATION AT ANY TIME BEFORE THE VALIDATION
21 EFFECTIVE TIME WITHOUT FURTHER ACTION OF THE SHAREHOLDERS.

22 (3) **Action on ratification.** (a) THE QUORUM AND VOTING
23 REQUIREMENTS APPLICABLE TO A RATIFYING ACTION BY THE BOARD OF
24 DIRECTORS UNDER SUBSECTION (2) OF THIS SECTION ARE THE QUORUM
25 AND VOTING REQUIREMENTS APPLICABLE TO THE CORPORATE ACTION
26 PROPOSED TO BE RATIFIED AT THE TIME THE RATIFYING ACTION IS TAKEN.

27 (b) IF THE RATIFICATION OF THE DEFECTIVE CORPORATE ACTION

1 REQUIRES APPROVAL BY THE SHAREHOLDERS UNDER SUBSECTION (2)(c)
2 OF THIS SECTION AND THE APPROVAL IS TO BE GIVEN AT A MEETING, THE
3 CORPORATION SHALL NOTIFY EACH HOLDER OF VALID AND PUTATIVE
4 SHARES, REGARDLESS OF WHETHER ENTITLED TO VOTE, AS OF THE RECORD
5 DATE FOR NOTICE OF THE MEETING. THE NOTICE MUST STATE THAT THE
6 PURPOSE, OR ONE OF THE PURPOSES, OF THE MEETING IS TO CONSIDER
7 RATIFICATION OF A DEFECTIVE CORPORATE ACTION AND MUST BE
8 ACCOMPANIED BY:

9 (I) EITHER A COPY OF THE WRITTEN ACTION TAKEN BY THE BOARD
10 OF DIRECTORS IN ACCORDANCE WITH SUBSECTION (2)(a) OF THIS SECTION
11 OR THE INFORMATION REQUIRED BY SUBSECTIONS (2)(a)(I) TO (2)(a)(IV)
12 OF THIS SECTION; AND

13 (II) A STATEMENT THAT ANY CLAIM THAT THE RATIFICATION OF
14 THE DEFECTIVE CORPORATE ACTION AND ANY PUTATIVE SHARES ISSUED
15 AS A RESULT OF THE DEFECTIVE CORPORATE ACTION SHOULD NOT BE
16 EFFECTIVE, OR SHOULD BE EFFECTIVE ONLY ON CERTAIN CONDITIONS,
17 MUST BE BROUGHT WITHIN ONE HUNDRED TWENTY DAYS AFTER THE
18 APPLICABLE VALIDATION EFFECTIVE TIME.

19 (c) EXCEPT AS PROVIDED IN SUBSECTION (3)(d) OF THIS SECTION
20 WITH RESPECT TO THE VOTING REQUIREMENTS TO RATIFY THE ELECTION
21 OF A DIRECTOR, THE QUORUM AND VOTING REQUIREMENTS APPLICABLE TO
22 THE APPROVAL BY THE SHAREHOLDERS REQUIRED BY SUBSECTION (2)(c)
23 OF THIS SECTION ARE THE QUORUM AND VOTING REQUIREMENTS
24 APPLICABLE TO THE CORPORATE ACTION PROPOSED TO BE RATIFIED AT THE
25 TIME OF THE SHAREHOLDER APPROVAL, NOT BASED ON THE REQUIREMENTS
26 FOR SHAREHOLDER APPROVAL EXISTING AT THE TIME THAT THE DEFECTIVE
27 CORPORATE ACTION REQUIRING RATIFICATION WAS ORIGINALLY TAKEN.

1 (d) THE APPROVAL BY SHAREHOLDERS TO RATIFY THE ELECTION
2 OF A DIRECTOR REQUIRES THAT THE VOTES CAST WITHIN THE VOTING
3 GROUP FAVORING THE RATIFICATION EXCEED THE VOTES CAST OPPOSING
4 THE RATIFICATION OF THE ELECTION AT A MEETING AT WHICH A QUORUM
5 IS PRESENT.

6 (e) PUTATIVE SHARES ON THE RECORD DATE FOR DETERMINING
7 THE SHAREHOLDERS ENTITLED TO VOTE ON ANY MATTER SUBMITTED TO
8 SHAREHOLDERS UNDER SUBSECTION (2)(c) OF THIS SECTION, AND
9 WITHOUT GIVING EFFECT TO ANY RATIFICATION OF PUTATIVE SHARES THAT
10 BECOMES EFFECTIVE AS A RESULT OF THE VOTE, ARE NEITHER ENTITLED TO
11 VOTE NOR COUNTED FOR QUORUM PURPOSES IN ANY VOTE TO APPROVE
12 THE RATIFICATION OF ANY DEFECTIVE CORPORATE ACTION.

13 (f) IF THE APPROVAL UNDER THIS SECTION OF PUTATIVE SHARES
14 WOULD RESULT IN AN OVERISSUE, THEN, IN ADDITION TO THE APPROVAL
15 REQUIRED BY SUBSECTION (2) OF THIS SECTION, APPROVAL OF AN
16 AMENDMENT TO THE ARTICLES OF INCORPORATION UNDER ARTICLE 110 OF
17 THIS TITLE 7 TO INCREASE THE NUMBER OF SHARES OF AN AUTHORIZED
18 CLASS OR SERIES OR TO AUTHORIZE THE CREATION OF A CLASS OR SERIES
19 OF SHARES SO THERE WOULD BE NO OVERISSUE IS REQUIRED.

20 (4) **Notice requirements.** (a) (I) EXCEPT AS SPECIFIED IN
21 SUBSECTION (4)(a)(II) OF THIS SECTION, UNLESS SHAREHOLDER APPROVAL
22 IS REQUIRED UNDER SUBSECTION (2)(c) OF THIS SECTION, PROMPT NOTICE
23 OF AN ACTION TAKEN UNDER SUBSECTION (2) OF THIS SECTION SHALL BE
24 GIVEN TO EACH HOLDER OF VALID AND PUTATIVE SHARES, REGARDLESS OF
25 WHETHER ENTITLED TO VOTE, AS OF:

26 (A) THE DATE OF THE ACTION BY THE BOARD OF DIRECTORS; AND

27 (B) THE DATE OF THE DEFECTIVE CORPORATE ACTION RATIFIED.

1 (II) NOTICE IS NOT REQUIRED TO BE GIVEN TO HOLDERS OF VALID
2 AND PUTATIVE SHARES WHOSE IDENTITIES OR ADDRESSES FOR NOTICE
3 CANNOT BE DETERMINED FROM THE RECORDS OF THE CORPORATION.

4 (b) THE NOTICE MUST CONTAIN:

5 (I) EITHER A COPY OF THE WRITTEN ACTION TAKEN BY THE BOARD
6 OF DIRECTORS IN ACCORDANCE WITH SUBSECTION (2)(a) OR (2)(b) OF THIS
7 SECTION OR THE INFORMATION REQUIRED BY SUBSECTIONS (2)(a)(I) TO
8 (2)(a)(IV) OR SUBSECTIONS (2)(b)(I) TO (2)(b)(III) OF THIS SECTION, AS
9 APPLICABLE; AND

10 (II) A STATEMENT THAT ANY CLAIM THAT THE RATIFICATION OF
11 THE DEFECTIVE CORPORATE ACTION AND ANY PUTATIVE SHARES ISSUED
12 AS A RESULT OF THE DEFECTIVE CORPORATE ACTION SHOULD NOT BE
13 EFFECTIVE, OR SHOULD BE EFFECTIVE ONLY ON CERTAIN CONDITIONS,
14 MUST BE BROUGHT WITHIN ONE HUNDRED TWENTY DAYS AFTER THE
15 APPLICABLE VALIDATION EFFECTIVE TIME.

16 (c) NO NOTICE UNDER THIS SECTION IS REQUIRED WITH RESPECT TO
17 ANY ACTION REQUIRED TO BE SUBMITTED TO SHAREHOLDERS FOR
18 APPROVAL UNDER SUBSECTION (2)(c) OF THIS SECTION IF NOTICE IS GIVEN
19 IN ACCORDANCE WITH SUBSECTION (4)(b) OF THIS SECTION.

20 (d) A NOTICE REQUIRED BY THIS SECTION MAY BE GIVEN IN ANY
21 MANNER PERMITTED BY SECTION 7-101-402 AND, FOR ANY CORPORATION
22 SUBJECT TO THE REPORTING REQUIREMENTS OF SECTION 13 OR 15 (d) OF
23 THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934", 15 U.S.C. SEC. 78m
24 AND 78m (d), MAY BE GIVEN BY MEANS OF A FILING OR FURNISHING OF
25 THE NOTICE WITH THE FEDERAL SECURITIES AND EXCHANGE COMMISSION.

26 (e) THE FAILURE TO GIVE NOTICE DOES NOT INVALIDATE THE
27 RATIFICATION OF THE DEFECTIVE CORPORATION ACTION.

1 (5) **Effect of ratification.** ON AND AFTER THE VALIDATION
2 EFFECTIVE TIME, AND WITHOUT REGARD TO THE
3 ONE-HUNDRED-TWENTY-DAY PERIOD DURING WHICH A CLAIM MAY BE
4 BROUGHT UNDER SUBSECTION (7) OF THIS SECTION:

5 (a) A DEFECTIVE CORPORATE ACTION RATIFIED IN ACCORDANCE
6 WITH SUBSECTION (2) OF THIS SECTION IS NOT VOID OR VOIDABLE AS A
7 RESULT OF THE FAILURE OF AUTHORIZATION IDENTIFIED IN THE ACTION
8 TAKEN UNDER SUBSECTION (2)(a) OR (2)(b) OF THIS SECTION AND IS
9 DEEMED A VALID CORPORATE ACTION EFFECTIVE ON THE DATE OF THE
10 DEFECTIVE CORPORATE ACTION;

11 (b) THE ISSUANCE OF EACH PUTATIVE SHARE OR FRACTION OF A
12 PUTATIVE SHARE PURPORTEDLY ISSUED PURSUANT TO A DEFECTIVE
13 CORPORATE ACTION IDENTIFIED IN THE ACTION TAKEN UNDER SUBSECTION
14 (2) OF THIS SECTION IS NOT VOID OR VOIDABLE, AND EACH SUCH PUTATIVE
15 SHARE OR FRACTION OF A PUTATIVE SHARE IS AN IDENTICAL SHARE OR
16 FRACTION OF A VALID SHARE AS OF THE TIME IT WAS PURPORTEDLY
17 ISSUED; AND

18 (c) ANY CORPORATE ACTION TAKEN AFTER THE DEFECTIVE
19 CORPORATE ACTION RATIFIED IN ACCORDANCE WITH THIS SECTION IN
20 RELIANCE ON THE DEFECTIVE CORPORATE ACTION HAVING BEEN VALIDLY
21 EFFECTED AND ANY SUBSEQUENT DEFECTIVE CORPORATE ACTION
22 RESULTING DIRECTLY OR INDIRECTLY FROM THE ORIGINAL DEFECTIVE
23 CORPORATE ACTION ARE VALID AS OF THE TIME TAKEN.

24 (6) **Filings.** (a) IF THE DEFECTIVE CORPORATE ACTION RATIFIED
25 UNDER THIS SECTION WOULD HAVE REQUIRED, UNDER ANY OTHER SECTION
26 OF ARTICLES 101 TO 117 OF THIS TITLE 7, A FILING IN ACCORDANCE WITH
27 ARTICLES 101 TO 117 OF THIS TITLE 7, THEN, REGARDLESS OF WHETHER A

1 FILING WAS PREVIOUSLY MADE WITH RESPECT TO THE DEFECTIVE
2 CORPORATE ACTION AND IN LIEU OF A FILING OTHERWISE REQUIRED BY
3 ARTICLES 101 TO 117 OF THIS TITLE 7, THE CORPORATION SHALL FILE
4 ARTICLES OF VALIDATION IN ACCORDANCE WITH THIS SECTION, AND THE
5 ARTICLES OF VALIDATION AMEND OR SUBSTITUTE FOR ANY OTHER FILING
6 WITH RESPECT TO THE DEFECTIVE CORPORATE ACTION REQUIRED BY
7 ARTICLES 101 TO 117 OF THIS TITLE 7.

8 (b) THE ARTICLES OF VALIDATION MUST SET FORTH:

9 (I) THE DEFECTIVE CORPORATE ACTION THAT IS THE SUBJECT OF
10 THE ARTICLES OF VALIDATION, INCLUDING, IN THE CASE OF ANY DEFECTIVE
11 CORPORATE ACTION INVOLVING THE ISSUANCE OF PUTATIVE SHARES, THE
12 NUMBER AND TYPE OF PUTATIVE SHARES ISSUED AND THE DATE OR DATES
13 UPON WHICH THE PUTATIVE SHARES WERE PURPORTED TO HAVE BEEN
14 ISSUED;

15 (II) THE DATE OF THE DEFECTIVE CORPORATE ACTION;

16 (III) THE NATURE OF THE FAILURE OF AUTHORIZATION IN RESPECT
17 OF THE DEFECTIVE CORPORATE ACTION;

18 (IV) A STATEMENT THAT THE DEFECTIVE CORPORATE ACTION WAS
19 RATIFIED IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION,
20 INCLUDING THE DATE ON WHICH THE BOARD OF DIRECTORS RATIFIED THE
21 DEFECTIVE CORPORATE ACTION AND THE DATE, IF ANY, ON WHICH THE
22 SHAREHOLDERS APPROVED THE RATIFICATION OF THE DEFECTIVE
23 CORPORATE ACTION; AND

24 (V) THE INFORMATION REQUIRED BY SUBSECTION (6)(c) OF THIS
25 SECTION.

26 (c) THE ARTICLES OF VALIDATION MUST ALSO CONTAIN THE
27 FOLLOWING INFORMATION:

1 (I) IF A FILING WAS PREVIOUSLY MADE WITH RESPECT TO THE
2 DEFECTIVE CORPORATE ACTION AND NO CHANGES TO THE FILING ARE
3 REQUIRED TO GIVE EFFECT TO THE RATIFICATION OF THE DEFECTIVE
4 CORPORATE ACTION IN ACCORDANCE WITH SUBSECTION (2) OF THIS
5 SECTION:

6 (A) THE NAME, TITLE, AND FILING DATE OF THE FILING PREVIOUSLY
7 MADE AND ANY ARTICLES OF CORRECTION TO THAT FILING;

8 (B) A STATEMENT THAT A COPY OF THE FILING PREVIOUSLY MADE,
9 TOGETHER WITH ANY ARTICLES OF CORRECTION TO THAT FILING, IS
10 ATTACHED AS AN EXHIBIT TO THE ARTICLES OF VALIDATION; AND

11 (C) THE EXHIBIT REFERRED TO IN SUBSECTION (6)(c)(I)(B) OF THIS
12 SECTION;

13 (II) IF A FILING WAS PREVIOUSLY MADE WITH RESPECT TO THE
14 DEFECTIVE CORPORATE ACTION AND THE FILING REQUIRES ANY CHANGE
15 TO GIVE EFFECT TO THE RATIFICATION OF THE DEFECTIVE CORPORATE
16 ACTION IN ACCORDANCE WITH THIS SUBSECTION (6)(c):

17 (A) THE NAME, TITLE, AND FILING DATE OF THE FILING PREVIOUSLY
18 MADE AND ANY ARTICLES OF CORRECTION TO THAT FILING; AND

19 (B) A STATEMENT THAT A FILING CONTAINING ALL OF THE
20 INFORMATION REQUIRED TO BE INCLUDED UNDER THE APPLICABLE
21 SECTION OR SECTIONS OF ARTICLES 101 TO 117 OF THIS TITLE 7 TO GIVE
22 EFFECT TO THE DEFECTIVE CORPORATE ACTION IS ATTACHED AS AN
23 EXHIBIT TO THE ARTICLES OF VALIDATION; AND

24 (C) THE DATE AND TIME THAT THE FILING IS DEEMED TO HAVE
25 BECOME EFFECTIVE; OR

26 (III) IF A FILING WAS NOT PREVIOUSLY MADE WITH RESPECT TO THE
27 DEFECTIVE CORPORATE ACTION AND THE DEFECTIVE CORPORATE ACTION

1 RATIFIED UNDER SUBSECTION (2) OF THIS SECTION WOULD HAVE REQUIRED
2 A FILING UNDER ANY OTHER SECTION OF ARTICLES 101 TO 117 OF THIS
3 TITLE 7, THE ARTICLES OF VALIDATION MUST SET FORTH:

4 (A) A STATEMENT THAT A FILING CONTAINING ALL OF THE
5 INFORMATION REQUIRED TO BE INCLUDED UNDER THE APPLICABLE
6 SECTION OR SECTIONS OF ARTICLES 101 TO 117 OF THIS TITLE 7 TO GIVE
7 EFFECT TO THE DEFECTIVE CORPORATE ACTION IS ATTACHED AS AN
8 EXHIBIT TO THE ARTICLES OF VALIDATION;

9 (B) THE EXHIBIT REFERRED TO IN SUBSECTION (6)(c)(III)(A) OF
10 THIS SECTION; AND

11 (C) THE DATE AND TIME THAT THE FILING IS DEEMED TO HAVE
12 BECOME EFFECTIVE.

13 (7) **Judicial proceedings regarding validity of corporate**
14 **actions.** (a) UPON APPLICATION BY THE CORPORATION, A SUCCESSOR
15 ENTITY TO THE CORPORATION, A DIRECTOR OF THE CORPORATION, A
16 BENEFICIAL OWNER OF THE CORPORATION, INCLUDING ANY BENEFICIAL
17 OWNER AS OF THE DATE OF THE DEFECTIVE CORPORATE ACTION RATIFIED
18 UNDER SUBSECTION (2) OF THIS SECTION, OR ANY OTHER PERSON CLAIMING
19 TO BE SUBSTANTIALLY AND ADVERSELY AFFECTED BY A RATIFICATION
20 UNDER SUBSECTION (2) OF THIS SECTION, THE COURT AUTHORIZED TO ACT
21 UNDER SECTION 7-107-103 MAY:

22 (I) DETERMINE THE VALIDITY AND EFFECTIVENESS OF ANY
23 CORPORATE ACTION OR DEFECTIVE CORPORATE ACTION;

24 (II) DETERMINE THE VALIDITY AND EFFECTIVENESS OF ANY
25 RATIFICATION UNDER SUBSECTION (2) OF THIS SECTION;

26 (III) DETERMINE THE VALIDITY OF ANY PUTATIVE SHARES; AND

27 (IV) MODIFY OR WAIVE ANY OF THE PROCEDURES SPECIFIED IN

1 SUBSECTION (2) OR (3) OF THIS SECTION TO RATIFY A DEFECTIVE
2 CORPORATE ACTION.

3 (b) IN CONNECTION WITH AN ACTION UNDER THIS SECTION, THE
4 COURT MAY MAKE SUCH FINDINGS OR ORDERS, AND TAKE INTO ACCOUNT
5 ANY FACTORS OR CONSIDERATIONS, REGARDING THE MATTERS AT ISSUE AS
6 IT DEEMS PROPER UNDER THE CIRCUMSTANCES.

7 (c) SERVICE OF PROCESS OF THE APPLICATION UNDER SUBSECTION
8 (7)(a) OF THIS SECTION ON THE CORPORATION MAY BE MADE IN ANY
9 MANNER PROVIDED BY STATUTE OF THIS STATE OR BY RULE OF THE
10 APPLICABLE COURT FOR SERVICE ON THE CORPORATION, AND NO OTHER
11 PARTY NEED BE JOINED IN ORDER FOR THE COURT TO ADJUDICATE THE
12 MATTER. IN AN ACTION FILED BY THE CORPORATION, THE COURT MAY
13 REQUIRE THAT NOTICE OF THE ACTION BE PROVIDED TO OTHER PERSONS
14 SPECIFIED BY THE COURT AND PERMIT SOME OR ALL OF THOSE OTHER
15 PERSONS TO INTERVENE IN THE ACTION.

16 (d) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION OR
17 OTHERWISE APPLICABLE LAW, ANY ACTION ASSERTING THAT THE
18 RATIFICATION OF A DEFECTIVE CORPORATE ACTION AND ANY PUTATIVE
19 SHARES ISSUED AS A RESULT OF THE DEFECTIVE CORPORATE ACTION
20 SHOULD NOT BE EFFECTIVE, OR SHOULD BE EFFECTIVE ONLY ON CERTAIN
21 CONDITIONS, MUST BE BROUGHT WITHIN ONE HUNDRED TWENTY DAYS
22 AFTER THE VALIDATION EFFECTIVE TIME.

23 (8) **Definitions.** AS USED IN THIS SECTION:

24 (a) "CORPORATE ACTION" MEANS ANY ACTION TAKEN BY OR ON
25 BEHALF OF THE CORPORATION, INCLUDING ANY ACTION TAKEN BY AN
26 INCORPORATOR, THE BOARD OF DIRECTORS, A COMMITTEE OF THE BOARD
27 OF DIRECTORS, AN OFFICER OR AGENT OF THE CORPORATION, OR THE

1 SHAREHOLDERS.

2 (b) "DATE OF THE DEFECTIVE CORPORATE ACTION" MEANS THE
3 DATE, OR THE APPROXIMATE DATE IF THE EXACT DATE IS UNKNOWN, ON
4 WHICH THE DEFECTIVE CORPORATE ACTION WAS PURPORTED TO HAVE
5 BEEN TAKEN.

6 (c) "DEFECTIVE CORPORATE ACTION" MEANS:

7 (I) A CORPORATE ACTION PURPORTEDLY TAKEN THAT IS, AND AT
8 THE TIME THE CORPORATE ACTION WAS PURPORTEDLY TAKEN WOULD
9 HAVE BEEN, WITHIN THE POWER OF THE CORPORATION WITHOUT REGARD
10 TO THE FAILURE OF AUTHORIZATION IDENTIFIED IN SUBSECTION (2)(a) OF
11 THIS SECTION, BUT IS VOID OR VOIDABLE DUE TO A FAILURE OF
12 AUTHORIZATION; AND

13 (II) AN OVERISSUE.

14 (d) "FAILURE OF AUTHORIZATION" MEANS THE FAILURE TO
15 AUTHORIZE, APPROVE, OR OTHERWISE EFFECT A CORPORATE ACTION IN
16 COMPLIANCE WITH:

17 (I) ARTICLES 101 TO 117 OF THIS TITLE 7;

18 (II) THE ARTICLES OF INCORPORATION OR BYLAWS;

19 (III) A CORPORATE RESOLUTION OR ANY PLAN OR AGREEMENT TO
20 WHICH THE CORPORATION IS A PARTY; OR

21 (IV) THE DISCLOSURE SET FORTH IN ANY PROXY OR CONSENT
22 SOLICITATION STATEMENT IF, AND TO THE EXTENT, THE FAILURE WOULD
23 RENDER THE CORPORATE ACTION VOID OR VOIDABLE.

24 (e) "OVERISSUE" MEANS THE PURPORTED ISSUANCE OF:

25 (I) SHARES OF A CLASS OR SERIES IN EXCESS OF THE NUMBER OF
26 SHARES OF A CLASS OR SERIES THE CORPORATION HAS THE POWER TO ISSUE
27 UNDER SECTION 7-106-101 AT THE TIME OF ISSUANCE; OR

1 (II) SHARES OF ANY CLASS OR SERIES THAT ARE NOT THEN
2 AUTHORIZED FOR ISSUANCE BY THE ARTICLES OF INCORPORATION.

3 (f) "PUTATIVE SHARES" MEANS THE SHARES OF ANY CLASS OR
4 SERIES, INCLUDING SHARES ISSUED UPON EXERCISE OF RIGHTS, OPTIONS,
5 WARRANTS, OR OTHER SECURITIES CONVERTIBLE INTO SHARES OF THE
6 CORPORATION, OR INTERESTS WITH RESPECT TO THE SHARES, THAT WERE
7 CREATED OR ISSUED AS A RESULT OF A DEFECTIVE CORPORATE ACTION,
8 THAT:

9 (I) BUT FOR ANY FAILURE OF AUTHORIZATION, WOULD CONSTITUTE
10 VALID SHARES; OR

11 (II) CANNOT BE DETERMINED BY THE BOARD OF DIRECTORS TO BE
12 VALID SHARES.

13 (g) "VALID SHARES" MEANS THE SHARES OF ANY CLASS OR SERIES
14 THAT HAVE BEEN DULY AUTHORIZED AND VALIDLY ISSUED IN
15 ACCORDANCE WITH ARTICLES 101 TO 117 OF THIS TITLE 7, INCLUDING AS
16 A RESULT OF RATIFICATION OR VALIDATION UNDER THIS SECTION.

17 (h) (I) "VALIDATION EFFECTIVE TIME" MEANS, WITH RESPECT TO
18 ANY DEFECTIVE CORPORATE ACTION RATIFIED UNDER THIS SECTION, THE
19 LATER OF:

20 (A) THE TIME AT WHICH THE RATIFICATION OF THE DEFECTIVE
21 CORPORATE ACTION IS APPROVED BY THE SHAREHOLDERS OR, IF APPROVAL
22 OF SHAREHOLDERS IS NOT REQUIRED, THE TIME AT WHICH THE NOTICE
23 REQUIRED BY SUBSECTION (4) OF THIS SECTION TAKES EFFECT IN
24 ACCORDANCE WITH SECTION 7-101-402; AND

25 (B) THE TIME AT WHICH ANY ARTICLES OF VALIDATION FILED IN
26 ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION BECOME EFFECTIVE.

27 (II) THE VALIDATION EFFECTIVE TIME IS NOT AFFECTED BY THE

1 FILING OR PENDENCY OF A JUDICIAL PROCEEDING UNDER SUBSECTION (7)
2 OF THIS SECTION OR OTHERWISE, UNLESS OTHERWISE ORDERED BY THE
3 COURT.

4 **SECTION 32.** In Colorado Revised Statutes, 7-107-203, **amend**
5 (3) and (9) as follows:

6 **7-107-203. Proxies.** (3) An appointment of a proxy is effective
7 against the corporation when received by the corporation, including
8 receipt by the corporation of an appointment transmitted pursuant to
9 ~~paragraph (b) of subsection (2)~~ SUBSECTION (2)(b) of this section. An
10 appointment is valid for THE TERM SPECIFIED IN THE APPOINTMENT FORM
11 AND, IF NO TERM IS SPECIFIED, IS VALID FOR eleven months unless a
12 ~~different period is expressly provided in the appointment form~~ IS
13 IRREVOCABLE UNDER SUBSECTION (5) OF THIS SECTION.

14 (9) UNLESS AN APPOINTMENT OTHERWISE PROVIDES, AN
15 APPOINTMENT MADE IRREVOCABLE UNDER SUBSECTION (5) OF THIS
16 SECTION CONTINUES IN EFFECT AFTER A TRANSFER OF THE SHARES AND A
17 TRANSFEREE TAKES THE SHARES SUBJECT TO THE APPOINTMENT; EXCEPT
18 THAT a transferee for value of shares subject to an irrevocable
19 appointment may revoke the appointment if:

20 (a) The transferee did not know of its existence when the
21 transferee acquired the shares; and

22 (b) The existence of the irrevocable appointment was not noted on
23 the certificate representing the shares or on the information statement for
24 shares without certificates.

25 **SECTION 33.** In Colorado Revised Statutes, **amend** 7-107-204
26 as follows:

27 **7-107-204. Shares held by intermediaries and nominees.** (1) A

1 ~~corporation~~ CORPORATION'S BOARD OF DIRECTORS may establish a
2 procedure by which ~~the~~ A beneficial owner of shares that are registered
3 ~~in the name of a nominee~~ is recognized by the corporation IN ITS RECORDS
4 as the shareholder. The extent, TERMS, CONDITIONS, AND LIMITATIONS of
5 this ~~recognition may~~ TREATMENT MUST be ~~determined~~ SPECIFIED in the
6 procedure ~~thus~~ SO established. TO THE EXTENT THAT THE BENEFICIAL
7 OWNER IS TREATED UNDER THE PROCEDURE AS HAVING RIGHTS OR
8 PRIVILEGES THAT THE SHAREHOLDER OTHERWISE WOULD HAVE, THE
9 SHAREHOLDER DOES NOT HAVE THOSE RIGHTS OR PRIVILEGES.

10 (2) The procedure described in subsection (1) of this section ~~may~~
11 ~~state~~ MUST SPECIFY:

12 (a) The types of INTERMEDIARIES OR nominees to which it applies;

13 (b) The rights or privileges that the corporation recognizes in a
14 beneficial owner, which may include rights or privileges other than
15 voting;

16 (c) The manner in which the procedure may be used by the
17 INTERMEDIARY OR nominee;

18 (d) The information that shall be provided by the INTERMEDIARY
19 OR nominee when the procedure is used;

20 (e) The period for which the INTERMEDIARY'S OR nominee's use
21 of the procedure is effective; ~~and~~

22 (f) REQUIREMENTS FOR NOTICE TO THE CORPORATION WITH
23 RESPECT TO THE ARRANGEMENT, INCLUDING ANY REQUIREMENTS FOR THE
24 DEPOSIT WITH THE CORPORATION OF THE BENEFICIAL OWNERSHIP
25 CERTIFICATE;

26 (g) THE FORM AND CONTENTS OF THE BENEFICIAL OWNERSHIP
27 CERTIFICATE; AND

1 (†) (h) Other aspects of the rights and duties thereby created.

2 **SECTION 34.** In Colorado Revised Statutes, **amend** 7-107-205
3 as follows:

4 **7-107-205. Corporation's acceptance of votes.** (1) If the name
5 signed on a vote, BALLOT, consent, waiver, proxy appointment, or proxy
6 appointment revocation corresponds to the name of a shareholder, the
7 corporation, if acting in good faith, is entitled to accept the vote, BALLOT,
8 consent, waiver, proxy appointment, or proxy appointment revocation and
9 to give it effect as the act of the shareholder.

10 (2) If the name signed on a vote, BALLOT, consent, waiver, proxy
11 appointment, or proxy appointment revocation does not correspond to the
12 name of a shareholder, the corporation, if acting in good faith, is
13 nevertheless entitled to accept the vote, BALLOT, consent, waiver, proxy
14 appointment, or proxy appointment revocation and to give it effect as the
15 act of the shareholder if:

16 (a) The shareholder is an entity and the name signed purports to
17 be that of an officer or agent of the entity;

18 (b) The name signed purports to be that of an administrator,
19 executor, guardian, or conservator representing the shareholder and, if the
20 corporation requests, evidence of fiduciary status acceptable to the
21 corporation has been presented with respect to the vote, BALLOT, consent,
22 waiver, proxy appointment, or proxy appointment revocation;

23 (c) The name signed purports to be that of a receiver or trustee in
24 bankruptcy of the shareholder and, if the corporation requests, evidence
25 of this status acceptable to the corporation has been presented with
26 respect to the vote, BALLOT, consent, waiver, proxy appointment, or proxy
27 appointment revocation;

1 (d) The name signed purports to be that of a pledgee, beneficial
2 owner, or attorney-in-fact of the shareholder and, if the corporation
3 requests, evidence acceptable to the corporation of the signatory's
4 authority to sign for the shareholder has been presented with respect to
5 the vote, BALLOT, consent, waiver, proxy appointment, or proxy
6 appointment revocation;

7 (e) Two or more persons are the shareholder as cotenants or
8 fiduciaries and the name signed purports to be the name of at least one of
9 the cotenants or fiduciaries and the person signing appears to be acting on
10 behalf of all the cotenants or fiduciaries; or

11 (f) The acceptance of the vote, BALLOT, consent, waiver, proxy
12 appointment, or proxy appointment revocation is otherwise proper under
13 rules established by the corporation that are not inconsistent with the
14 provisions of this subsection (2).

15 (3) The corporation is entitled to reject a vote, BALLOT, consent,
16 waiver, proxy appointment, or proxy appointment revocation if the
17 secretary or other officer or agent authorized to tabulate votes, acting in
18 good faith, has reasonable basis for doubt about the validity of the
19 signature on it or about the signatory's authority to sign for the
20 shareholder.

21 (4) ~~NEITHER the corporation and its officer or agent who~~ NOR THE
22 PERSON AUTHORIZED TO COUNT VOTES THAT accepts or rejects a vote,
23 BALLOT, consent, waiver, proxy appointment, or proxy appointment
24 revocation in good faith and in accordance with the standards of this
25 section ~~are not~~ IS liable in damages for the consequences of the
26 acceptance or rejection.

27 (5) Corporate action based on the acceptance or rejection of a

1 vote, BALLOT, consent, waiver, proxy appointment, or proxy appointment
2 revocation under this section is valid unless a court of competent
3 jurisdiction determines otherwise.

4 **SECTION 35.** In Colorado Revised Statutes, **repeal** 7-107-401
5 as follows:

6 **7-107-401. Definition of "shareholder".** ~~As used in this part 4,~~
7 ~~"shareholder" includes a beneficial owner whose shares are held in a~~
8 ~~voting trust or held by a nominee on the beneficial owner's behalf.~~

9 **SECTION 36.** In Colorado Revised Statutes, **amend with**
10 **relocated provisions** part 4 of article 108 of title 7 as follows:

11 PART 4

12 STANDARDS OF CONDUCT

13 **7-108-401. General standards of conduct for directors and**
14 **officers.** (1) Each director shall discharge the director's duties as a
15 director, including the director's duties as a member of a committee, and
16 each officer with discretionary authority shall discharge the officer's
17 duties under that authority:

18 (a) In good faith;

19 (b) ~~With the care; an ordinarily prudent person in a like position~~
20 ~~would exercise under similar circumstances;~~ and

21 (c) In a manner the director or officer reasonably believes to be in
22 the best interests of the corporation.

23 (2) In discharging duties UNDER THIS SECTION, a director or officer
24 is entitled to rely on information, opinions, reports, or statements,
25 including financial statements and other financial data, if prepared or
26 presented by:

27 (a) One or more officers or employees of the corporation whom

1 the director or officer reasonably believes to be reliable and competent in
2 ~~the matters presented~~ WITH RESPECT TO THE INFORMATION, OPINIONS,
3 REPORTS, OR STATEMENTS;

4 (b) ONE OR MORE legal counsel, ~~a public accountant, or another~~
5 ~~person~~ ACCOUNTANTS, OR OTHER PERSONS RETAINED BY THE
6 CORPORATION as to matters INVOLVING EXPERTISE OR SKILLS the director
7 or officer reasonably believes are within ~~such~~ THE person's professional
8 or expert competence; ~~or~~

9 (c) In the case of a director, a committee of the board of directors
10 of which the director is not a member if the director reasonably believes
11 the committee merits confidence; OR

12 (d) IN THE CASE OF AN OFFICER, THE BOARD OF DIRECTORS OR ANY
13 COMMITTEE OF THE BOARD OF DIRECTORS.

14 (3) A director or officer ~~is not acting in good faith~~ MAY NOT RELY
15 ON INFORMATION, OPINION, REPORTS, OR STATEMENTS AS PERMITTED BY
16 SUBSECTION (2) OF THIS SECTION if the director or officer has knowledge
17 concerning the matter in question that makes THE reliance ~~otherwise~~
18 ~~permitted by subsection (2) of this section~~ unwarranted.

19 (4) ~~A director or officer is not liable as such to the corporation or~~
20 ~~its shareholders for any action the director or officer takes or omits to take~~
21 ~~as a director or officer, as the case may be, if, in connection with such~~
22 ~~action or omission, the director or officer performed the duties of the~~
23 ~~position in compliance with this section.~~

24 (5) (4) A director or officer of a corporation, in the performance
25 of duties in that capacity, ~~shall~~ DOES not have any fiduciary duty to any
26 creditor of the corporation arising only from the status as a creditor,
27 WHETHER THE CORPORATION IS SOLVENT OR INSOLVENT.

1 **7-108-402. Standards of liabilities for directors.** (1) A
2 DIRECTOR IS LIABLE, AS A DIRECTOR, TO THE CORPORATION OR TO ITS
3 SHAREHOLDERS FOR MONEY DAMAGES OR OTHER MONEY PAYMENT FOR
4 ANY ACT, OMISSION TO ACT, OR DECISION ONLY IF THE PARTY ASSERTING
5 LIABILITY ESTABLISHES IN A PROCEEDING THAT THE CHALLENGED ACT,
6 OMISSION, OR DECISION:

7 (a) WAS NOT IN GOOD FAITH;

8 (b) WAS ONE THAT THE DIRECTOR DID NOT RATIONALLY BELIEVE
9 TO BE IN THE BEST INTERESTS OF THE CORPORATION;

10 (c) WAS ONE AS TO WHICH THE DIRECTOR WAS AT LEAST GROSSLY
11 NEGLIGENT, UNLESS THE ARTICLES OF INCORPORATION CHANGE THE
12 STANDARD OF LIABILITY TO KNOWING MISCONDUCT, KNOWING VIOLATION
13 OF LAW, OR NEGLIGENCE;

14 (d) WAS ONE AS TO WHICH THE DIRECTOR FAILED TO MAKE OR
15 CAUSE TO BE MADE APPROPRIATE INQUIRY, WHEN PARTICULAR FACTS OR
16 CIRCUMSTANCES OF SIGNIFICANT CONCERN CAME TO THE ATTENTION OF
17 THE DIRECTOR THAT WOULD HAVE ALERTED A REASONABLY ATTENTIVE
18 DIRECTOR TO THE NEED FOR INQUIRY;

19 (e) CONSISTED OF OR RESULTED FROM A SUSTAINED OR
20 SYSTEMATIC FAILURE BY THE DIRECTOR TO EXERCISE OVERSIGHT OF THE
21 BUSINESS AND AFFAIRS OF THE CORPORATION;

22 (f) SUBJECT TO SECTION 7-108-501, WAS A BREACH OF THE
23 DIRECTOR'S DUTY OF LOYALTY TO THE CORPORATION, INCLUDING BY
24 DIRECTLY OR INDIRECTLY RECEIVING AN IMPROPER PERSONAL BENEFIT; OR

25 (g) CONSISTED OF OR RESULTED FROM A VOTE OR ASSENT
26 SPECIFIED IN SECTION 7-108-405.

27 (2) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (1) OF THIS

1 SECTION, THE PARTY SEEKING TO HOLD THE DIRECTOR LIABLE HAS:

2 (a) WITH RESPECT TO MONEY DAMAGES, THE BURDEN OF
3 ESTABLISHING THAT THE MONEY DAMAGES WERE:

4 (I) SUFFERED BY THE CORPORATION OR ITS SHAREHOLDERS; AND

5 (II) CAUSED BY THE DIRECTOR'S CHALLENGED CONDUCT;

6 (b) WITH RESPECT TO OTHER MONEY PAYMENT UNDER A LEGAL
7 REMEDY, SUCH AS COMPENSATION FOR THE UNAUTHORIZED USE OF
8 CORPORATE ASSETS, WHATEVER PERSUASION BURDEN MAY BE CALLED FOR
9 TO ESTABLISH THAT THE MONEY PAYMENT SOUGHT IS APPROPRIATE IN THE
10 CIRCUMSTANCES; OR

11 (c) WITH RESPECT TO OTHER MONEY PAYMENT UNDER AN
12 EQUITABLE REMEDY, SUCH AS PROFIT RECOVERY BY OR DISGORGEMENT TO
13 THE CORPORATION, WHATEVER PERSUASION BURDEN MAY BE CALLED FOR
14 TO ESTABLISH THAT THE EQUITABLE REMEDY SOUGHT IS APPROPRIATE IN
15 THE CIRCUMSTANCES.

16 (3) A DIRECTOR LIABLE UNDER THIS SECTION FOR MONEY
17 DAMAGES OR FOR OTHER MONEY PAYMENT MAY OFFSET AGAINST THE
18 LIABILITY ANY GAIN TO THE CORPORATION THAT THE DIRECTOR
19 ESTABLISHES AROSE OUT OF THE SAME TRANSACTION, UNLESS THE OFFSET
20 IS AGAINST PUBLIC POLICY.

21 **7-108-403. [Formerly 7-108-402] Limitation of certain**
22 **liabilities of directors and officers.** ~~(1) If so provided in the articles of~~
23 ~~incorporation, the corporation shall eliminate or limit the personal~~
24 ~~liability of a director to the corporation or to its shareholders for monetary~~
25 ~~damages for breach of fiduciary duty as a director; except that any such~~
26 ~~provision shall not eliminate or limit the liability of a director to the~~
27 ~~corporation or to its shareholders for monetary damages for any breach~~

1 of the director's duty of loyalty to the corporation or to its shareholders,
2 acts or omissions not in good faith or which involve intentional
3 misconduct or a knowing violation of law, acts specified in section
4 7-108-403, or any transaction from which the director directly or
5 indirectly derived an improper personal benefit. No such provision shall
6 eliminate or limit the liability of a director to the corporation or to its
7 shareholders for monetary damages for any act or omission occurring
8 before the date when such provision becomes effective.

9 (2) ~~No~~ A director or officer shall be IS NOT personally liable for
10 any injury to person or property arising out of a tort committed by an
11 employee unless such THE director or officer was personally involved in
12 the situation giving rise to the litigation or unless such THE director or
13 officer committed a criminal offense in connection with such THE
14 situation. The protection afforded in this subsection (2) shall SECTION
15 DOES not restrict other common-law protections and rights that a director
16 or officer may have. This subsection (2) shall not restrict the corporation's
17 right to eliminate or limit the personal liability of a director to the
18 corporation or to its shareholders for monetary damages for breach of
19 fiduciary duty as a director as provided in subsection (1) of this section.

20 **7-108-404. Limitation of certain remedies - definition.** (1) AN
21 ACTION BY THE CORPORATION OR BY THE BOARD OF DIRECTORS IS NOT
22 VOID OR VOIDABLE, AND SHALL NOT BE ENJOINED OR SET ASIDE IN A
23 PROCEEDING BY A SHAREHOLDER OR BY OR IN THE RIGHT OF THE
24 CORPORATION, BECAUSE ONE OR MORE PRECLUDED DIRECTORS WAS
25 PRESENT AT OR PARTICIPATED IN THE MEETING OF THE BOARD OF
26 DIRECTORS AT WHICH THE ACTION WAS AUTHORIZED, APPROVED, OR
27 RATIFIED, OR EXECUTED A CONSENT FOR THE ACTION IN THE MANNER

1 PROVIDED IN SECTION 7-108-202, IF THE ACTION WAS AUTHORIZED,
2 APPROVED, OR RATIFIED:

3 (a) AT A MEETING, BY THE AFFIRMATIVE VOTE OF THE NUMBER OF
4 DIRECTORS PRESENT AT THE MEETING THAT WOULD BE SUFFICIENT TO
5 TAKE ACTION AT THE MEETING UNDER ARTICLES 101 TO 117 OF THIS TITLE
6 7 OR THE BYLAWS; EXCEPT THAT, IN DETERMINING HOW MANY VOTES
7 WOULD BE SUFFICIENT, THE VOTE OF A PRECLUDED DIRECTOR IS NOT
8 COUNTED FOR PURPOSES OF AUTHORIZING THE ACTION BUT THE DIRECTOR
9 IS CONSIDERED PRESENT FOR PURPOSES OF DETERMINING A QUORUM; OR

10 (b) WITHOUT A MEETING BY WRITTEN CONSENT PURSUANT TO
11 SECTION 7-108-202 AND EXECUTED BY ALL OF THE DIRECTORS, IF THE
12 NUMBER OF DIRECTORS, NOT INCLUDING ANY PRECLUDED DIRECTOR,
13 CONSTITUTES NOT LESS THAN A MAJORITY OF ALL OF THE DIRECTORS OR
14 SUCH GREATER NUMBER OF DIRECTORS AS IS REQUIRED BY ARTICLES 101
15 TO 117 OF THIS TITLE 7 OR THE BYLAWS.

16 (2) IN THIS SECTION, "PRECLUDED DIRECTOR" MEANS A DIRECTOR
17 WHO VIOLATED ONE OR MORE OF THE STANDARDS OF LIABILITY SET FORTH
18 IN SECTION 7-108-402 (1) WITH RESPECT TO AN ACTION DESCRIBED IN
19 SUBSECTION (1) OF THIS SECTION.

20 **7-108-405. [Formerly 7-108-403] Liability of directors for**
21 **unlawful distributions.** (1) A director who votes for or assents to a
22 distribution made in violation of section 7-106-401 or the articles of
23 incorporation is personally liable to the corporation for the amount of the
24 distribution that exceeds what could have been distributed without
25 violating ~~said~~ section 7-106-401 or the articles of incorporation if it is
26 established that the director did not perform the director's duties in
27 compliance with section 7-108-401. In any proceeding commenced under

1 this section, a director ~~shall have~~ HAS all of the defenses ordinarily
2 available to a director.

3 (2) A director held liable under subsection (1) of this section for
4 an unlawful distribution is entitled to contribution:

5 (a) From every other director who could be held liable under
6 subsection (1) of this section for the unlawful distribution; and

7 (b) From each shareholder who accepted the distribution knowing
8 the distribution was made in violation of section 7-106-401 or the articles
9 of incorporation, the amount of the contribution from ~~such~~ THE
10 shareholder being the amount of the distribution to that shareholder that
11 exceeds what could have been distributed to that shareholder without
12 violating ~~said~~ section 7-106-401 or the articles of incorporation.

13 **SECTION 37.** In Colorado Revised Statutes, **amend** 7-108-501
14 as follows:

15 **7-108-501. Conflicting interest transaction.** (1) (a) As used in
16 this section, "conflicting interest transaction" means, WITH RESPECT TO A
17 DIRECTOR OF THE CORPORATION, any of the following:

18 (I) A loan or other assistance by a corporation to a director of the
19 corporation or to an entity in which ~~a~~ THE director ~~of the corporation~~ is a
20 director or officer or has a financial interest THAT IS KNOWN TO, AND
21 MATERIAL TO, THE DIRECTOR;

22 (II) A guaranty by a corporation of an obligation of ~~a~~ THE director
23 ~~of the corporation~~ or of an obligation of an entity in which ~~a~~ THE director
24 ~~of the corporation~~ is a director or officer or has a financial interest ~~or~~
25 THAT IS KNOWN TO, AND MATERIAL TO, THE DIRECTOR;

26 (III) A contract or transaction between ~~a~~ THE corporation and ~~a~~
27 THE director ~~of the corporation~~ or between the corporation and an entity

1 in which ~~a~~ THE director of ~~the corporation~~ is a director or officer or has
2 a financial interest THAT IS KNOWN TO, AND MATERIAL TO, THE DIRECTOR;
3 OR

4 (IV) THE DIRECTOR'S TAKING A CORPORATE OPPORTUNITY,
5 EXCEPT TO THE EXTENT PERMITTED PURSUANT TO A PROVISION OF THE
6 ARTICLES OF INCORPORATION ADOPTED UNDER SECTION 7-102-102 (2)(d).

7 (b) "Conflicting interest transaction" ~~shall~~ DOES not include any
8 transaction between:

9 (I) A corporation and another entity ~~that~~ IF THE OTHER ENTITY
10 owns, directly or indirectly, all of the outstanding shares of the
11 corporation; or

12 (II) THE CORPORATION AND ANOTHER ENTITY IF THE CORPORATION
13 OWNS, DIRECTLY OR INDIRECTLY, all of the outstanding shares or other
14 equity interests of ~~which are owned, directly or indirectly, by the~~
15 ~~corporation~~ THE OTHER ENTITY.

16 (2) ~~No~~ A conflicting interest transaction ~~shall be~~ IS NOT void or
17 voidable, ~~or~~ SHALL NOT be enjoined OR set aside, ~~or~~ AND DOES NOT give
18 rise to an award of damages or other sanctions in a proceeding by a
19 shareholder or by or in the right of the corporation, solely because ~~the~~ IT
20 IS A conflicting interest transaction ~~involves a director of the corporation~~
21 ~~or an entity in which a director of the corporation is a director or officer~~
22 ~~or has a financial interest or solely~~ OR because the director is present at
23 or participates in the meeting of the corporation's board of directors or of
24 the committee of the board of directors ~~which~~ THAT authorizes, approves,
25 or ratifies the conflicting interest transaction or ~~solely~~ because the
26 director's vote is counted for ~~such~~ THAT purpose if:

27 (a) The material facts as to the director's relationship or interest

1 and as to the conflicting interest transaction are disclosed or are known
2 to the board of directors or the committee, and the board of directors or
3 committee in good faith authorizes, approves, or ratifies the conflicting
4 interest transaction by the affirmative vote of a majority of the
5 disinterested directors, even though the disinterested directors are less
6 than a quorum; or

7 (b) The material facts as to the director's relationship or interest
8 and as to the conflicting interest transaction are disclosed or are known
9 to the shareholders entitled to vote ~~thereon~~, ON THE CONFLICTING
10 INTEREST TRANSACTION, and:

11 (I) The conflicting interest transaction is specifically authorized,
12 approved, or ratified ~~in good faith~~ by a vote of the DISINTERESTED
13 shareholders IN WHICH THE VOTES CAST IN FAVOR OF AUTHORIZING,
14 APPROVING, OR RATIFYING THE CONFLICTING INTEREST TRANSACTION
15 EXCEED THE VOTES CAST IN OPPOSITION; or

16 (II) IF THE ARTICLES OF INCORPORATION PROVIDE FOR VOTING ON
17 THE MATTER BY THE DISINTERESTED SHAREHOLDERS IN TWO OR MORE
18 VOTING GROUPS, THE CONFLICTING INTEREST TRANSACTION IS
19 SPECIFICALLY AUTHORIZED, APPROVED, OR RATIFIED BY A VOTE OF EACH
20 VOTING GROUP IN WHICH THE VOTES CAST WITHIN THE VOTING GROUP IN
21 FAVOR OF AUTHORIZING, APPROVING, OR RATIFYING THE CONFLICTING
22 INTEREST TRANSACTION EXCEED THE VOTES CAST WITHIN THE VOTING
23 GROUP IN OPPOSITION; OR

24 (c) The conflicting interest transaction is fair as to the corporation.

25 (3) A DIRECTOR'S TAKING ADVANTAGE, DIRECTLY OR INDIRECTLY,
26 OF A CORPORATE OPPORTUNITY SHALL NOT BE ENJOINED OR SET ASIDE AND
27 DOES NOT GIVE RISE TO AN AWARD OF DAMAGES OR OTHER SANCTIONS IN

1 A PROCEEDING BY A SHAREHOLDER OR BY OR IN THE RIGHT OF THE
2 CORPORATION, BECAUSE THE DIRECTOR TOOK SUCH ADVANTAGE, IF:

3 (a) THE MATERIAL FACTS AS TO THE DIRECTOR'S RELATIONSHIP OR
4 INTEREST AND AS TO THE CORPORATE OPPORTUNITY ARE DISCLOSED TO OR
5 ARE KNOWN TO THE BOARD OF DIRECTORS OR THE COMMITTEE, AND THE
6 BOARD OF DIRECTORS OR COMMITTEE AUTHORIZES, APPROVES, OR
7 RATIFIES THE TAKING OF THE CORPORATE OPPORTUNITY BY THE
8 AFFIRMATIVE VOTE OF A MAJORITY OF THE DISINTERESTED DIRECTORS,
9 EVEN THOUGH THE DISINTERESTED DIRECTORS ARE LESS THAN A QUORUM;
10 OR

11 (b) THE MATERIAL FACTS AS TO THE DIRECTOR'S RELATIONSHIP OR
12 INTEREST AND AS TO THE CORPORATE OPPORTUNITY ARE DISCLOSED TO OR
13 ARE KNOWN TO THE SHAREHOLDERS ENTITLED TO VOTE ON THE
14 CORPORATE OPPORTUNITY, AND EITHER:

15 (I) THE TAKING OF THE CORPORATE OPPORTUNITY IS SPECIFICALLY
16 AUTHORIZED, APPROVED, OR RATIFIED BY A VOTE OF THE DISINTERESTED
17 SHAREHOLDERS IN WHICH THE VOTES CAST IN FAVOR OF AUTHORIZING,
18 APPROVING, OR RATIFYING THE TAKING OF THE CORPORATE OPPORTUNITY
19 EXCEED THE VOTES CAST IN OPPOSITION; OR

20 (II) IF THE ARTICLES OF INCORPORATION PROVIDE FOR VOTING ON
21 THE MATTER BY THE DISINTERESTED SHAREHOLDERS IN TWO OR MORE
22 VOTING GROUPS, THE TAKING OF THE CORPORATE OPPORTUNITY IS
23 SPECIFICALLY AUTHORIZED, APPROVED, OR RATIFIED BY A VOTE OF EACH
24 SUCH VOTING GROUP IN WHICH THE VOTES CAST WITHIN THE VOTING
25 GROUP IN FAVOR OF AUTHORIZING, APPROVING, OR RATIFYING THE TAKING
26 OF THE CORPORATE OPPORTUNITY EXCEED THE VOTES CAST WITHIN THE
27 VOTING GROUP IN OPPOSITION.

1 ~~(3)~~ (4) Common or interested directors may be counted in
2 determining the presence of a quorum at a meeting of the board of
3 directors or of a committee ~~which~~ THAT authorizes, approves, or ratifies
4 ~~the~~ A conflicting interest transaction OR THE TAKING OF A CORPORATE
5 OPPORTUNITY.

6 ~~(4) (a)~~ Neither a board of directors nor a committee thereof shall
7 authorize a loan, by the corporation to a director of the corporation or to
8 an entity in which a director of the corporation is a director or officer or
9 has a financial interest, or a guaranty, by the corporation of an obligation
10 of a director of the corporation or of an obligation of an entity in which
11 a director of the corporation is a director or officer or has a financial
12 interest, pursuant to paragraph (a) of subsection (2) of this section, until
13 at least ten days after written notice of the proposed authorization of the
14 loan or guaranty has been given to the shareholders who would be entitled
15 to vote thereon if the issue of the loan or guaranty were submitted to a
16 vote of the shareholders.

17 ~~(b) (I)~~ Notwithstanding any provision of paragraph (a) of this
18 subsection (4) to the contrary, a board of directors or a subsidiary of the
19 corporation shall not authorize the corporation or subsidiary of the
20 corporation to extend or maintain credit, to arrange for the extension of
21 credit, or to renew an extension of credit in the form of a personal loan to
22 or for a director of the corporation pursuant to paragraph (a) of subsection
23 (2) of this section. For the purposes of this paragraph (b), a corporation
24 or entity is limited to an issuer as defined in section 2 of the federal
25 "Sarbanes-Oxley Act of 2002", 15 U.S.C. sec. 7201.

26 ~~(II)~~ The provisions of this paragraph (b) shall not apply to:

27 ~~(A)~~ An extension of credit or guaranty maintained by a

1 corporation or entity on August 6, 2003, so long as there is no material
2 modification made to the extension of credit or guaranty or the extension
3 of credit or guaranty is not renewed;

4 (B) ~~An extension of credit or guaranty for a home improvement
5 loan or manufactured home loan under section 5 of the federal "Home
6 Owner's Loan Act", 12 U.S.C. sec. 1464;~~

7 (C) ~~An extension of credit or guaranty for a consumer credit loan
8 as defined in the federal "Truth in Lending Act", 15 U.S.C. sec. 1602;~~

9 (D) ~~An extension of credit under an open end credit plan pursuant
10 to section 103 of the federal "Truth in Lending Act", 15 U.S.C. sec. 1602;~~

11 (E) ~~An extension of credit from a charge card pursuant to the
12 federal "Truth in Lending Act", 15 U.S.C. sec. 1637 (c)(4)(e);~~

13 (F) ~~An extension of credit by a broker or dealer that buys, trades,
14 or carries securities permitted under rules of the board of governors of the
15 federal reserve system to an employee to buy, trade, or carry securities;
16 except that such extension of credit shall not include an extension of
17 credit that would be used to purchase stock of the corporation or entity
18 employing such employee; or~~

19 (G) ~~An extension of credit that is subject to 12 CFR 215 or 12
20 CFR 223, as amended, or any rule promulgated by the division of
21 banking.~~

22 (H) ~~An extension of credit pursuant to subparagraph (H) of this
23 paragraph (b) shall be issued in terms no more favorable than terms
24 offered to a member of the public for an extension of credit generally
25 made available to a member of the public, and made in the ordinary
26 course of business.~~

27 (IV) ~~Subparagraphs (I) to (H) of this paragraph (b) are repealed~~

1 as of the effective date of any federal law that would permit any activity
2 described in this paragraph (b).

3 (5) UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF
4 INCORPORATION, A MAJORITY OF THE VOTES OF DISINTERESTED
5 SHAREHOLDERS ENTITLED TO BE CAST ON THE MATTER OF AUTHORIZING,
6 APPROVING, OR RATIFYING A CONFLICTING INTEREST TRANSACTION
7 PURSUANT TO SUBSECTION (2)(b) OF THIS SECTION OR A TAKING OF A
8 CORPORATE OPPORTUNITY PURSUANT TO SUBSECTION (3)(b) OF THIS
9 SECTION CONSTITUTES A QUORUM OF THAT VOTING GROUP FOR ACTION ON
10 THAT MATTER, BUT A QUORUM MUST NOT CONSIST OF FEWER THAN
11 ONE-THIRD OF THE VOTES OF DISINTERESTED SHAREHOLDERS ENTITLED TO
12 BE CAST ON THE MATTER BY THE VOTING GROUP.

13 **SECTION 38.** In Colorado Revised Statutes, 7-109-101, **amend**
14 the introductory portion, (2), and (7) as follows:

15 **7-109-101. Definitions.** As used in this ~~article~~ ARTICLE 109:

16 (2) "Director" means an individual who is or was a director of a
17 corporation or an individual who, while a director of a corporation, is or
18 was serving at the corporation's request as a director, an officer, an agent,
19 an associate, an employee, a fiduciary, a manager, a member, a partner,
20 a promoter, or a trustee of, or ~~to hold any similar position~~ IN ANY OTHER
21 CAPACITY with, another ~~domestic or foreign entity~~ PERSON or of an
22 employee benefit plan. A director is considered to be serving an employee
23 benefit plan at the corporation's request if the director's duties to the
24 corporation also impose duties on, or otherwise involve services by, the
25 director to the plan or to participants in or beneficiaries of the plan.
26 "Director" includes, unless the context requires otherwise, the estate or
27 personal representative of a deceased director.

1 (7) "Proceeding" means any threatened, pending, or completed
2 action, suit, or proceeding, whether civil, criminal, administrative,
3 ARBITRATIVE, or investigative and whether formal or informal.

4 **SECTION 39.** In Colorado Revised Statutes, 7-109-102, **amend**
5 (1), (3), and (4)(a) as follows:

6 **7-109-102. Authority to indemnify directors.** (1) Except as
7 provided in subsection (4) of this section, a corporation may indemnify
8 ~~a person~~ AN INDIVIDUAL made a party to a proceeding, because the ~~person~~
9 INDIVIDUAL is or was a director, against liability incurred in the
10 proceeding if:

11 (a) The ~~person's~~ INDIVIDUAL'S conduct was in good faith; and

12 (b) The ~~person~~ INDIVIDUAL reasonably believed:

13 (I) In the case of conduct in an official capacity with the
14 corporation, that ~~such~~ THE conduct was in the corporation's best interests;
15 and

16 (II) In all other cases, that ~~such~~ THE conduct was at least not
17 opposed to the corporation's best interests; and

18 (c) In the case of any criminal proceeding, the ~~person~~ INDIVIDUAL
19 had no reasonable cause to believe the ~~person's~~ INDIVIDUAL'S conduct was
20 unlawful.

21 (3) The termination of a proceeding by judgment, order,
22 settlement, conviction, or upon a plea of nolo contendere or its equivalent
23 ~~is~~ DOES not, of itself, ~~determinative~~ CREATE A PRESUMPTION that the
24 director did not meet the RELEVANT standard of conduct described in this
25 section.

26 (4) A corporation may not indemnify a director under this section:

27 (a) In connection with a proceeding by or in the right of the

1 corporation in which the director was adjudged liable to the corporation
2 EXCEPT FOR REASONABLE EXPENSES INCURRED IN CONNECTION WITH THE
3 PROCEEDING IF IT IS DETERMINED THAT THE DIRECTOR HAS MET THE
4 RELEVANT STANDARD OF CONDUCT UNDER SUBSECTION (1) OF THIS
5 SECTION; or

6 **SECTION 40.** In Colorado Revised Statutes, **amend** 7-109-103
7 as follows:

8 **7-109-103. Mandatory indemnification of directors.** Unless
9 limited by its articles of incorporation, a corporation shall indemnify a
10 ~~person~~ AN INDIVIDUAL who was wholly successful, on the merits or
11 otherwise, in the defense of any proceeding to which the ~~person~~
12 INDIVIDUAL was a party because the ~~person~~ INDIVIDUAL is or was a
13 director, against reasonable expenses incurred by the ~~person~~ INDIVIDUAL
14 in connection with the proceeding.

15 **SECTION 41.** In Colorado Revised Statutes, **amend** 7-109-104
16 as follows:

17 **7-109-104. Advance of expenses to directors.** (1) A corporation
18 may, BEFORE FINAL DISPOSITION OF A PROCEEDING, pay for or reimburse
19 the reasonable expenses incurred by a ~~director~~ AN INDIVIDUAL who is a
20 party to a proceeding ~~in advance of final disposition of the proceeding~~
21 BECAUSE THAT PERSON IS A DIRECTOR if:

22 (a) The director ~~furnishes~~ DELIVERS to the corporation a written
23 affirmation of the director's good faith belief that:

24 (I) The director has met the RELEVANT standard of conduct
25 described in section 7-109-102; OR

26 (II) THE PROCEEDING INVOLVES CONDUCT FOR WHICH LIABILITY
27 HAS BEEN ELIMINATED UNDER A PROVISION IN THE ARTICLES OF

1 INCORPORATION AS AUTHORIZED BY SECTION 7-102-102 (2)(d); AND

2 (b) The director ~~furnishes~~ DELIVERS to the corporation a written
3 undertaking, executed personally or on the director's behalf, to repay ~~the~~
4 ~~advance~~ ANY FUNDS ADVANCED if THE DIRECTOR IS NOT ENTITLED TO
5 MANDATORY INDEMNIFICATION UNDER SECTION 7-109-103 AND it is
6 ultimately determined UNDER SECTION 7-109-105 OR 7-109-106 that the
7 director ~~did~~ HAS not ~~meet~~ MET the RELEVANT standard of conduct
8 DESCRIBED IN SECTION 7-109-102. ~~and~~

9 ~~(c) A determination is made that the facts then known to those~~
10 ~~making the determination would not preclude indemnification under this~~
11 ~~article.~~

12 (2) The undertaking required by ~~paragraph (b) of subsection (1)~~
13 SUBSECTION (1)(b) of this section ~~shall be~~ IS an unlimited general
14 obligation of the director but need not be secured and may be accepted
15 without reference to financial ability to make repayment.

16 (3) ~~Determinations and~~ Authorizations of payments under this
17 section shall be made in the manner specified in section 7-109-106.

18 **SECTION 42.** In Colorado Revised Statutes, **amend** 7-109-105
19 as follows:

20 **7-109-105. Court-ordered indemnification - advance of**
21 **expenses.** (1) Unless otherwise provided in the articles of incorporation,
22 a director who is or was a party to a proceeding may apply for
23 indemnification OR AN ADVANCE OF EXPENSES to the court conducting the
24 proceeding or to another court of competent jurisdiction. ~~On~~ AFTER
25 receipt of an application ~~the court~~, AND after giving any notice the court
26 considers necessary, THE COURT may order indemnification OR AN
27 ADVANCE OF EXPENSES in the following manner:

1 (a) If it determines that the director is entitled to mandatory
2 indemnification under section 7-109-103, the court shall order
3 indemnification, in which case the court shall also order the corporation
4 to pay the director's reasonable expenses incurred to obtain court-ordered
5 indemnification.

6 (b) IF IT DETERMINES THAT THE DIRECTOR IS ENTITLED TO
7 INDEMNIFICATION OR AN ADVANCE OF EXPENSES UNDER SECTION
8 7-109-109 (1), THE COURT SHALL ORDER INDEMNIFICATION OR AN
9 ADVANCE OF EXPENSES, AS APPLICABLE, IN WHICH CASE THE COURT SHALL
10 ALSO ORDER THE CORPORATION TO PAY THE DIRECTOR'S REASONABLE
11 EXPENSES INCURRED TO OBTAIN COURT-ORDERED INDEMNIFICATION OR AN
12 ADVANCE OF EXPENSES.

13 ~~(b)~~ (c) If it determines that the director is fairly and reasonably
14 entitled to indemnification OR AN ADVANCE OF EXPENSES in view of all
15 the relevant circumstances, whether or not the director met the standard
16 of conduct set forth in section 7-109-102 (1), FAILED TO COMPLY WITH
17 SECTION 7-109-104, or was adjudged liable in the circumstances
18 described in section 7-109-102 (4), the court may order such
19 indemnification OR AN ADVANCE OF EXPENSES as the court deems proper;
20 except that the indemnification with respect to any proceeding in which
21 liability ~~shall have~~ HAS been adjudged in the circumstances described in
22 section 7-109-102 (4) is limited to reasonable expenses incurred in
23 connection with the proceeding and reasonable expenses incurred to
24 obtain court-ordered indemnification.

25 **SECTION 43.** In Colorado Revised Statutes, **amend** 7-109-106
26 as follows:

27 **7-109-106. Determination and authorization of**

1 **indemnification of directors.** (1) A corporation may not indemnify a
2 director under section 7-109-102 unless authorized in the specific case
3 after a determination has been made that indemnification of the director
4 is permissible in the circumstances because the director has met the
5 standard of conduct set forth in section 7-109-102. A corporation shall
6 not advance expenses to a director under section 7-109-104 unless
7 authorized in the specific case after the written affirmation and
8 undertaking required by section 7-109-104 (1)(a) and (1)(b) are received.
9 ~~and the determination required by section 7-109-104 (1)(c) has been~~
10 ~~made.~~

11 (2) The determinations required by subsection (1) of this section
12 ~~shall~~ MUST be made:

13 (a) ~~IF THERE ARE TWO OR MORE DISINTERESTED DIRECTORS, by the~~
14 ~~board of directors by a majority vote of those present at a meeting at~~
15 ~~which a quorum is present, and only those directors not parties to the~~
16 ~~proceeding shall be counted in satisfying the quorum; or ALL THE~~
17 ~~DISINTERESTED DIRECTORS, A MAJORITY OF WHOM CONSTITUTE A QUORUM~~
18 ~~FOR THIS PURPOSE, OR BY A MAJORITY VOTE OF A COMMITTEE OF THE~~
19 ~~BOARD OF DIRECTORS APPOINTED BY SUCH A VOTE, WHICH COMMITTEE~~
20 ~~CONSISTS OF TWO OR MORE DISINTERESTED DIRECTORS;~~

21 (b) ~~If a quorum cannot be obtained, by a majority vote of a~~
22 ~~committee of the board of directors designated by the board of directors,~~
23 ~~which committee shall consist of two or more directors not parties to the~~
24 ~~proceeding; except that directors who are parties to the proceeding may~~
25 ~~participate in the designation of directors for the committee. BY~~
26 ~~INDEPENDENT LEGAL COUNSEL SELECTED IN THE MANNER SPECIFIED IN~~
27 ~~SUBSECTION (2)(a) OF THIS SECTION OR, IF THERE ARE FEWER THAN TWO~~

1 DISINTERESTED DIRECTORS, BY INDEPENDENT LEGAL COUNSEL SELECTED
2 BY A MAJORITY VOTE OF THE FULL BOARD OF DIRECTORS; OR

3 (c) BY THE SHAREHOLDERS, BUT SHARES OWNED BY OR VOTED
4 UNDER THE CONTROL OF A DIRECTOR WHO AT THE TIME IS NOT A
5 DISINTERESTED DIRECTOR MAY NOT BE VOTED ON THE DETERMINATION.

6 ~~(3) If a quorum cannot be obtained as contemplated in paragraph~~
7 ~~(a) of subsection (2) of this section, and a committee cannot be~~
8 ~~established under paragraph (b) of subsection (2) of this section, or, even~~
9 ~~if a quorum is obtained or a committee is designated, if a majority of the~~
10 ~~directors constituting such quorum or such committee so directs, the~~
11 ~~determination required to be made by subsection (1) of this section shall~~
12 ~~be made:~~

13 ~~(a) By independent legal counsel selected by a vote of the board~~
14 ~~of directors or the committee in the manner specified in paragraph (a) or~~
15 ~~(b) of subsection (2) of this section or, if a quorum of the full board~~
16 ~~cannot be obtained and a committee cannot be established, by~~
17 ~~independent legal counsel selected by a majority vote of the full board of~~
18 ~~directors; or~~

19 ~~(b) By the shareholders.~~

20 ~~(4) (3) Authorization of indemnification and AN advance of~~
21 ~~expenses shall MUST be made in the same manner as the determination~~
22 ~~that indemnification or AN advance of expenses is permissible; except~~
23 ~~that, if the determination that indemnification or AN advance of expenses~~
24 ~~is permissible is made by independent legal counsel, authorization of~~
25 ~~indemnification and AN advance of expenses shall MUST be made by the~~
26 ~~body that selected such THE counsel.~~

27 **SECTION 44.** In Colorado Revised Statutes, **amend** 7-109-107

1 as follows:

2 **7-109-107. Indemnification of officers, employees, fiduciaries,**
3 **and agents.** (1) ~~Unless otherwise provided in the articles of~~
4 ~~incorporation:~~

5 (a) An officer is entitled to mandatory indemnification OR AN
6 ADVANCE OF EXPENSES under section 7-109-103, and is entitled to apply
7 for court-ordered indemnification OR AN ADVANCE OF EXPENSES under
8 section 7-109-105, in each case to the same extent as a director.

9 (b) (2) A corporation may indemnify and advance expenses to an
10 officer, employee, fiduciary, or agent of the corporation to the same
11 extent as to a director. ~~and~~

12 (c) (3) A corporation may also indemnify and advance expenses
13 to an officer, employee, fiduciary, or agent who is not a director to a
14 ~~greater~~ SUCH FURTHER extent ~~if not inconsistent with public policy, and~~
15 ~~if~~ AS MAY BE provided for by its ARTICLES OF INCORPORATION, bylaws,
16 general or specific action of its board of directors or shareholders, or
17 contract. THIS SUBSECTION (3) APPLIES TO AN OFFICER WHO IS ALSO A
18 DIRECTOR IF THE BASIS ON WHICH THE OFFICER IS MADE A PARTY TO THE
19 PROCEEDING IS AN ACT OR OMISSION SOLELY AS AN OFFICER.

20 **SECTION 45.** In Colorado Revised Statutes, **amend** 7-109-108
21 as follows:

22 **7-109-108. Insurance.** A corporation may purchase and maintain
23 insurance on behalf of a person who is or was a director, officer,
24 employee, fiduciary, or agent of the corporation, or who, while a director,
25 officer, employee, fiduciary, or agent of the corporation, is or was serving
26 at the request of the corporation as a director, officer, ~~partner, trustee~~
27 AGENT, ASSOCIATE, employee, fiduciary, ~~or agent of another domestic or~~

1 ~~foreign entity or of~~ MANAGER, MEMBER, PARTNER, PROMOTER, OR
2 TRUSTEE OF, OR IN ANY OTHER CAPACITY WITH, ANOTHER PERSON OR an
3 employee benefit plan, against liability asserted against or incurred by the
4 person in that capacity or arising from the person's status as a director,
5 officer, employee, fiduciary, or agent, whether or not the corporation
6 would have power to indemnify the person against the same liability
7 under section 7-109-102, 7-109-103, or 7-109-107. Any such insurance
8 may be procured from any insurance company designated by the board of
9 directors, whether ~~such~~ THE insurance company is formed under the law
10 of this state or any other jurisdiction of the United States or elsewhere,
11 including any insurance company in which the corporation has an equity
12 or any other interest through stock ownership or otherwise.

13 **SECTION 46.** In Colorado Revised Statutes, **repeal and reenact,**
14 **with amendments,** 7-109-109 as follows:

15 **7-109-109. Variation by corporate action.** (1) A CORPORATION
16 MAY, BY A PROVISION IN ITS ARTICLES OF INCORPORATION OR BYLAWS OR
17 IN A RESOLUTION ADOPTED OR A CONTRACT APPROVED BY ITS BOARD OF
18 DIRECTORS OR SHAREHOLDERS, OBLIGATE ITSELF IN ADVANCE OF THE ACT
19 OR OMISSION GIVING RISE TO A PROCEEDING TO PROVIDE INDEMNIFICATION
20 IN ACCORDANCE WITH SECTION 7-109-102 OR ADVANCE FUNDS TO PAY FOR
21 OR REIMBURSE EXPENSES IN ACCORDANCE WITH SECTION 7-109-104. SUCH
22 AN OBLIGATORY PROVISION:

23 (a) SATISFIES THE REQUIREMENTS FOR AUTHORIZATION, BUT NOT
24 DETERMINATION, REFERRED TO IN SECTION 7-109-106.

25 (b) THAT OBLIGATES THE CORPORATION TO PROVIDE
26 INDEMNIFICATION TO THE FULLEST EXTENT PERMITTED BY LAW OBLIGATES
27 THE CORPORATION TO ADVANCE FUNDS TO PAY FOR OR REIMBURSE

1 EXPENSES IN ACCORDANCE WITH SECTION 7-109-104 TO THE FULLEST
2 EXTENT PERMITTED BY LAW, UNLESS THE PROVISION SPECIFICALLY
3 PROVIDES OTHERWISE.

4 (2) A RIGHT OF INDEMNIFICATION OR TO ADVANCES OF EXPENSES
5 CREATED BY THIS ARTICLE 109 OR UNDER SUBSECTION (1) OF THIS SECTION
6 AND IN EFFECT AT THE TIME OF AN ACT OR OMISSION MUST NOT BE
7 ELIMINATED OR IMPAIRED WITH RESPECT TO THE ACT OR OMISSION BY AN
8 AMENDMENT OF THE ARTICLES OF INCORPORATION OR BYLAWS OR A
9 RESOLUTION OF THE BOARD OF DIRECTORS OR SHAREHOLDERS, ADOPTED
10 AFTER THE OCCURRENCE OF THE ACT OR OMISSION, UNLESS, IN THE CASE
11 OF A RIGHT CREATED UNDER SUBSECTION (1) OF THIS SECTION, THE
12 PROVISION CREATING THE RIGHT AND IN EFFECT AT THE TIME OF THE ACT
13 OR OMISSION EXPLICITLY AUTHORIZES THE ELIMINATION OR IMPAIRMENT
14 AFTER THE ACT OR OMISSION HAS OCCURRED.

15 (3) A PROVISION SPECIFIED IN SUBSECTION (1) OF THIS SECTION
16 DOES NOT OBLIGATE THE CORPORATION TO INDEMNIFY OR ADVANCE
17 EXPENSES TO A DIRECTOR OF A PREDECESSOR OF THE CORPORATION
18 PERTAINING TO CONDUCT WITH RESPECT TO THE PREDECESSOR, UNLESS
19 OTHERWISE SPECIFICALLY PROVIDED. A PROVISION FOR INDEMNIFICATION
20 OR AN ADVANCE OF EXPENSES IN THE ARTICLES OF INCORPORATION,
21 BYLAWS, OR A RESOLUTION OF THE BOARD OF DIRECTORS OR
22 SHAREHOLDERS OF A PREDECESSOR OF THE CORPORATION IN A MERGER OR
23 IN A CONTRACT TO WHICH THE PREDECESSOR IS A PARTY, EXISTING AT THE
24 TIME THE MERGER TAKES EFFECT, IS GOVERNED BY SECTION 7-90-204 (1).

25 (4) SUBJECT TO SUBSECTION (2) OF THIS SECTION, A CORPORATION
26 MAY, BY A PROVISION IN ITS ARTICLES OF INCORPORATION, LIMIT ANY OF
27 THE RIGHTS TO INDEMNIFICATION OR AN ADVANCE OF EXPENSES CREATED

1 BY OR PURSUANT TO THIS ARTICLE 109.

2 (5) SECTIONS 7-109-101 TO 7-109-108 DO NOT LIMIT A
3 CORPORATION'S POWER TO PAY OR REIMBURSE EXPENSES INCURRED BY A
4 DIRECTOR IN CONNECTION WITH AN APPEARANCE AS A WITNESS IN A
5 PROCEEDING AT A TIME WHEN THE DIRECTOR HAS NOT BEEN MADE A
6 NAMED DEFENDANT OR RESPONDENT IN THE PROCEEDING.

7 **SECTION 47.** In Colorado Revised Statutes, **add** 7-109-111 as
8 follows:

9 **7-109-111. Exclusivity.** A CORPORATION MAY PROVIDE
10 INDEMNIFICATION OR AN ADVANCE OF EXPENSES TO A DIRECTOR OR AN
11 OFFICER ONLY AS PERMITTED BY THIS ARTICLE 109.

12 **SECTION 48.** In Colorado Revised Statutes, **amend** 7-111-101
13 as follows:

14 **7-111-101. Merger of domestic corporation.** ~~(†) One or more~~
15 ~~domestic corporations may merge into another domestic~~ WITH ANY OTHER
16 ~~entity if the board of directors of each domestic corporation that is a party~~
17 ~~to the merger and each other entity that is a party to the merger adopts a~~
18 ~~plan of merger complying with section 7-90-203.3 and the shareholders~~
19 ~~of each such corporation, if required by section 7-111-103, approve the~~
20 ~~plan of merger~~ PURSUANT TO SECTION 7-90-203.

21 ~~(2) and (3) (Deleted by amendment, L. 2007, p. 245, § 43,~~
22 ~~effective May 29, 2007.)~~

23 **SECTION 49.** In Colorado Revised Statutes, **amend** 7-111-101.5
24 as follows:

25 **7-111-101.5. Conversion of domestic corporation.** A domestic
26 corporation may convert into any form of entity ~~permitted by~~ PURSUANT
27 TO section 7-90-201. ~~if the board of directors of the corporation adopts a~~

1 ~~plan of conversion that complies with section 7-90-201.3 and the~~
2 ~~shareholders of the corporation, if required by section 7-111-103, approve~~
3 ~~the plan of conversion.~~

4 **SECTION 50.** In Colorado Revised Statutes, **amend** 7-111-102
5 as follows:

6 **7-111-102. Owner's interest exchange involving domestic**
7 **corporation.** ~~(1) A domestic corporation may acquire all of the~~
8 ~~outstanding shares of one or more classes or series of one or more~~
9 ~~domestic corporations if the board of directors of each corporation adopts~~
10 ~~a plan of share exchange and the shareholders of each corporation~~
11 ~~approve the plan of share exchange~~ BE PARTY TO AN EXCHANGE OF
12 OWNERS' INTERESTS WITH ANY OTHER ENTITY PURSUANT TO SECTION
13 7-90-203.1.

14 ~~(2) The plan of share exchange required by subsection (1) of this~~
15 ~~section shall state:~~

16 ~~(a) The domestic entity name of each corporation whose shares~~
17 ~~will be acquired and the name of the acquiring corporation;~~

18 ~~(b) The terms and conditions of the share exchange;~~

19 ~~(c) The manner and basis of exchanging the shares to be acquired~~
20 ~~for shares, obligations, or other securities of the acquiring or any other~~
21 ~~corporation or for money or other property in whole or part.~~

22 ~~(3) The plan of share exchange may state other provisions relating~~
23 ~~to the share exchange.~~

24 ~~(4) This section does not limit the power of a corporation to~~
25 ~~acquire all or part of the shares of one or more classes or series of another~~
26 ~~corporation through a voluntary exchange of shares or otherwise.~~

27 **SECTION 51.** In Colorado Revised Statutes, **amend** 7-111-103

1 as follows:

2 **7-111-103. Action on plan - merger, conversion, or exchange.**

3 (1) After adopting a plan of conversion complying with section
4 7-90-201.3, a plan of merger complying with section 7-90-203.3, or a
5 plan of ~~share~~ exchange complying with section ~~7-111-102~~ 7-90-203.3, the
6 board of directors of the converting corporation, the board of directors of
7 each corporation party to the merger, ~~and~~ OR the board of directors of
8 each corporation ~~whose shares will be acquired in the share~~ PARTY TO THE
9 exchange, shall submit the plan of conversion, plan of merger, OR PLAN
10 OF EXCHANGE TO ITS SHAREHOLDERS FOR APPROVAL, except as provided
11 in subsection (7) of this section or in section 7-111-104. ~~or the plan of~~
12 ~~share exchange to its shareholders for approval.~~

13 (2) For a plan of conversion, a plan of merger, or a plan of ~~share~~
14 exchange to be approved by the shareholders:

15 (a) The board of directors ~~shall~~ MUST recommend the plan of
16 conversion, plan of merger, or plan of ~~share~~ exchange to the shareholders
17 unless the board of directors determines that, because of conflict of
18 interest or other special circumstances, it should make no
19 recommendation and communicates the basis for its determination to the
20 shareholders with the plan; and

21 (b) The shareholders entitled to vote on the plan of conversion,
22 plan of merger, or plan of ~~share~~ exchange ~~shall~~ MUST approve the plan as
23 provided in subsection (5) of this section.

24 (3) The board of directors may condition the effectiveness of the
25 plan of conversion, plan of merger, or plan of ~~share~~ exchange on any
26 basis.

27 (4) The corporation shall give notice, in accordance with section

1 7-107-105, to each shareholder entitled to vote on the plan of conversion,
2 plan of merger, or plan of ~~share~~ exchange, of the shareholders' meeting
3 at which the plan will be voted upon. The notice ~~shall~~ MUST state that the
4 purpose, or one of the purposes, of the meeting is to consider the plan of
5 conversion, plan of merger, or plan of ~~share~~ exchange, and the notice
6 ~~shall~~ MUST contain or be accompanied by a copy of the plan or a summary
7 ~~thereof~~ OF THE PLAN.

8 (5) Unless articles 101 to 117 of this ~~title~~ TITLE 7, including the
9 provisions of section 7-117-101 (8), the articles of incorporation, bylaws
10 adopted by the shareholders, or the board of directors acting pursuant to
11 subsection (3) of this section require a greater vote, the plan of
12 conversion, plan of merger, or plan of ~~share~~ exchange ~~shall~~ MUST be
13 approved by each voting group entitled to vote separately on the plan by
14 a majority of all the votes entitled to be cast on the plan by that voting
15 group.

16 (6) Separate voting by voting groups is required:

17 (a) On a plan of merger or a plan of conversion if the plan
18 contains a provision that, if contained in an amendment to the articles of
19 incorporation, would require action by one or more separate voting
20 groups on the amendment under section 7-110-104;

21 (b) On a plan of ~~share~~ exchange by each class or series of shares
22 included in the ~~share~~ exchange, with each class or series constituting a
23 separate voting group.

24 (7) Action by the shareholders of the surviving corporation on a
25 plan of merger OR BY THE SHAREHOLDERS OF THE ACQUIRING
26 CORPORATION IN A PLAN OF EXCHANGE is not required if:

27 (a) The articles of incorporation of the surviving OR ACQUIRING

1 corporation will not differ, except for amendments enumerated in section
2 7-110-102, from its articles of incorporation before the merger
3 TRANSACTION;

4 (b) Each shareholder of the surviving OR ACQUIRING corporation
5 whose shares were outstanding immediately before the merger
6 TRANSACTION will hold the same number of shares, with identical
7 designations, preferences, limitations, and relative rights, immediately
8 after the merger TRANSACTION;

9 (c) The number of voting shares outstanding immediately after the
10 merger TRANSACTION, plus the number of voting shares issuable as a
11 result of the merger TRANSACTION either by the conversion of securities
12 issued pursuant to the merger TRANSACTION or by the exercise of rights
13 and warrants issued pursuant to the merger TRANSACTION, will not exceed
14 by more than twenty percent the total number of voting shares of the
15 surviving OR ACQUIRING corporation outstanding immediately before the
16 merger TRANSACTION; and

17 (d) The number of participating shares outstanding immediately
18 after the merger TRANSACTION, plus the number of participating shares
19 issuable as a result of the merger TRANSACTION either by the conversion
20 of securities issued pursuant to the merger TRANSACTION or by the
21 exercise of rights and warrants issued pursuant to the merger
22 TRANSACTION, will not exceed by more than twenty percent the total
23 number of participating shares outstanding immediately before the merger
24 TRANSACTION.

25 (8) As used in subsection (7) of this section:

26 (a) "Participating shares" means shares that entitle their holders
27 to participate without limitation in distributions.

1 (b) "Voting shares" means shares that entitle their holders to vote
2 unconditionally in elections of directors.

3 ~~(9) After a plan of merger, a plan of conversion, or a plan of share~~
4 ~~exchange is authorized, and at any time before the merger, conversion, or~~
5 ~~share exchange becomes effective, the merger, conversion, or share~~
6 ~~exchange may be abandoned, subject to any contractual rights, without~~
7 ~~further shareholder action, in accordance with the procedure stated in the~~
8 ~~plan of merger, conversion, or share exchange or, if none is stated, in the~~
9 ~~manner determined by the board of directors. If a merger, conversion, or~~
10 ~~share exchange is abandoned after a statement of merger has been filed~~
11 ~~by the secretary of state pursuant to section 7-90-203.7, a statement of~~
12 ~~conversion has been filed by the secretary of state pursuant to section~~
13 ~~7-90-201.7, or a plan of share exchange has been filed by the secretary of~~
14 ~~state pursuant to section 7-111-105 stating a delayed effective date, the~~
15 ~~merger, conversion, or share exchange may be prevented from becoming~~
16 ~~effective by delivering to the secretary of state, for filing pursuant to part~~
17 ~~3 of article 90 of this title, before the date the merger or share exchange~~
18 ~~becomes effective pursuant to section 7-90-304, a statement of change~~
19 ~~that states that, by appropriate corporate action, the merger, conversion,~~
20 ~~or share exchange has been abandoned.~~

21 **SECTION 52.** In Colorado Revised Statutes, **repeal** 7-111-104.5
22 as follows:

23 **7-111-104.5. Statement of merger or conversion.** ~~(1) After a~~
24 ~~plan of merger is approved, the surviving corporation shall deliver to the~~
25 ~~secretary of state, for filing pursuant to part 3 of article 90 of this title, a~~
26 ~~statement of merger pursuant to section 7-90-203.7. If the plan of merger~~
27 ~~provides for amendments to the articles of incorporation of the surviving~~

1 corporation, articles of amendment effecting the amendments shall be
2 delivered to the secretary of state for filing pursuant to part 3 of article 90
3 of this title:

4 (2) After a plan of conversion is approved, the converting
5 corporation shall deliver to the secretary of state, for filing pursuant to
6 part 3 of article 90 of this title, a statement of conversion pursuant to
7 section 7-90-201.7.

8 **SECTION 53.** In Colorado Revised Statutes, **repeal** 7-111-105
9 as follows:

10 **7-111-105. Statement of share exchange.** (1) After a plan of
11 share exchange is approved by the shareholders, the acquiring corporation
12 shall deliver to the secretary of state, for filing pursuant to part 3 of article
13 90 of this title, a statement of share exchange stating:

14 (a) The entity name of each corporation whose shares will be
15 acquired, and the principal office address of its principal office;

16 (b) The entity name of the acquiring corporation, and the principal
17 office address of its principal office; and

18 (c) A statement that the acquiring corporation acquires shares of
19 the other corporations:

20 (d) and (e) (Deleted by amendment, L. 2004, p. 1503, § 275,
21 effective July 1, 2004.)

22 (2) and (3) (Deleted by amendment, L. 2003, p. 2324, § 258,
23 effective July 1, 2004.)

24 **SECTION 54.** In Colorado Revised Statutes, **repeal** 7-111-106
25 as follows:

26 **7-111-106. Effect of merger, conversion, or share exchange.**

27 (1) The effect of a merger shall be as provided in section 7-90-204.

1 ~~(1.5) The effect of a conversion shall be as provided in section~~
2 ~~7-90-202.~~

3 ~~(2) When a share exchange takes effect, the shares of each~~
4 ~~acquired corporation are exchanged as provided in the plan, and the~~
5 ~~former holders of the shares are entitled only to the exchange rights~~
6 ~~provided in the articles of share exchange or to their rights under article~~
7 ~~113 of this title.~~

8 **SECTION 55.** In Colorado Revised Statutes, 7-111-106.5,
9 **amend** (1)(c) as follows:

10 **7-111-106.5. Merger with foreign entity.** (1) One or more
11 domestic corporations may merge with one or more foreign entities if:

12 (c) Each domestic corporation complies with the applicable
13 provisions of sections 7-111-101 to 7-111-104 and, if it is the surviving
14 corporation of the merger, with section ~~7-111-104.5~~ 7-90-203.7.

15 **SECTION 56.** In Colorado Revised Statutes, **repeal** 7-111-107
16 as follows:

17 **7-111-107. Share exchange with foreign corporation.** ~~(1) One~~
18 ~~or more domestic corporations may enter into a share exchange with one~~
19 ~~or more foreign corporations if:~~

20 (a) ~~(Deleted by amendment, L. 2007, p. 248, § 49, effective May~~
21 ~~29, 2007.)~~

22 ~~(b) In a share exchange, the corporation whose shares will be~~
23 ~~acquired is a domestic corporation, whether or not a share exchange is~~
24 ~~permitted by the law of the jurisdiction under the law of which the~~
25 ~~acquiring corporation is incorporated;~~

26 (c) The foreign corporation complies with section 7-111-105 if it
27 is the acquiring corporation of the share exchange; and

1 ~~(d) Each domestic corporation complies with the applicable~~
2 ~~provisions of sections 7-111-101 to 7-111-104 and, if it is the acquiring~~
3 ~~corporation of the share exchange, with section 7-111-105.~~

4 ~~(1.5) (Deleted by amendment, L. 2007, p. 248, § 49, effective May~~
5 ~~29, 2007.)~~

6 ~~(2) Upon the share exchange taking effect, the acquiring foreign~~
7 ~~corporation of a share exchange:~~

8 ~~(a) Shall either:~~

9 ~~(I) Appoint a registered agent if the foreign corporation has no~~
10 ~~registered agent and maintain a registered agent pursuant to part 7 of~~
11 ~~article 90 of this title, whether or not the foreign corporation is otherwise~~
12 ~~subject to that part, to accept service in any proceeding to enforce any~~
13 ~~obligation or rights of dissenting shareholders of each domestic~~
14 ~~corporation party to the share exchange; or~~

15 ~~(II) Be deemed to have authorized service of process on it in~~
16 ~~connection with any such proceeding by mailing in accordance with~~
17 ~~section 7-90-704 (2);~~

18 ~~(b) Shall promptly pay to the dissenting shareholders of each~~
19 ~~domestic corporation party to the share exchange the amount, if any, to~~
20 ~~which they are entitled under article 113 of this title; and~~

21 ~~(c) Shall comply with part 8 of article 90 of this title if it is to~~
22 ~~transact business or conduct activities in this state.~~

23 ~~(3) (Deleted by amendment, L. 2004, p. 1505, § 277, effective~~
24 ~~July 1, 2004.)~~

25 ~~(4) Subsection (2) of this section does not prescribe the only~~
26 ~~means, or necessarily the required means, of serving an acquiring foreign~~
27 ~~corporation of a share exchange.~~

1 TECHNIQUES GENERALLY EMPLOYED FOR SIMILAR BUSINESSES IN THE
2 CONTEXT OF THE TRANSACTION REQUIRING APPRAISAL; AND

3 (c) WITHOUT DISCOUNTING FOR LACK OF MARKETABILITY OR
4 MINORITY STATUS EXCEPT, IF APPROPRIATE, FOR AMENDMENTS TO THE
5 ARTICLES PURSUANT TO SECTION 7-113-102 (1)(e).

6 (4) "INTEREST" MEANS INTEREST, FROM THE EFFECTIVE DATE OF
7 THE CORPORATE ACTION UNTIL THE DATE OF PAYMENT, AT THE LEGAL
8 RATE AS SPECIFIED IN SECTION 5-12-101.

9 (5) "INTERESTED TRANSACTION" MEANS A CORPORATE ACTION
10 DESCRIBED IN SECTION 7-113-102 (1), OTHER THAN A MERGER PURSUANT
11 TO SECTION 7-111-104, INVOLVING AN INTERESTED PERSON IN WHICH ANY
12 OF THE SHARES OR ASSETS OF THE CORPORATION ARE BEING ACQUIRED OR
13 CONVERTED. AS USED ONLY IN THIS SUBSECTION (5):

14 (a) (I) "BENEFICIAL OWNER" MEANS ANY PERSON THAT, DIRECTLY
15 OR INDIRECTLY, THROUGH ANY CONTRACT, ARRANGEMENT, OR
16 UNDERSTANDING, OTHER THAN A REVOCABLE PROXY, HAS OR SHARES THE
17 POWER TO VOTE, OR TO DIRECT THE VOTING OF, SHARES; EXCEPT THAT A
18 MEMBER OF A NATIONAL SECURITIES EXCHANGE IS NOT DEEMED TO BE A
19 BENEFICIAL OWNER OF SECURITIES HELD DIRECTLY OR INDIRECTLY BY IT
20 ON BEHALF OF ANOTHER PERSON SOLELY BECAUSE THE MEMBER IS THE
21 RECORD HOLDER OF THE SECURITIES IF THE MEMBER IS PRECLUDED BY THE
22 RULES OF THE EXCHANGE FROM VOTING WITHOUT INSTRUCTION ON
23 CONTESTED MATTERS OR MATTERS THAT MAY AFFECT SUBSTANTIALLY
24 THE RIGHTS OR PRIVILEGES OF THE HOLDERS OF THE SECURITIES TO BE
25 VOTED.

26 (II) WHEN TWO OR MORE PERSONS AGREE TO ACT TOGETHER FOR
27 THE PURPOSE OF VOTING THEIR SHARES OF THE CORPORATION, EACH

1 MEMBER OF THE GROUP FORMED BY THE AGREEMENT IS DEEMED TO HAVE
2 ACQUIRED BENEFICIAL OWNERSHIP, AS OF THE DATE OF THE AGREEMENT,
3 OF ALL VOTING SHARES OF THE CORPORATION BENEFICIALLY OWNED BY
4 ANY MEMBER OF THE GROUP.

5 (b) "EXCLUDED SHARES" MEANS SHARES ACQUIRED PURSUANT TO
6 AN OFFER FOR ALL SHARES HAVING VOTING POWER IF THE OFFER WAS
7 MADE WITHIN ONE YEAR BEFORE THE CORPORATE ACTION FOR
8 CONSIDERATION OF THE SAME KIND AND OF A VALUE EQUAL TO OR LESS
9 THAN THAT PAID IN CONNECTION WITH THE CORPORATE ACTION.

10 (c) "INTERESTED PERSON" MEANS A PERSON, OR AN AFFILIATE OF
11 A PERSON, THAT, AT ANY TIME DURING THE ONE-YEAR PERIOD
12 IMMEDIATELY PRECEDING APPROVAL BY THE BOARD OF DIRECTORS OF THE
13 CORPORATE ACTION:

14 (I) WAS THE BENEFICIAL OWNER OF TWENTY PERCENT OR MORE OF
15 THE VOTING POWER OF THE CORPORATION, OTHER THAN AS OWNER OF
16 EXCLUDED SHARES;

17 (II) HAD THE POWER, CONTRACTUALLY OR OTHERWISE, OTHER
18 THAN AS OWNER OF EXCLUDED SHARES, TO CAUSE THE APPOINTMENT OR
19 ELECTION OF TWENTY-FIVE PERCENT OR MORE OF THE DIRECTORS TO THE
20 BOARD OF DIRECTORS OF THE CORPORATION; OR

21 (III) WAS A SENIOR EXECUTIVE OR DIRECTOR OF THE
22 CORPORATION OR A SENIOR EXECUTIVE OF ANY AFFILIATE OF THE
23 CORPORATION AND WILL RECEIVE, AS A RESULT OF THE CORPORATE
24 ACTION, A FINANCIAL BENEFIT NOT GENERALLY AVAILABLE TO OTHER
25 SHAREHOLDERS AS SUCH, OTHER THAN:

26 (A) EMPLOYMENT, CONSULTING, RETIREMENT, OR SIMILAR
27 BENEFITS ESTABLISHED SEPARATELY, AND NOT AS PART OF, OR IN

1 CONTEMPLATION OF THE CORPORATE ACTION; OR

2 (B) EMPLOYMENT, CONSULTING, RETIREMENT, OR SIMILAR
3 BENEFITS ESTABLISHED IN CONTEMPLATION OF, OR AS PART OF, THE
4 CORPORATE ACTION THAT ARE NOT MORE FAVORABLE THAN THOSE
5 EXISTING BEFORE THE CORPORATE ACTION OR, IF MORE FAVORABLE, THAT
6 HAVE BEEN APPROVED ON BEHALF OF THE CORPORATION IN THE SAME
7 MANNER AS IS PROVIDED IN SECTION 7-108-501; OR

8 (C) IN THE CASE OF A DIRECTOR OF THE CORPORATION WHO WILL,
9 IN THE CORPORATE ACTION, BECOME A DIRECTOR OF THE ACQUIRING
10 ENTITY IN THE CORPORATE ACTION OR ONE OF ITS AFFILIATES, RIGHTS AND
11 BENEFITS AS A DIRECTOR THAT ARE PROVIDED ON THE SAME BASIS AS
12 THOSE AFFORDED BY THE ACQUIRING ENTITY GENERALLY TO OTHER
13 DIRECTORS OF THE ENTITY OR AFFILIATE.

14 (6) "PREFERRED SHARES" MEANS A CLASS OR SERIES OF SHARES
15 WHOSE HOLDERS HAVE PREFERENCE OVER ANY OTHER CLASS OR SERIES
16 WITH RESPECT TO DISTRIBUTIONS.

17 (7) "SENIOR EXECUTIVE" MEANS THE CHIEF EXECUTIVE OFFICER,
18 CHIEF OPERATING OFFICER, CHIEF FINANCIAL OFFICER, AND ANYONE IN
19 CHARGE OF A PRINCIPAL BUSINESS UNIT OR FUNCTION.

20 **7-113-102. Right to appraisal.** (1) A SHAREHOLDER IS ENTITLED
21 TO APPRAISAL RIGHTS AND TO OBTAIN PAYMENT OF THE FAIR VALUE OF
22 THAT SHAREHOLDER'S SHARES IN THE EVENT OF ANY OF THE FOLLOWING
23 CORPORATE ACTIONS:

24 (a) CONSUMMATION OF A MERGER TO WHICH THE CORPORATION IS
25 A PARTY IF:

26 (I) SHAREHOLDER APPROVAL IS REQUIRED FOR THE MERGER BY
27 SECTION 7-111-103 AND THE SHAREHOLDER IS ENTITLED TO VOTE ON THE

1 MERGER; EXCEPT THAT APPRAISAL RIGHTS ARE NOT AVAILABLE TO A
2 SHAREHOLDER OF THE CORPORATION WITH RESPECT TO SHARES OF ANY
3 CLASS OR SERIES THAT REMAIN OUTSTANDING AFTER CONSUMMATION OF
4 THE MERGER; OR

5 (II) THE CORPORATION IS A SUBSIDIARY THAT IS MERGED WITH ITS
6 PARENT CORPORATION UNDER SECTION 7-111-104;

7 (b) CONSUMMATION OF A SHARE EXCHANGE TO WHICH THE
8 CORPORATION IS A PARTY AS THE CORPORATION WHOSE SHARES WILL BE
9 ACQUIRED IF THE SHAREHOLDER IS ENTITLED TO VOTE ON THE EXCHANGE;
10 EXCEPT THAT APPRAISAL RIGHTS ARE NOT AVAILABLE TO ANY
11 SHAREHOLDER OF THE CORPORATION WITH RESPECT TO ANY CLASS OR
12 SERIES OF SHARES OF THE CORPORATION THAT IS NOT EXCHANGED;

13 (c) CONSUMMATION OF A DISPOSITION OF ASSETS PURSUANT TO
14 SECTION 7-112-102 (1) IF THE SHAREHOLDER IS ENTITLED TO VOTE ON THE
15 DISPOSITION;

16 (d) CONSUMMATION OF A DISPOSITION OF ASSETS OF AN ENTITY
17 CONTROLLED BY THE CORPORATION PURSUANT TO SECTION 7-112-102 (2)
18 IF THE SHAREHOLDERS OF THE CORPORATION WERE ENTITLED TO VOTE ON
19 THE CONSENT OF THE CORPORATION TO THE DISPOSITION;

20 (e) AN AMENDMENT TO THE ARTICLES OF INCORPORATION WITH
21 RESPECT TO A CLASS OR SERIES OF SHARES THAT REDUCES THE NUMBER OF
22 SHARES OF A CLASS OR SERIES OWNED BY THE SHAREHOLDER TO A
23 FRACTION OF A SHARE IF THE CORPORATION HAS THE OBLIGATION OR
24 RIGHT TO REPURCHASE THE FRACTIONAL SHARE SO CREATED;

25 (f) ANY OTHER AMENDMENT TO THE ARTICLES OF INCORPORATION,
26 MERGER, SHARE EXCHANGE, OR DISPOSITION OF ASSETS TO THE EXTENT
27 PROVIDED BY THE ARTICLES OF INCORPORATION, BYLAWS, OR RESOLUTION

1 OF THE BOARD OF DIRECTORS;

2 (g) CONSUMMATION OF A CONVERSION OF THE CORPORATION TO
3 NONPROFIT STATUS PURSUANT TO SECTION 7-90-201; OR

4 (h) CONSUMMATION OF A CONVERSION OF THE CORPORATION TO
5 AN UNINCORPORATED ENTITY PURSUANT TO SECTION 7-90-206 (2) IF THE
6 SHAREHOLDER IS ENTITLED TO VOTE ON THE CONVERSION.

7 (2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, THE
8 AVAILABILITY OF APPRAISAL RIGHTS UNDER SUBSECTIONS (1)(a), (1)(b),
9 (1)(c), (1)(d), (1)(e), AND (1)(h) OF THIS SECTION ARE LIMITED IN
10 ACCORDANCE WITH THE FOLLOWING PROVISIONS:

11 (a) APPRAISAL RIGHTS ARE NOT AVAILABLE FOR THE HOLDERS OF
12 SHARES OF ANY CLASS OR SERIES OF SHARES THAT IS:

13 (I) A COVERED SECURITY UNDER SECTION 18 (b)(1)(A) OR 18
14 (b)(1)(B) OF THE FEDERAL "SECURITIES ACT OF 1933", 15 U.S.C. 77r
15 (b)(1)(A) AND 77r (b)(1)(B); OR

16 (II) NOT A COVERED SECURITY BUT IS TRADED IN AN ORGANIZED
17 MARKET AND HAS A MARKET VALUE OF AT LEAST TWENTY MILLION
18 DOLLARS, EXCLUSIVE OF THE VALUE OF THE SHARES HELD BY THE
19 CORPORATION'S SUBSIDIARIES, SENIOR EXECUTIVES, DIRECTORS, AND
20 PERSONS KNOWN TO THE CORPORATION OWNING MORE THAN TEN PERCENT
21 OF THE SHARES; OR

22 (III) ISSUED BY AN OPEN-END MANAGEMENT INVESTMENT
23 COMPANY REGISTERED WITH THE FEDERAL SECURITIES AND EXCHANGE
24 COMMISSION UNDER THE FEDERAL "INVESTMENT COMPANY ACT OF 1940",
25 15 U.S.C. SEC. 80a-1 ET SEQ., AND THAT MAY BE REDEEMED AT THE
26 OPTION OF THE HOLDER AT NET ASSET VALUE.

27 (b) THE APPLICABILITY OF SUBSECTION (2)(a) OF THIS SECTION IS

1 DETERMINED AS OF:

2 (I) THE RECORD DATE FIXED TO DETERMINE THE SHAREHOLDERS
3 ENTITLED TO RECEIVE NOTICE OF, AND TO VOTE AT, THE MEETING OF
4 SHAREHOLDERS TO ACT UPON THE CORPORATE ACTION REQUIRING
5 APPRAISAL RIGHTS; OR

6 (II) THE DAY BEFORE THE EFFECTIVE DATE OF THE CORPORATE
7 ACTION IF THERE IS NO MEETING OF SHAREHOLDERS.

8 (c) SUBSECTION (2)(a) OF THIS SECTION DOES NOT APPLY AND
9 APPRAISAL RIGHTS ARE AVAILABLE PURSUANT TO SUBSECTION (1) OF THIS
10 SECTION FOR THE HOLDERS OF ANY CLASS OR SERIES OF SHARES THAT IS
11 REQUIRED BY THE TERMS OF THE CORPORATE ACTION REQUIRING
12 APPRAISAL RIGHTS TO ACCEPT FOR THE SHARES ANYTHING OTHER THAN:

13 (I) CASH; OR

14 (II) SHARES OF ANY CLASS OR ANY SERIES OF SHARES OF ANY
15 CORPORATION, OR ANY OTHER PROPRIETARY INTEREST OF ANY OTHER
16 ENTITY, THAT SATISFY THE STANDARDS SET FORTH IN SUBSECTION (2)(a)
17 OF THIS SECTION AT THE TIME THE CORPORATE ACTION BECOMES
18 EFFECTIVE.

19 (d) SUBSECTION (2)(a) OF THIS SECTION DOES NOT APPLY AND
20 APPRAISAL RIGHTS ARE AVAILABLE PURSUANT TO SUBSECTION (1) OF THIS
21 SECTION FOR THE HOLDERS OF ANY CLASS OR SERIES OF SHARES WHERE
22 THE CORPORATE ACTION IS AN INTERESTED TRANSACTION.

23 (3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
24 THE ARTICLES OF INCORPORATION AS ORIGINALLY FILED OR AS AMENDED
25 MAY LIMIT OR ELIMINATE APPRAISAL RIGHTS FOR ANY CLASS OR SERIES OF
26 PREFERRED SHARES; EXCEPT THAT AN AMENDMENT TO THE ARTICLES OF
27 INCORPORATION DOES NOT APPLY TO ANY CORPORATE ACTION THAT

1 BECOMES EFFECTIVE WITHIN ONE YEAR AFTER THE EFFECTIVE DATE OF THE
2 AMENDMENT IF:

3 (a) THAT ACTION WOULD OTHERWISE AFFORD APPRAISAL RIGHTS;
4 AND

5 (b) THE AMENDMENT LIMITS OR ELIMINATES APPRAISAL RIGHTS
6 FOR SHARES THAT:

7 (I) ARE OUTSTANDING IMMEDIATELY BEFORE THE EFFECTIVE DATE
8 OF THE AMENDMENT; OR

9 (II) THE CORPORATION IS OR MAY BE REQUIRED TO ISSUE OR SELL
10 AFTER THE EFFECTIVE DATE OF THE AMENDMENT PURSUANT TO ANY
11 CONVERSION, EXCHANGE, OR OTHER RIGHT EXISTING IMMEDIATELY
12 BEFORE THE EFFECTIVE DATE OF THE AMENDMENT.

13 **7-113-103. Assertion of rights by nominees and beneficial**
14 **owners.** (1) A SHAREHOLDER MAY ASSERT APPRAISAL RIGHTS AS TO
15 FEWER THAN ALL THE SHARES REGISTERED IN THE SHAREHOLDER'S NAME
16 BUT OWNED BY A BENEFICIAL OWNER OTHER THAN THE SHAREHOLDER
17 ONLY IF THE SHAREHOLDER OBJECTS WITH RESPECT TO ALL SHARES OF THE
18 CLASS OR SERIES OWNED BY THE BENEFICIAL OWNER AND NOTIFIES THE
19 CORPORATION IN WRITING OF THE NAME AND ADDRESS AND FEDERAL
20 TAXPAYER IDENTIFICATION NUMBER, IF ANY, OF EACH BENEFICIAL OWNER
21 ON WHOSE BEHALF APPRAISAL RIGHTS ARE BEING ASSERTED. THE RIGHTS
22 OF A SHAREHOLDER WHO ASSERTS APPRAISAL RIGHTS UNDER THIS
23 SUBSECTION (1) FOR ONLY PART OF THE SHARES HELD OF RECORD IN THE
24 SHAREHOLDER'S NAME ARE DETERMINED AS IF THE SHARES AS TO WHICH
25 THE SHAREHOLDER OBJECTS AND THE SHAREHOLDER'S OTHER SHARES
26 WERE REGISTERED IN THE NAMES OF DIFFERENT SHAREHOLDERS.

27 (2) A BENEFICIAL OWNER MAY ASSERT APPRAISAL RIGHTS AS TO

1 SHARES OF ANY CLASS OR SERIES HELD ON BEHALF OF THE BENEFICIAL
2 OWNER ONLY IF THE BENEFICIAL OWNER:

3 (a) SUBMITS TO THE CORPORATION THE SHAREHOLDER'S WRITTEN
4 CONSENT TO THE ASSERTION OF THE RIGHTS NO LATER THAN THE DATE
5 SPECIFIED IN SECTION 7-113-203 (2)(b)(II); AND

6 (b) DOES SO WITH RESPECT TO ALL SHARES OF THE CLASS OR
7 SERIES THAT ARE OWNED BY THE BENEFICIAL OWNER.

8 (3) THE CORPORATION MAY REQUIRE THAT, WHEN A SHAREHOLDER
9 OBJECTS WITH RESPECT TO THE SHARES OF ANY CLASS OR SERIES HELD BY
10 ANY ONE OR MORE BENEFICIAL OWNERS, EACH SUCH BENEFICIAL OWNER
11 MUST CERTIFY TO THE CORPORATION THAT THE BENEFICIAL OWNER AND
12 THE SHAREHOLDER OR SHAREHOLDERS OF ALL SHARES OF THAT CLASS OR
13 SERIES OWNED BY THE BENEFICIAL OWNER HAVE ASSERTED, OR WILL
14 TIMELY ASSERT, THE BENEFICIAL OWNER'S APPRAISAL RIGHTS AS TO ALL
15 SHARES AS TO WHICH THERE IS NO LIMITATION ON THE ABILITY TO
16 EXERCISE APPRAISAL RIGHTS. ANY SUCH REQUIREMENT MUST BE STATED
17 IN THE NOTICE GIVEN PURSUANT TO SECTION 7-113-202.

18 PART 2

19 PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS

20 **7-113-201. Notice of appraisal rights.** (1) WHERE ANY
21 CORPORATE ACTION SPECIFIED IN SECTION 7-113-102 (1) IS TO BE
22 SUBMITTED TO A VOTE AT A SHAREHOLDERS' MEETING, THE MEETING
23 NOTICE MUST STATE THAT THE CORPORATION HAS CONCLUDED THAT THE
24 SHAREHOLDERS ARE, ARE NOT, OR MAY BE ENTITLED TO ASSERT
25 APPRAISAL RIGHTS UNDER THIS ARTICLE 113. IF THE CORPORATION
26 CONCLUDES THAT APPRAISAL RIGHTS ARE OR MAY BE AVAILABLE, A COPY
27 OF THIS ARTICLE 113 MUST ACCOMPANY THE MEETING NOTICE SENT TO

1 THOSE SHAREHOLDERS ENTITLED TO EXERCISE APPRAISAL RIGHTS.

2 (2) IN A MERGER PURSUANT TO SECTION 7-111-104, THE PARENT
3 CORPORATION SHALL NOTIFY IN WRITING ALL SHAREHOLDERS OF THE
4 SUBSIDIARY THAT ARE ENTITLED TO ASSERT APPRAISAL RIGHTS THAT THE
5 CORPORATE ACTION BECAME EFFECTIVE. THE NOTICE SHALL BE SENT
6 WITHIN TEN DAYS AFTER THE CORPORATE ACTION BECAME EFFECTIVE AND
7 MUST INCLUDE THE MATERIALS DESCRIBED IN SECTION 7-113-203.

8 (3) WHERE ANY CORPORATE ACTION SPECIFIED IN SECTION
9 7-113-102 (1) IS TO BE APPROVED BY WRITTEN CONSENT OF THE
10 SHAREHOLDERS PURSUANT TO SECTION 7-107-104:

11 (a) WRITTEN NOTICE THAT APPRAISAL RIGHTS ARE, ARE NOT, OR
12 MAY BE AVAILABLE SHALL BE GIVEN TO EACH SHAREHOLDER FROM WHOM
13 A CONSENT IS SOLICITED AT THE TIME CONSENT OF THE SHAREHOLDER IS
14 FIRST SOLICITED AND, IF THE CORPORATION HAS CONCLUDED THAT
15 APPRAISAL RIGHTS ARE OR MAY BE AVAILABLE, MUST BE ACCOMPANIED BY
16 A COPY OF THIS ARTICLE 113; AND

17 (b) WRITTEN NOTICE THAT APPRAISAL RIGHTS ARE, ARE NOT, OR
18 MAY BE AVAILABLE SHALL BE DELIVERED, TOGETHER WITH THE NOTICE TO
19 NONCONSENTING AND NONVOTING SHAREHOLDERS REQUIRED BY SECTION
20 7-107-104 (5.5); MAY INCLUDE THE MATERIALS DESCRIBED IN SECTION
21 7-113-203; AND, IF THE CORPORATION HAS CONCLUDED THAT APPRAISAL
22 RIGHTS ARE OR MAY BE AVAILABLE, MUST BE ACCOMPANIED BY A COPY OF
23 THIS ARTICLE 113.

24 (4) WHERE CORPORATE ACTION DESCRIBED IN SECTION 7-113-102
25 (1) IS PROPOSED OR A MERGER PURSUANT TO SECTION 7-111-104 IS
26 EFFECTED, THE NOTICE REQUIRED BY SUBSECTION (1) OR (3) OF THIS
27 SECTION IF THE CORPORATION CONCLUDES THAT APPRAISAL RIGHTS ARE

1 OR MAY BE AVAILABLE AND BY SUBSECTION (2) OF THIS SECTION MUST BE
2 ACCOMPANIED BY:

3 (a) THE ANNUAL FINANCIAL STATEMENTS SPECIFIED IN SECTION
4 7-116-105 OF THE CORPORATION THAT ISSUED THE SHARES THAT MAY BE
5 SUBJECT TO APPRAISAL, WHICH STATEMENTS MUST BE AS OF A DATE
6 ENDING NOT MORE THAN SIXTEEN MONTHS BEFORE THE DATE OF THE
7 NOTICE AND MUST COMPLY WITH SECTION 7-116-105; EXCEPT THAT, IF THE
8 ANNUAL FINANCIAL STATEMENTS ARE NOT REASONABLY AVAILABLE, THE
9 CORPORATION SHALL PROVIDE REASONABLY EQUIVALENT FINANCIAL
10 INFORMATION; AND

11 (b) THE LATEST AVAILABLE QUARTERLY FINANCIAL STATEMENTS
12 OF THE CORPORATION, IF ANY.

13 (5) THE RIGHT TO RECEIVE THE INFORMATION DESCRIBED IN
14 SUBSECTION (4) OF THIS SECTION MAY BE WAIVED IN WRITING BY A
15 SHAREHOLDER BEFORE OR AFTER THE CORPORATE ACTION.

16 **7-113-202. Notice of intent to demand payment.** (1) IF A
17 PROPOSED CORPORATE ACTION SPECIFIED IN SECTION 7-113-102 (1) IS
18 SUBMITTED TO A VOTE AT A SHAREHOLDERS' MEETING, A SHAREHOLDER
19 THAT WISHES TO ASSERT APPRAISAL RIGHTS WITH RESPECT TO ANY CLASS
20 OR SERIES OF SHARES:

21 (a) MUST DELIVER TO THE CORPORATION, BEFORE THE VOTE IS
22 TAKEN, WRITTEN NOTICE OF THE SHAREHOLDER'S INTENT TO DEMAND
23 PAYMENT IF THE PROPOSED CORPORATE ACTION IS EFFECTUATED; AND

24 (b) MUST NOT VOTE, OR CAUSE OR PERMIT TO BE VOTED, ANY
25 SHARES OF THE CLASS OR SERIES IN FAVOR OF THE PROPOSED CORPORATE
26 ACTION.

27 (2) IF A PROPOSED CORPORATE ACTION SPECIFIED IN SECTION

1 7-113-102 (1) IS TO BE APPROVED BY LESS THAN UNANIMOUS WRITTEN
2 CONSENT, A SHAREHOLDER THAT WISHES TO ASSERT APPRAISAL RIGHTS
3 WITH RESPECT TO ANY CLASS OR SERIES OF SHARES MUST NOT EXECUTE A
4 CONSENT IN FAVOR OF THE PROPOSED CORPORATE ACTION WITH RESPECT
5 TO THAT CLASS OR SERIES OF SHARES.

6 (3) A SHAREHOLDER THAT FAILS TO SATISFY THE REQUIREMENTS
7 OF SUBSECTION (1) OR (2) OF THIS SECTION IS NOT ENTITLED TO DEMAND
8 PAYMENT UNDER THIS ARTICLE 113.

9 **7-113-203. Appraisal notice and form.** (1) IF A PROPOSED
10 CORPORATE ACTION REQUIRING APPRAISAL RIGHTS UNDER SECTION
11 7-113-102 (1) BECOMES EFFECTIVE, THE CORPORATION SHALL DELIVER A
12 WRITTEN APPRAISAL NOTICE AND FORM TO ALL SHAREHOLDERS THAT MAY
13 BE ENTITLED TO ASSERT APPRAISAL RIGHTS.

14 (2) THE APPRAISAL NOTICE REQUIRED BY SUBSECTION (1) OF THIS
15 SECTION SHALL BE SENT NO EARLIER THAN THE DATE THE CORPORATE
16 ACTION SPECIFIED IN SECTION 7-113-102 (1) BECAME EFFECTIVE, AND NO
17 LATER THAN TEN DAYS AFTER THAT DATE, AND MUST:

18 (a) INCLUDE A FORM THAT:

19 (I) SPECIFIES THE FIRST DATE OF ANY ANNOUNCEMENT TO
20 SHAREHOLDERS, MADE BEFORE THE DATE THE CORPORATE ACTION
21 BECAME EFFECTIVE, OF THE PRINCIPAL TERMS OF THE PROPOSED
22 CORPORATE ACTION;

23 (II) IF THE ANNOUNCEMENT WAS MADE, REQUIRES THE
24 SHAREHOLDER ASSERTING APPRAISAL RIGHTS TO CERTIFY WHETHER
25 BENEFICIAL OWNERSHIP OF THOSE SHARES FOR WHICH APPRAISAL RIGHTS
26 ARE ASSERTED WAS ACQUIRED BEFORE THAT DATE; AND

27 (III) REQUIRES THE SHAREHOLDER ASSERTING APPRAISAL RIGHTS

1 TO CERTIFY THAT THE SHAREHOLDER DID NOT VOTE FOR OR CONSENT TO
2 THE TRANSACTION;

3 (b) STATE:

4 (I) WHERE THE FORM MUST BE SENT, WHERE CERTIFICATES FOR
5 CERTIFICATED SHARES MUST BE DEPOSITED, AND THE DATE BY WHICH
6 THOSE CERTIFICATES MUST BE DEPOSITED, WHICH DATE MUST NOT BE
7 EARLIER THAN THE DATE FOR RECEIVING THE REQUIRED FORM UNDER
8 SUBSECTION (2)(b)(II) OF THIS SECTION;

9 (II) A DATE BY WHICH THE CORPORATION MUST RECEIVE THE
10 FORM, WHICH DATE MUST NOT BE FEWER THAN FORTY NOR MORE THAN
11 SIXTY DAYS AFTER THE DATE THE APPRAISAL NOTICE AND FORM ARE
12 REQUIRED TO BE SENT PURSUANT TO THE INTRODUCTORY PORTION TO
13 SUBSECTION (2) OF THIS SECTION, AND STATE THAT THE SHAREHOLDER
14 WAIVES THE RIGHT TO DEMAND APPRAISAL WITH RESPECT TO THE SHARES
15 UNLESS THE FORM IS RECEIVED BY THE CORPORATION BY THE SPECIFIED
16 DATE;

17 (III) THE CORPORATION'S ESTIMATE OF THE FAIR VALUE OF THE
18 SHARES;

19 (IV) THAT, IF REQUESTED IN WRITING, THE CORPORATION WILL
20 PROVIDE TO THE SHAREHOLDER SO REQUESTING, WITHIN TEN DAYS AFTER
21 THE DATE SPECIFIED IN SUBSECTION (2)(b)(II) OF THIS SECTION, A
22 STATEMENT OF THE NUMBER OF SHAREHOLDERS THAT RETURN THE FORMS
23 BY THE SPECIFIED DATE AND THE TOTAL NUMBER OF SHARES OWNED BY
24 THEM; AND

25 (V) THE DATE BY WHICH THE NOTICE TO WITHDRAW UNDER
26 SECTION 7-113-204 MUST BE RECEIVED, WHICH DATE MUST BE WITHIN
27 TWENTY DAYS AFTER THE DATE SPECIFIED IN SUBSECTION (2)(b)(II) OF

1 THIS SECTION; AND

2 (c) BE ACCOMPANIED BY A COPY OF THIS ARTICLE 113.

3 **7-113-204. Perfection of rights - right to withdraw.** (1) A
4 SHAREHOLDER THAT RECEIVES NOTICE PURSUANT TO SECTION 7-113-203
5 AND THAT WISHES TO EXERCISE APPRAISAL RIGHTS MUST SIGN AND
6 RETURN THE FORM SENT BY THE CORPORATION AND, IN THE CASE OF
7 CERTIFICATED SHARES, DEPOSIT THE SHAREHOLDER'S CERTIFICATES IN
8 ACCORDANCE WITH THE TERMS OF THE NOTICE BY THE DATE REFERRED TO
9 IN THE NOTICE GIVEN PURSUANT TO SECTION 7-113-203 (2)(b)(II). IN
10 ADDITION, IF APPLICABLE, THE SHAREHOLDER MUST CERTIFY ON THE FORM
11 WHETHER THE BENEFICIAL OWNER OF THE SHARES ACQUIRED BENEFICIAL
12 OWNERSHIP OF THE SHARES BEFORE THE DATE REQUIRED TO BE SET FORTH
13 IN THE NOTICE PURSUANT TO SECTION 7-113-203 (2)(a). IF A
14 SHAREHOLDER FAILS TO MAKE THIS CERTIFICATION, THE CORPORATION
15 MAY ELECT TO TREAT THE SHAREHOLDER'S SHARES AS AFTER-ACQUIRED
16 SHARES UNDER SECTION 7-113-206. ONCE A SHAREHOLDER DEPOSITS
17 THAT SHAREHOLDER'S CERTIFICATES OR, IN THE CASE OF UNCERTIFICATED
18 SHARES, RETURNS THE SIGNED FORMS, THAT SHAREHOLDER LOSES ALL
19 RIGHTS AS A SHAREHOLDER UNLESS THE SHAREHOLDER WITHDRAWS
20 PURSUANT TO SUBSECTION (2) OF THIS SECTION.

21 (2) A SHAREHOLDER WHO HAS COMPLIED WITH SUBSECTION (1) OF
22 THIS SECTION MAY NEVERTHELESS DECLINE TO EXERCISE APPRAISAL
23 RIGHTS AND WITHDRAW FROM THE APPRAISAL PROCESS BY SO NOTIFYING
24 THE CORPORATION IN WRITING BY THE DATE SET FORTH IN THE APPRAISAL
25 NOTICE GIVEN PURSUANT TO SECTION 7-113-203 (2)(b)(V). A
26 SHAREHOLDER THAT FAILS TO SO WITHDRAW FROM THE APPRAISAL
27 PROCESS MAY NOT THEREAFTER WITHDRAW WITHOUT THE CORPORATION'S

1 WRITTEN CONSENT.

2 (3) A SHAREHOLDER THAT DOES NOT SIGN AND RETURN THE FORM
3 AND, IN THE CASE OF CERTIFIED SHARES, DEPOSIT THAT SHAREHOLDER'S
4 SHARE CERTIFICATES WHERE REQUIRED, EACH BY THE DATE SET FORTH IN
5 THE NOTICE DESCRIBED IN SECTION 7-113-203 (2), IS NOT ENTITLED TO
6 PAYMENT UNDER THIS ARTICLE 113.

7 **7-113-205. Payment.** (1) EXCEPT AS PROVIDED IN SECTION
8 7-113-206, WITHIN THIRTY DAYS AFTER THE DATE SPECIFIED IN SECTION
9 7-113-203 (2)(b)(II), THE CORPORATION SHALL PAY IN CASH TO THOSE
10 SHAREHOLDERS WHO COMPLIED WITH SECTION 7-113-204 (1) THE AMOUNT
11 THE CORPORATION ESTIMATES TO BE THE FAIR VALUE OF THEIR SHARES,
12 PLUS INTEREST.

13 (2) THE PAYMENT TO EACH SHAREHOLDER PURSUANT TO
14 SUBSECTION (1) OF THIS SECTION MUST BE ACCOMPANIED BY:

15 (a) (I) THE ANNUAL FINANCIAL STATEMENTS SPECIFIED IN SECTION
16 7-116-105 OF THE CORPORATION THAT ISSUED THE SHARES TO BE
17 APPRAISED, WHICH STATEMENT MUST BE AS OF A DATE ENDING NOT MORE
18 THAN SIXTEEN MONTHS BEFORE THE DATE OF PAYMENT; EXCEPT THAT, IF
19 THE ANNUAL FINANCIAL STATEMENTS ARE NOT REASONABLY AVAILABLE,
20 THE CORPORATION SHALL PROVIDE REASONABLY EQUIVALENT FINANCIAL
21 INFORMATION; AND

22 (II) THE LATEST AVAILABLE QUARTERLY FINANCIAL STATEMENTS
23 OF THE CORPORATION, IF ANY;

24 (b) A STATEMENT OF THE CORPORATION'S ESTIMATE OF THE FAIR
25 VALUE OF THE SHARES, WHICH ESTIMATE MUST EQUAL OR EXCEED THE
26 CORPORATION'S ESTIMATE GIVEN PURSUANT TO SECTION 7-113-203
27 (2)(b)(III); AND

1 (c) A STATEMENT THAT SHAREHOLDERS DESCRIBED IN SUBSECTION
2 (1) OF THIS SECTION HAVE THE RIGHT TO DEMAND FURTHER PAYMENT
3 UNDER SECTION 7-113-207 AND THAT IF ANY SUCH SHAREHOLDER DOES
4 NOT DO SO WITHIN THE PERIOD SPECIFIED IN SECTION 7-113-207 (2), THE
5 SHAREHOLDER SHALL BE DEEMED TO HAVE ACCEPTED THE PAYMENT IN
6 FULL SATISFACTION OF THE CORPORATION'S OBLIGATIONS UNDER THIS
7 ARTICLE 113.

8 **7-113-206. After-acquired shares.** (1) THE CORPORATION MAY
9 ELECT TO WITHHOLD PAYMENT OTHERWISE REQUIRED BY SECTION
10 7-113-205 FROM ANY SHAREHOLDER THAT WAS REQUIRED TO CERTIFY,
11 BUT DID NOT CERTIFY, THAT BENEFICIAL OWNERSHIP OF ALL OF THE
12 SHAREHOLDER'S SHARES FOR WHICH APPRAISAL RIGHTS ARE ASSERTED
13 WAS ACQUIRED BEFORE THE DATE SET FORTH IN THE APPRAISAL NOTICES
14 SENT PURSUANT TO SECTION 7-113-203 (2)(a).

15 (2) IF THE CORPORATION ELECTED TO WITHHOLD PAYMENT UNDER
16 SUBSECTION (1) OF THIS SECTION, IT MUST, WITHIN THIRTY DAYS AFTER
17 THE DATE SPECIFIED IN SECTION 7-113-203 (2)(b)(II), NOTIFY ALL
18 SHAREHOLDERS THAT ARE DESCRIBED IN SUBSECTION (1) OF THIS SECTION:

19 (a) OF THE INFORMATION REQUIRED BY SECTION 7-113-205 (2)(a);

20 (b) OF THE CORPORATION'S ESTIMATE OF FAIR VALUE PURSUANT
21 TO SECTION 7-113-205 (2)(b);

22 (c) THAT THEY MAY ACCEPT THE CORPORATION'S ESTIMATE OF
23 FAIR VALUE, PLUS INTEREST, IN FULL SATISFACTION OF THEIR DEMANDS OR
24 DEMAND APPRAISAL UNDER SECTION 7-113-207;

25 (d) THAT THOSE SHAREHOLDERS THAT WISH TO ACCEPT THE OFFER
26 MUST NOTIFY THE CORPORATION OF THEIR ACCEPTANCE OF THE
27 CORPORATION'S OFFER WITHIN THIRTY DAYS AFTER RECEIVING THE OFFER;

1 AND

2 (e) THAT THOSE SHAREHOLDERS WHO DO NOT SATISFY THE
3 REQUIREMENTS FOR DEMANDING APPRAISAL UNDER SECTION 7-113-207
4 SHALL BE DEEMED TO HAVE ACCEPTED THE CORPORATION'S OFFER.

5 (3) WITHIN TEN DAYS AFTER RECEIVING THE SHAREHOLDER'S
6 ACCEPTANCE PURSUANT TO SUBSECTION (2)(d) OF THIS SECTION, THE
7 CORPORATION SHALL PAY IN CASH THE AMOUNT IT OFFERED UNDER
8 SECTION 7-113-206 (2)(b) TO EACH SHAREHOLDER THAT AGREED TO
9 ACCEPT THE CORPORATION'S OFFER IN FULL SATISFACTION OF THE
10 SHAREHOLDER'S DEMAND.

11 (4) WITHIN FORTY DAYS AFTER SENDING THE NOTICE DESCRIBED
12 IN SUBSECTION (2) OF THIS SECTION, THE CORPORATION SHALL PAY IN
13 CASH THE AMOUNT IT OFFERED TO PAY UNDER SUBSECTION (2)(b) OF THIS
14 SECTION TO EACH SHAREHOLDER DESCRIBED IN SUBSECTION (3) OF THIS
15 SECTION.

16 **7-113-207. Procedure if shareholder is dissatisfied with**
17 **payment or offer.** (1) A SHAREHOLDER THAT IS PAID PURSUANT TO
18 SECTION 7-113-205 AND IS DISSATISFIED WITH THE AMOUNT OF THE
19 PAYMENT MUST NOTIFY THE CORPORATION IN WRITING OF THAT
20 SHAREHOLDER'S ESTIMATE OF THE FAIR VALUE OF THE SHARES AND
21 DEMAND PAYMENT OF THAT ESTIMATE, PLUS INTEREST, LESS ANY
22 PAYMENT MADE UNDER SECTION 7-113-205. A SHAREHOLDER THAT IS
23 OFFERED PAYMENT UNDER SECTION 7-113-206 AND IS DISSATISFIED WITH
24 THAT OFFER MUST REJECT THE OFFER AND DEMAND PAYMENT OF THE
25 SHAREHOLDER'S STATED ESTIMATE OF THE FAIR VALUE OF THE SHARES,
26 PLUS INTEREST.

27 (2) A SHAREHOLDER THAT FAILS TO NOTIFY THE CORPORATION IN

1 WRITING OF THAT SHAREHOLDER'S DEMAND TO BE PAID THE
2 SHAREHOLDER'S STATED ESTIMATE OF THE FAIR VALUE PLUS INTEREST
3 UNDER SUBSECTION (1) OF THIS SECTION WITHIN THIRTY DAYS AFTER
4 RECEIVING THE CORPORATION'S PAYMENT OR OFFER OF PAYMENT UNDER
5 SECTION 7-113-205 OR 7-113-206, RESPECTIVELY, WAIVES THE RIGHT TO
6 DEMAND PAYMENT UNDER THIS SECTION AND IS ENTITLED ONLY TO THE
7 PAYMENT MADE OR OFFERED PURSUANT TO THOSE RESPECTIVE SECTIONS.

8 PART 3

9 JUDICIAL APPRAISAL OF SHARES

10 **7-113-301. Court action.** (1) IF A DEMAND FOR PAYMENT UNDER
11 SECTION 7-113-207 REMAINS UNRESOLVED, THE CORPORATION SHALL
12 COMMENCE A PROCEEDING WITHIN SIXTY DAYS AFTER RECEIVING THE
13 PAYMENT DEMAND AND PETITION THE COURT TO DETERMINE THE FAIR
14 VALUE OF THE SHARES AND ACCRUED INTEREST. IF THE CORPORATION
15 DOES NOT COMMENCE THE PROCEEDING WITHIN THE SIXTY-DAY PERIOD,
16 IT SHALL PAY IN CASH TO EACH SHAREHOLDER THE AMOUNT THE
17 SHAREHOLDER DEMANDED PURSUANT TO SECTION 7-113-207 PLUS
18 INTEREST.

19 (2) THE CORPORATION SHALL COMMENCE THE PROCEEDING
20 DESCRIBED IN SUBSECTION (1) OF THIS SECTION IN:

21 (a) THE DISTRICT COURT FOR THE COUNTY IN THIS STATE IN WHICH
22 THE STREET ADDRESS OF THE CORPORATION'S PRINCIPAL OFFICE IS
23 LOCATED;

24 (b) THE DISTRICT COURT FOR THE COUNTY IN WHICH THE STREET
25 ADDRESS OF ITS REGISTERED AGENT IS LOCATED IF THE CORPORATION HAS
26 NO PRINCIPAL OFFICE IN THIS STATE; OR

27 (c) THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER

1 IF THE CORPORATION HAS NO REGISTERED AGENT; EXCEPT THAT IF THE
2 CORPORATION IS A FOREIGN CORPORATION WITHOUT A REGISTERED
3 AGENT, THE CORPORATION SHALL COMMENCE THE PROCEEDING IN THE
4 COUNTY IN THIS STATE WHERE THE PRINCIPAL OFFICE OR REGISTERED
5 OFFICE OF THE DOMESTIC CORPORATION THAT MERGED WITH THE FOREIGN
6 CORPORATION WAS LOCATED AT THE TIME OF THE MERGER.

7 (3) (a) THE CORPORATION SHALL:

8 (I) MAKE ALL SHAREHOLDERS WHOSE DEMANDS REMAIN
9 UNRESOLVED, WHETHER OR NOT RESIDENTS OF THIS STATE, PARTIES TO
10 THE PROCEEDING AS IN AN ACTION AGAINST THEIR SHARES; AND

11 (II) SERVE ALL PARTIES WITH A COPY OF THE PETITION.

12 (b) SERVICE ON EACH SHAREHOLDER DEMANDING APPRAISAL
13 RIGHTS MUST BE BY REGISTERED OR CERTIFIED MAIL TO THE ADDRESS
14 STATED IN THE SHAREHOLDER'S PAYMENT DEMAND OR, IF NO SUCH
15 ADDRESS IS STATED IN THE PAYMENT DEMAND, TO THE ADDRESS SHOWN
16 ON THE CORPORATION'S CURRENT RECORD OF SHAREHOLDERS FOR THE
17 SHAREHOLDER HOLDING THE SHARES AS TO WHICH APPRAISAL RIGHTS ARE
18 DEMANDED, OR AS PROVIDED BY LAW.

19 (4) THE JURISDICTION OF THE COURT IN WHICH THE PROCEEDING
20 IS COMMENCED UNDER SUBSECTION (2) OF THIS SECTION IS PLENARY AND
21 EXCLUSIVE. THE COURT MAY APPOINT ONE OR MORE PERSONS AS
22 APPRAISERS TO RECEIVE EVIDENCE AND RECOMMEND A DECISION ON THE
23 QUESTION OF FAIR VALUE. THE APPRAISERS HAVE THE POWERS DESCRIBED
24 IN THE ORDER APPOINTING THEM OR IN ANY AMENDMENT TO THE ORDER.
25 THE SHAREHOLDERS DEMANDING APPRAISAL RIGHTS ARE ENTITLED TO THE
26 SAME DISCOVERY RIGHTS AS PARTIES IN OTHER CIVIL PROCEEDINGS. THERE
27 IS NO RIGHT TO A JURY TRIAL.

1 (5) EACH SHAREHOLDER MADE A PARTY TO THE PROCEEDING
2 COMMENCED UNDER SUBSECTION (2) OF THIS SECTION IS ENTITLED TO
3 JUDGMENT:

4 (a) FOR THE AMOUNT, IF ANY, BY WHICH THE COURT FINDS THE
5 FAIR VALUE OF THE SHAREHOLDER'S SHARES, PLUS INTEREST, EXCEEDS
6 THE AMOUNT PAID BY THE CORPORATION FOR THE SHARES; OR

7 (b) FOR THE FAIR VALUE, PLUS INTEREST, OF THE SHAREHOLDER'S
8 SHARES FOR WHICH THE CORPORATION ELECTED TO WITHHOLD PAYMENT
9 UNDER SECTION 7-113-206.

10 **7-113-302. Court costs and expenses.** (1) THE COURT IN AN
11 APPRAISAL PROCEEDING COMMENCED UNDER SECTION 7-113-301 SHALL
12 DETERMINE ALL COSTS OF THE PROCEEDING, INCLUDING THE REASONABLE
13 COMPENSATION AND EXPENSES OF APPRAISERS APPOINTED BY THE COURT.
14 THE COURT SHALL ASSESS THE COSTS AGAINST THE CORPORATION; EXCEPT
15 THAT THE COURT MAY ASSESS COSTS AGAINST ALL OR SOME OF THE
16 SHAREHOLDERS DEMANDING APPRAISAL, IN AMOUNTS THE COURT FINDS
17 EQUITABLE, TO THE EXTENT THE COURT FINDS THE SHAREHOLDERS ACTED
18 ARBITRARILY, VEXATIOUSLY, OR NOT IN GOOD FAITH WITH RESPECT TO
19 THE RIGHTS PROVIDED BY THIS ARTICLE 113.

20 (2) THE COURT IN AN APPRAISAL PROCEEDING MAY ALSO ASSESS
21 THE FEES AND EXPENSES OF THE RESPECTIVE PARTIES, IN AMOUNTS THE
22 COURT FINDS EQUITABLE:

23 (a) AGAINST THE CORPORATION AND IN FAVOR OF ANY OR ALL
24 SHAREHOLDERS DEMANDING APPRAISAL IF THE COURT FINDS THE
25 CORPORATION DID NOT SUBSTANTIALLY COMPLY WITH SECTION
26 7-113-201, 7-113-203, 7-113-205, OR 7-113-206; OR

27 (b) AGAINST EITHER THE CORPORATION OR ONE OR MORE

1 SHAREHOLDERS DEMANDING APPRAISAL, IN FAVOR OF ANY OTHER PARTY,
2 IF THE COURT FINDS THAT THE PARTY AGAINST WHOM THE FEES AND
3 EXPENSES ARE ASSESSED ACTED ARBITRARILY, VEXATIOUSLY, OR NOT IN
4 GOOD FAITH WITH RESPECT TO THE RIGHTS PROVIDED BY THIS ARTICLE
5 113.

6 (3) IF THE COURT IN AN APPRAISAL PROCEEDING FINDS THAT THE
7 EXPENSES INCURRED BY ANY SHAREHOLDER WERE OF SUBSTANTIAL
8 BENEFIT TO OTHER SHAREHOLDERS SIMILARLY SITUATED AND THAT THE
9 EXPENSES SHOULD NOT BE ASSESSED AGAINST THE CORPORATION, THE
10 COURT MAY DIRECT THAT THE EXPENSES BE PAID OUT OF THE AMOUNTS
11 AWARDED TO THE SHAREHOLDERS WHO WERE BENEFITED.

12 (4) TO THE EXTENT THE CORPORATION FAILS TO MAKE A REQUIRED
13 PAYMENT PURSUANT TO SECTION 7-113-205, 7-113-206, OR 7-113-207,
14 THE SHAREHOLDER MAY SUE DIRECTLY FOR THE AMOUNT OWED AND, TO
15 THE EXTENT SUCCESSFUL, IS ENTITLED TO RECOVER FROM THE
16 CORPORATION ALL EXPENSES OF THE SUIT, INCLUDING REASONABLE
17 ATTORNEY FEES.

18 PART 4

19 OTHER REMEDIES

20 **7-113-401. Other remedies limited.** (1) THE LEGALITY OF A
21 PROPOSED OR COMPLETED CORPORATE ACTION DESCRIBED IN SECTION
22 7-113-102 (1) MAY NOT BE CONTESTED, NOR MAY THE CORPORATE ACTION
23 BE ENJOINED, SET ASIDE, OR RESCINDED, IN A LEGAL OR EQUITABLE
24 PROCEEDING BY A SHAREHOLDER AFTER THE SHAREHOLDERS HAVE
25 APPROVED THE CORPORATE ACTION.

26 (2) SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO A
27 CORPORATE ACTION THAT:

1 (a) WAS NOT AUTHORIZED AND APPROVED IN ACCORDANCE WITH
2 THE APPLICABLE PROVISIONS OF:

- 3 (I) ARTICLE 109, 110, 111, OR 112 OF THIS TITLE 7;
- 4 (II) THE ARTICLES OF INCORPORATION OR BYLAWS; OR
- 5 (III) THE RESOLUTION OF THE BOARD OF DIRECTORS AUTHORIZING
6 THE CORPORATE ACTION;

7 (b) WAS PROCURED AS A RESULT OF FRAUD, A MATERIAL
8 MISREPRESENTATION, OR AN OMISSION OF A MATERIAL FACT NECESSARY
9 TO MAKE STATEMENTS MADE, IN LIGHT OF THE CIRCUMSTANCES IN WHICH
10 THEY WERE MADE, NOT MISLEADING;

11 (c) IS AN INTERESTED TRANSACTION, UNLESS IT HAS BEEN
12 RECOMMENDED BY THE BOARD OF DIRECTORS IN THE SAME MANNER AS IS
13 PROVIDED IN SECTION 7-108-501 AND HAS BEEN APPROVED BY THE
14 SHAREHOLDERS, IN THE SAME MANNER AS IS PROVIDED IN SECTION
15 7-108-501, AS IF THE INTERESTED TRANSACTION WERE A DIRECTOR'S
16 CONFLICTING INTEREST TRANSACTION; OR

17 (d) WAS APPROVED BY LESS THAN UNANIMOUS CONSENT OF THE
18 VOTING SHAREHOLDERS PURSUANT TO SECTION 7-107-104 IF:

19 (I) THE CHALLENGE TO THE CORPORATE ACTION IS BROUGHT BY A
20 SHAREHOLDER THAT DID NOT CONSENT AND AS TO WHOM NOTICE OF THE
21 APPROVAL OF THE CORPORATE ACTION WAS NOT EFFECTIVE AT LEAST TEN
22 DAYS BEFORE THE CORPORATE ACTION WAS EFFECTED; AND

23 (II) THE PROCEEDING CHALLENGING THE CORPORATE ACTION IS
24 COMMENCED WITHIN TEN DAYS AFTER NOTICE OF THE APPROVAL OF THE
25 CORPORATE ACTION IS EFFECTIVE AS TO THE SHAREHOLDER BRINGING THE
26 PROCEEDING.

27 **SECTION 58.** In Colorado Revised Statutes, 7-114-301, **amend**

1 (2)(c), (2)(d), and (4)(a); and **add** (2)(e) and (5) as follows:

2 **7-114-301. Grounds for judicial dissolution.** (2) A corporation
3 may be dissolved in a proceeding by a shareholder if it is established that:

4 (c) The shareholders are deadlocked in voting power and have
5 failed, for a period that includes at least two consecutive annual meeting
6 dates, to elect successors to directors whose terms have expired or would
7 have expired upon the election of their successors; ~~or~~

8 (d) The corporate assets are being misapplied or wasted; OR

9 (e) THE CORPORATION HAS ABANDONED ITS BUSINESS AND HAS
10 FAILED WITHIN A REASONABLE TIME TO LIQUIDATE AND DISTRIBUTE ITS
11 ASSETS AND DISSOLVE.

12 (4) (a) If a corporation has been dissolved by voluntary action
13 taken under part 1 of this ~~article~~ ARTICLE 114:

14 (I) The corporation may bring a proceeding to wind up and
15 liquidate its business and affairs under judicial supervision in accordance
16 with section ~~7-114-105~~ 7-114-302; and

17 (II) The attorney general, a shareholder, or a creditor, as the case
18 may be, may bring a proceeding to wind up and liquidate the business and
19 affairs of the corporation under judicial supervision in accordance with
20 section ~~7-114-105~~ 7-114-302, upon establishing the grounds set forth for
21 ~~such~~ THAT person, respectively, in subsections (1) to (3) of this section.

22 (5) SUBSECTIONS (2)(a) TO (2)(e) OF THIS SECTION DO NOT APPLY
23 IN THE CASE OF A CORPORATION THAT, ON THE DATE OF THE FILING OF THE
24 PROCEEDING, HAS A CLASS OR SERIES OF SHARES THAT IS:

25 (a) A COVERED SECURITY UNDER SECTION 18 (b)(1)(A) OR 18
26 (b)(1)(B) OF THE FEDERAL "SECURITIES ACT OF 1933", 15 U.S.C. SEC. 77r
27 (b)(1)(A) AND 77r (b)(1)(B);

1 (b) NOT A COVERED SECURITY BUT IS TRADED IN AN ORGANIZED
2 MARKET AND HAS A MARKET VALUE OF AT LEAST TWENTY MILLION
3 DOLLARS, EXCLUSIVE OF THE VALUE OF THE SHARES HELD BY THE
4 CORPORATION'S SUBSIDIARIES, SENIOR EXECUTIVES, DIRECTORS, AND
5 PERSONS KNOWN TO THE CORPORATION OWNING MORE THAN TEN PERCENT
6 OF THE SHARES; OR

7 (c) ISSUED BY AN OPEN-END MANAGEMENT INVESTMENT COMPANY
8 REGISTERED WITH THE FEDERAL SECURITIES AND EXCHANGE COMMISSION
9 UNDER THE FEDERAL "INVESTMENT COMPANY ACT OF 1940", 15 U.S.C.
10 SEC. 80a-1 ET SEQ., AND THAT MAY BE REDEEMED AT THE OPTION OF THE
11 HOLDER AT NET ASSET VALUE.

12 **SECTION 59.** In Colorado Revised Statutes, 7-114-302, **add** (4)
13 as follows:

14 **7-114-302. Procedure for judicial dissolution.** (4) WITHIN TEN
15 DAYS AFTER THE COMMENCEMENT OF A PROCEEDING TO DISSOLVE A
16 CORPORATION UNDER SECTION 7-114-301 (2), THE CORPORATION SHALL
17 SEND TO ALL SHAREHOLDERS, OTHER THAN THE PETITIONER, A NOTICE
18 STATING THAT THE SHAREHOLDERS ARE ENTITLED TO AVOID THE
19 DISSOLUTION OF THE CORPORATION BY ELECTING TO PURCHASE THE
20 PETITIONER'S SHARES UNDER SECTION 7-114-305 AND ACCOMPANIED BY
21 A COPY OF SECTION 7-114-305.

22 **SECTION 60.** In Colorado Revised Statutes, 7-114-303, **amend**
23 (1) as follows:

24 **7-114-303. Receivership or custodianship.** (1) UNLESS AN
25 ELECTION TO PURCHASE HAS BEEN FILED UNDER SECTION 7-114-305, a
26 court in a judicial proceeding to dissolve a corporation may appoint one
27 or more receivers to wind up and liquidate, or one or more custodians to

1 manage, the business and affairs of the corporation. The court shall hold
2 a hearing, after giving notice to all parties to the proceeding and any
3 interested persons designated by the court, before appointing a receiver
4 or custodian. The court appointing a receiver or custodian has ~~exclusive~~
5 jurisdiction over the corporation and all of its property, wherever located.

6 **SECTION 61.** In Colorado Revised Statutes, **add** 7-114-305 as
7 follows:

8 **7-114-305. Election to purchase in lieu of dissolution.** (1) IN A
9 PROCEEDING UNDER SECTION 7-114-301 (2) TO DISSOLVE A CORPORATION,
10 UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION OR
11 BYLAWS OF THE CORPORATION, THE CORPORATION MAY ELECT OR, IF IT
12 FAILS TO ELECT, ONE OR MORE SHAREHOLDERS MAY ELECT, TO PURCHASE
13 ALL SHARES OWNED BY THE PETITIONING SHAREHOLDER AT THE FAIR
14 VALUE OF THE SHARES. AN ELECTION PURSUANT TO THIS SECTION IS
15 IRREVOCABLE UNLESS THE COURT DETERMINES THAT IT IS EQUITABLE TO
16 SET ASIDE OR MODIFY THE ELECTION.

17 (2) (a) AN ELECTION TO PURCHASE PURSUANT TO THIS SECTION
18 MAY BE FILED WITH THE COURT AT ANY TIME WITHIN NINETY DAYS AFTER
19 THE FILING OF THE PETITION UNDER SECTION 7-114-301 (2) OR AT SUCH
20 LATER TIME AS THE COURT IN ITS DISCRETION MAY ALLOW. IF THE
21 ELECTION TO PURCHASE IS FILED BY ONE OR MORE SHAREHOLDERS, THE
22 CORPORATION SHALL, WITHIN TEN DAYS AFTER THE FILING, GIVE WRITTEN
23 NOTICE TO ALL SHAREHOLDERS OTHER THAN THE PETITIONER. THE NOTICE
24 MUST STATE THE NAME AND NUMBER OF SHARES OWNED BY THE
25 PETITIONER AND THE NAME AND NUMBER OF SHARES OWNED BY EACH
26 ELECTING SHAREHOLDER AND MUST ADVISE THE RECIPIENTS OF THEIR
27 RIGHT TO JOIN IN THE ELECTION TO PURCHASE SHARES IN ACCORDANCE

1 WITH THIS SECTION.

2 (b) SHAREHOLDERS THAT WISH TO PARTICIPATE MUST FILE NOTICE
3 OF THEIR INTENTION TO JOIN IN THE PURCHASE NO LATER THAN THIRTY
4 DAYS AFTER THE EFFECTIVE DATE OF THE NOTICE TO THEM. ALL
5 SHAREHOLDERS WHO HAVE FILED AN ELECTION OR NOTICE OF THEIR
6 INTENTION TO PARTICIPATE IN THE ELECTION TO PURCHASE BECOME
7 PARTIES TO THE PROCEEDING AND PARTICIPATE IN THE PURCHASE IN
8 PROPORTION TO THEIR OWNERSHIP OF SHARES AS OF THE DATE THE FIRST
9 ELECTION WAS FILED UNLESS THEY OTHERWISE AGREE OR THE COURT
10 OTHERWISE DIRECTS.

11 (c) AFTER AN ELECTION HAS BEEN FILED BY THE CORPORATION OR
12 ONE OR MORE SHAREHOLDERS, THE PROCEEDING UNDER SECTION
13 7-114-302 (2) MAY NOT BE DISCONTINUED OR SETTLED, NOR MAY THE
14 PETITIONING SHAREHOLDER SELL OR OTHERWISE DISPOSE OF THE
15 SHAREHOLDER'S SHARES, UNLESS THE COURT DETERMINES THAT IT WOULD
16 BE EQUITABLE TO THE CORPORATION AND THE SHAREHOLDERS, OTHER
17 THAN THE PETITIONER, TO PERMIT THE DISCONTINUANCE, SETTLEMENT,
18 SALE, OR OTHER DISPOSITION.

19 (3) IF, WITHIN SIXTY DAYS AFTER THE FILING OF THE FIRST
20 ELECTION, THE PARTIES REACH AGREEMENT AS TO THE FAIR VALUE AND
21 TERMS OF PURCHASE OF THE PETITIONER'S SHARES, THE COURT SHALL
22 ENTER AN ORDER DIRECTING THE PURCHASE OF THE PETITIONER'S SHARES
23 UPON THE TERMS AND CONDITIONS AGREED TO BY THE PARTIES.

24 (4) IF THE PARTIES ARE UNABLE TO REACH AN AGREEMENT AS
25 PROVIDED FOR IN SUBSECTION (3) OF THIS SECTION, THE COURT, UPON
26 APPLICATION OF ANY PARTY, SHALL STAY THE PROCEEDINGS HELD
27 PURSUANT TO SECTION 7-114-302 AND DETERMINE THE FAIR VALUE OF

1 THE PETITIONER'S SHARES AS OF THE DAY BEFORE THE DATE ON WHICH THE
2 PETITION UNDER SECTION 7-114-302 WAS FILED OR AS OF SUCH OTHER
3 DATE AS THE COURT DEEMS APPROPRIATE UNDER THE CIRCUMSTANCES.

4 (5) (a) UPON DETERMINING THE FAIR VALUE OF THE SHARES, THE
5 COURT SHALL ENTER AN ORDER DIRECTING THE PURCHASE UPON SUCH
6 TERMS AND CONDITIONS AS THE COURT DEEMS APPROPRIATE, WHICH MAY
7 INCLUDE PAYMENT OF THE PURCHASE PRICE IN INSTALLMENTS WHERE
8 NECESSARY IN THE INTERESTS OF EQUITY, PROVISION FOR SECURITY TO
9 ASSURE PAYMENT OF THE PURCHASE PRICE AND ANY ADDITIONAL
10 EXPENSES AS MAY HAVE BEEN AWARDED, AND, IF THE SHARES ARE TO BE
11 PURCHASED BY SHAREHOLDERS, THE ALLOCATION OF SHARES AMONG THE
12 SHAREHOLDERS. IN ALLOCATING THE PETITIONER'S SHARES AMONG
13 HOLDERS OF DIFFERENT CLASSES OF SHARES, THE COURT SHALL ATTEMPT
14 TO PRESERVE THE EXISTING DISTRIBUTION OF VOTING RIGHTS AMONG
15 HOLDERS OF DIFFERENT CLASSES INsofar AS PRACTICABLE AND MAY
16 DIRECT THAT HOLDERS OF A SPECIFIC CLASS OR CLASSES NOT PARTICIPATE
17 IN THE PURCHASE.

18 (b) INTEREST MAY BE ALLOWED AT THE RATE AND FROM THE DATE
19 DETERMINED BY THE COURT TO BE EQUITABLE, BUT IF THE COURT FINDS
20 THAT THE REFUSAL OF THE PETITIONING SHAREHOLDER TO ACCEPT AN
21 OFFER OF PAYMENT WAS ARBITRARY OR OTHERWISE NOT IN GOOD FAITH,
22 NO INTEREST SHALL BE ALLOWED.

23 (c) IF THE COURT FINDS THAT THE PETITIONING SHAREHOLDER HAD
24 PROBABLE GROUNDS FOR RELIEF UNDER SECTION 7-114-301 (2)(b) OR
25 (2)(d), IT MAY AWARD EXPENSES TO THE PETITIONING SHAREHOLDER.

26 (6) UPON ENTRY OF AN ORDER UNDER SUBSECTION (3) OR (5) OF
27 THIS SECTION, THE COURT SHALL DISMISS THE PETITION TO DISSOLVE THE

1 CORPORATION UNDER SECTION 7-114-302 AND THE PETITIONING
2 SHAREHOLDER NO LONGER HAS ANY RIGHTS OR STATUS AS A
3 SHAREHOLDER OF THE CORPORATION OTHER THAN THE RIGHT TO RECEIVE
4 THE AMOUNTS AWARDED BY THE ORDER OF THE COURT, WHICH IS
5 ENFORCEABLE IN THE SAME MANNER AS ANY OTHER JUDGMENT.

6 (7) THE PURCHASE ORDERED PURSUANT TO SUBSECTION (5) OF
7 THIS SECTION MUST BE MADE WITHIN TEN DAYS AFTER THE DATE THE
8 ORDER BECOMES FINAL UNLESS, BEFORE THAT TIME, THE CORPORATION
9 FILES WITH THE COURT A NOTICE OF ITS INTENTION TO ADOPT ARTICLES OF
10 DISSOLUTION PURSUANT TO SECTIONS 7-114-102 AND 7-114-103, WHICH
11 ARTICLES MUST THEN BE ADOPTED AND FILED WITHIN FIFTY DAYS AFTER
12 THE FILING OF THE NOTICE. UPON FILING OF THE ARTICLES OF
13 DISSOLUTION, THE CORPORATION IS DISSOLVED IN ACCORDANCE WITH
14 SECTIONS 7-90-910 TO 7-90-914 AND THE ORDER ENTERED PURSUANT TO
15 SUBSECTION (5) OF THIS SECTION IS NO LONGER OF ANY FORCE OR EFFECT;
16 EXCEPT THAT THE COURT MAY AWARD THE PETITIONING SHAREHOLDER
17 EXPENSES IN ACCORDANCE WITH SUBSECTION (5)(c) OF THIS SECTION AND
18 THE PETITIONER MAY CONTINUE TO PURSUE ANY CLAIMS PREVIOUSLY
19 ASSERTED ON BEHALF OF THE CORPORATION.

20 (8) ANY PAYMENT BY THE CORPORATION PURSUANT TO AN ORDER
21 UNDER SUBSECTION (3) OR (5) OF THIS SECTION, OTHER THAN AN AWARD
22 OF EXPENSES PURSUANT TO SUBSECTION (5) OF THIS SECTION, IS SUBJECT
23 TO SECTION 7-106-401.

24 **SECTION 62.** In Colorado Revised Statutes, 7-116-102, **amend**
25 (4)(b) as follows:

26 **7-116-102. Inspection of corporate records by shareholder.**

27 (4) For purposes of this section:

1 (b) "Shareholder" includes a beneficial owner. ~~whose shares are~~
2 ~~held in a voting trust and any other beneficial owner who establishes~~
3 ~~beneficial ownership.~~

4 **SECTION 63.** In Colorado Revised Statutes, 7-40-104, **amend**
5 (2)(b) as follows:

6 **7-40-104. Additional powers - indemnification - liability.**

7 (2) (b) Any such corporation shall have the same powers, rights, and
8 obligations and shall be subject to the same limitations as those that apply
9 to domestic corporations, as set forth in article 109 of this ~~title~~ TITLE 7.
10 Corporation directors, officers, employees, and agents shall have the same
11 rights as directors, officers, employees, and agents, respectively, of
12 domestic corporations, as set forth in article 109 of this ~~title~~ TITLE 7.
13 Corporation directors and officers shall have the benefit of the same
14 limitations on personal liability for any injury to person or property
15 arising out of a tort, as set forth in section ~~7-108-402 (2)~~ 7-108-403, for
16 directors and officers, respectively, of domestic corporations. Any
17 reference in said sections to shareholders shall be construed to refer to
18 voting members or voting stockholders, if any, for the purpose of this
19 section.

20 **SECTION 64.** In Colorado Revised Statutes, **amend** 7-55-107.5
21 as follows:

22 **7-55-107.5. Indemnification and personal liability of directors,**
23 **officers, employees, and agents.** The association shall have the same
24 powers, rights, and obligations and shall be subject to the same
25 limitations as apply to domestic corporations as set forth in article 109 of
26 this ~~title~~ TITLE 7. Association directors, officers, employees, and agents
27 shall have the same rights as directors, officers, employees, and agents,

1 respectively, of domestic corporations as set forth in article 109 of this
2 ~~title~~ TITLE 7. Association directors and officers shall have the benefit of
3 the same limitations on personal liability for any injury to person or
4 property arising out of a tort as set forth in section ~~7-108-402 (2)~~
5 7-108-403 for directors and officers, respectively, of domestic
6 corporations. Any reference in said sections to shareholders shall be
7 construed to refer to voting members or voting stockholders, if any, for
8 the purpose of this section.

9 **SECTION 65.** In Colorado Revised Statutes, 7-56-603, **amend**
10 (1) introductory portion, (1)(c), and (1)(d) as follows:

11 **7-56-603. Procedure for consolidation, share or equity capital**
12 **exchange, conversion, and merger.** (1) A plan for consolidation or
13 share or equity capital exchange ~~shall~~ MUST state the following:

14 (c) A statement that the consolidating entities are consolidated
15 with the surviving entity, or that the acquiring entity is acquiring shares
16 or equity capital of the other entities, and the section of this article
17 pursuant to which the consolidation or ~~share~~ exchange is effected;

18 (d) Any amendments to the articles of the surviving party to be
19 effected by the consolidation or ~~share or~~ equity capital exchange; and

20 **SECTION 66.** In Colorado Revised Statutes, 7-56-605, **amend**
21 (2) introductory portion as follows:

22 **7-56-605. Statement of consolidation or share or equity capital**
23 **exchange.** (2) After a plan of consolidation or share or equity capital
24 exchange is approved by all necessary action of all parties, the acquiring
25 entity shall deliver to the secretary of state, for filing pursuant to part 3 of
26 article 90 of this title, a statement of consolidation or a statement of ~~share~~
27 exchange stating:

1 **SECTION 67.** In Colorado Revised Statutes, 7-101-506, **amend**
2 (3) as follows:

3 **7-101-506. Duties of directors.** (3) The articles of incorporation
4 of a public benefit corporation may include a provision that a
5 disinterested director's failure to satisfy this section does not, for the
6 purposes of section 7-108-401 or ~~7-108-402~~ 7-108-403 or article 109 of
7 this title 7, constitute an act or omission not in good faith or a breach of
8 the duty of loyalty.

9 **SECTION 68.** In Colorado Revised Statutes, 7-117-101, **amend**
10 (8) as follows:

11 **7-117-101. Application to existing corporations.** (8) Unless the
12 articles of incorporation of an existing corporation contain a provision
13 establishing the vote of shareholders required to approve a plan of merger
14 or a plan of ~~share~~ exchange, as contemplated in section 7-111-103, ~~such~~
15 ~~THE~~ plan ~~shall~~ **MUST** be approved by each voting group entitled to vote
16 separately on the plan by two-thirds of all the votes entitled to be cast on
17 the plan by that voting group. In the case of a corporation incorporated
18 before July 1, 1978, each outstanding share of the corporation, other than
19 a redeemable share that is not entitled to vote by reason of section
20 7-107-202 (4), shall be entitled to vote on the plan of merger or ~~share~~
21 exchange whether or not such share has voting rights under the provisions
22 of the articles of incorporation, unless the articles of incorporation have
23 been amended after June 30, 1978, by the same vote of shareholders
24 ~~which~~ **THAT** would have been necessary at the time of the amendment to
25 approve the plan, so as to restrict or eliminate the right of ~~such~~ **THE** share
26 to vote on ~~such~~ **THE** plan.

27 **SECTION 69.** In Colorado Revised Statutes, 11-41-134, **amend**

1 (1) as follows:

2 **11-41-134. Indemnification and personal liability of directors,**
3 **officers, employees, and agents - legislative declaration.** (1) The
4 savings and loan association ~~shall have~~ HAS the same powers, rights, and
5 obligations and ~~shall be~~ IS subject to the same limitations as apply to
6 corporations for profit as set forth in article 109 of title 7. ~~C.R.S.~~ Savings
7 and loan association directors, officers, employees, and agents ~~shall have~~
8 the same rights as directors, officers, employees, and agents, respectively,
9 of corporations for profit as set forth in article 109 of title 7. ~~C.R.S.~~
10 Savings and loan association directors and officers ~~shall have~~ the benefit
11 of the same limitations on personal liability for any injury to person or
12 property arising out of a tort as set forth in section ~~7-108-402 (2), C.R.S.~~
13 7-108-403, for directors and officers, respectively, of corporations for
14 profit. Any reference in said sections to shareholders shall be construed
15 to refer to stockholders for the purposes of this section.

16 **SECTION 70.** In Colorado Revised Statutes, **amend** 11-103-602
17 as follows:

18 **11-103-602. Indemnification and personal liability of**
19 **directors, officers, employees, and agents.** ~~The~~ A state bank ~~shall have~~
20 HAS the same powers, rights, and obligations and ~~shall be~~ IS subject to the
21 same limitations as apply to corporations for profit as set forth in article
22 109 of title 7. ~~C.R.S.~~ State bank directors, officers, employees, and agents
23 ~~shall have~~ the same rights as directors, officers, employees, and agents,
24 respectively, of corporations for profit as set forth in article 109 of title
25 7. ~~C.R.S.~~ State bank directors and officers ~~shall have~~ the benefit of the
26 same limitations on personal liability for any injury to person or property
27 arising out of a tort as set forth in section ~~7-108-402 (2), C.R.S.~~

1 7-108-403, for directors and officers, respectively, of corporations for
2 profit. Any reference in said sections to shareholders shall be construed
3 to refer to stockholders for the purposes of this section.

4 **SECTION 71. Repeal of relocated provisions in this act.** In
5 Colorado Revised Statutes, **repeal** 7-108-402 (2).

6 **SECTION 72. Act subject to petition - effective date -**
7 **applicability.** (1) This act takes effect July 1, 2020; except that, if a
8 referendum petition is filed pursuant to section 1 (3) of article V of the
9 state constitution against this act or an item, section, or part of this act
10 within the ninety-day period after final adjournment of the general
11 assembly, then the act, item, section, or part will not take effect unless
12 approved by the people at the general election to be held in November
13 2020 and, in such case, will take effect on the date of the official
14 declaration of the vote thereon by the governor.

15 (2) This act applies to conduct occurring on or after the applicable
16 effective date of this act.