

WSBA BUSINESS LAW SECTION EXECUTIVE COMMITTEE

DRAFT Special Meeting Minutes

Date: October 27, 2023 2:00-2:30 p.m.

Zoom: <https://orrick.zoom.us/j/96629778106?pwd=QThCRnZJR1VMWEZLSkN6dXFGdjNIZz09>

Attendance:

Christina Catzoela, Immediate Past Chair (non-voting)	Michael Harris, P&DSL Cmte Co-Chair	Elisabeth Yandell McNeil, P&LLC Law Cmte Co-Chair
Kelly Lawton-Abbott, Chair-Elect	Michael Hutchings, CARC Co-Chair	Barbara Prowant, Treasurer, At-Large Member
Eric DeJong, CARC Co-Chair	David Lawson, NCC Chair	Amy Weston, P&DSL Cmte Co-Chair
Emily Donohue, YBL Committee Chair	Andrew Ledbetter, Securities Law Committee Chair	
Greg Fox, UCC Cmte Chair	Matthew LeMaster, P&LLC Law Cmte Co-Chair	

1. CALL TO ORDER

In the absence of a Chair, Christina called the meeting to order at 2:02 p.m. She thanked Committee members for being available for this special meeting to approve proposed legislative changes.

2. ROLL CALL

A majority of the voting members of the executive committee constitutes a quorum at all meetings of the executive committee, however any action (other than taking no position) with respect to proposed legislation shall require the affirmative vote of at least seventy-five percent (75%) of all voting members of the executive committee. Twelve voting members were present at the meeting which meets the 75% threshold (for 16 voting members).

3. PROPOSED LEGISLATION PRESENTED BY CORPORATE ACT REVISION COMMITTEE

Eric DeJong provided a summary of proposed revisions to the Washington Business Corporations Act for the Committee's consideration and endorsement. The Committee's memo with the full description of the changes is attached to these minutes.

Motion to approve CARC's proposed revisions to the Washington Business Corporations Act and recommend these revisions to the Legislative Review Committee made by Eric DeJong, properly seconded. Approved unanimously.

There being no other business, the meeting was adjourned at 2:10 p.m.

Respectfully submitted,
Christina Catzoela
Immediate Past Chair

Minutes Approved by the Business Law Section Executive Committee on _____

Joanna Carey Cleveland
Secretary

TO: WSBA Business Law Section Executive Committee

FROM: Corporate Act Revision Committee (CARC)

DATE: August 16, 2023

RE: Proposed changes to Washington Business Corporation Act (RCW 23B): New Chapter 11 – Merger and Share Exchange

This memorandum summarizes changes to the Washington Business Corporation Act, Title 23B of the Revised Code of Washington (WBCA) proposed by the Corporate Act Revision Committee (CARC). The proposed changes would replace the existing Chapter 11 (Merger and Share Exchange) of the WBCA to a version that substantially follows the current version of that chapter in the Model Business Corporation Act (MBCA), with a few significant exceptions noted below.

CARC is a committee of the WSBA's Business Law Section with approximately 10-15 members consisting of corporate attorneys practicing at large and smaller local law firms from around the state, in-house counsel at Washington corporations, professors of law at local law schools and representatives of the Secretary of State's office.

CARC was instrumental in the development of the Washington Business Corporation Act (WBCA) adopted in 1989, and regularly considers the need for changes to the WBCA in light of developments in the MBCA overseen by the Corporate Laws Committee of the American Bar Association's Business Law Section, corporate laws and practices, judicial decisions and regulatory actions.

CARC has prepared the changes described in this memorandum and ***unanimously requests and recommends that the Executive Committee recommend these changes to the WSBA's Legislative Committee for their consideration and recommendation to the Board of Governors as WSBA-request legislation.***

A. Overview

The current version of 23B.11 was initially adopted in 1989 and is based on the 1984 version of the MBCA. Chapter 11 of the MBCA has been amended several times since, with one of the most fundamental changes being a new version of the MBCA adopted in 1999.

The amended MBCA liberalized Chapter 11 in many ways, including authorizing mergers between corporations and "other entities" and changing shareholder approval requirements from a majority of outstanding shares to a majority of votes cast for or against approval of the transaction. It also consolidated provisions relating to foreign corporations, previously covered separate sections of the chapter.

Washington has amended Chapter 11 of the WBCA over the years to incorporate some of the changes made to the 1984 version of the MBCA, but it has not adopted many of the substantial revisions adopted in the 1999 version.

The current version of the MBCA is based largely on the changes made in 1999. CARC believes Chapter 11 of the WBCA should be amended to more closely align with the current version of the MBCA.

CARC also believes corresponding changes should be made to the shareholder approval provisions of the sections governing amendments to articles of incorporation and approval of asset sale transactions.

B. Material differences between Chapter 11 of the WBCA and the current version of the MBCA

1. Shareholder approval default threshold – under the WBCA, the default requirement for shareholder approval of a plan of merger or share exchange is two-thirds of the outstanding shares. This two-thirds default rule is based on a version of the statute in effect prior to 1984.¹ Unlike the 1999 version of the MBCA and the Delaware General Corporation Law (DGCL), both of which use a majority of outstanding shares default rule, the current version of the MBCA default rule is that a plan of merger or share exchange will be approved if it more votes are cast in favor of the plan than against it (i.e., majority of votes cast), as long as there is a quorum present. 29 states, including the important business states of Delaware, California and New York, have a majority of outstanding shares default shareholder approval threshold.
2. Occasions for class voting – The current version of the MBCA includes a provision that clarifies the occasions for group voting. Under this provision, any class or series has a right to a separate group vote if those shares would be converted in the plan into shares, other securities, cash, or any other consideration, unless that separate group voting right is limited or eliminated in the articles of incorporation. The current version of the WBCA also contains a provision the specifies the occasions for group voting. While the WBCA provision is much more verbose, the principal difference is that it requires the corporation to make a determination that any change in the merger “adversely affects” the class or series. The MBCA version does not depend on an evaluation of whether any change would be detrimental to a class or series.
3. Requiring shareholder notice to include organizational documents of surviving entity – The current version of the MBCA includes a provision requiring that the notice to shareholders include a copy or summary of the articles of incorporation or other organizational documents of the corporation or other entity into which the corporation is to be merged. This provision was added in 1999. The current version of the WBCA does not include this requirement.

C. Proposed New Chapter 11

CARC believes the WBCA should be amended to replace the current 23B.11 with a new chapter 11 that substantially mirrors the current version of the MBCA, with the following exceptions:

- Adopt a majority of outstanding shares voting threshold as the default approval requirements;
- Conform the language of the chapter with the language found throughout 23B (e.g., “other entity” instead of “eligible entity”; “surviving entity” instead of “survivor”; etc.);
- Incorporate recent updates to the upstream and downstream merger provisions in 23B.11.050; and

¹ Under 23B.11.030(5) and (6), the articles of incorporation may require a greater or lesser vote, so long as it’s not less than a majority.

- Include the holding company reorganization provisions recently adopted by the Washington legislature.

In addition, if CARC believes the WBCA should be amended to adopt a majority of outstanding shares threshold as the default approval requirements for approval of amendments to articles of incorporation and sales of assets under 23B.12. CARC believes these approval threshold changes should be grandfathered such that the two-thirds approval threshold would continue to be the default for corporations formed before August 1, 2024.

The proposed new Chapter 11 is included as Appendix A, with marked version of corresponding changes and other technical changes proposed for other sections of the WBCA included at the end of Appendix A following the proposed new Chapter 11.

APPENDIX A

Proposed New Chapter RCW 23B.11

Mergers and Share Exchanges

23B.11.010. DEFINITIONS

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

- (1) “Acquired entity” means the domestic corporation or other entity that will have all of one or more classes or series of its shares or interests acquired in a share exchange.
- (2) “Acquiring entity” means the domestic corporation or other entity that will acquire all of one or more classes or series of shares or interests of the acquired entity in a share exchange.
- (3) “New owner liability” means owner liability of a person, resulting from a merger or share exchange, that is (a) in respect of an entity which is different from the entity in which the person held shares or interests immediately before the merger or share exchange became effective; or (b) in respect of the same entity as the one in which the person held shares or interests immediately before the merger or share exchange became effective if (i) the person did not have owner liability immediately before the merger or share exchange became effective, or (ii) the person had owner liability immediately before the merger or share exchange became effective, the terms and conditions of which were changed when the merger or share exchange became effective.
- (4) “Party to a merger” means any domestic corporation or other entity that will merge under a plan of merger but does not include a surviving entity created by the merger.
- (5) “Surviving entity” in a merger means the domestic corporation or other entity into which one or more other domestic corporations or other entities are merged.

23B.11.020. MERGER

- (1) By complying with this chapter:
 - (a) One or more domestic corporations may merge with one or more domestic corporations or other entities in accordance with a plan of merger, resulting in a surviving entity; and
 - (b) Two or more other entities may merge, resulting in a surviving entity that is a domestic corporation created in the merger.
- (2) By complying with the provisions of this chapter applicable to other entities, an other entity may be a party to a merger with a domestic corporation or may be created as the surviving entity in a merger in which a domestic corporation is a party, but only if the merger is permitted by the organic law of the other entity.
- (3) If the organic law or organic rules of a domestic other entity do not provide procedures for the approval of a merger, a plan of merger may nonetheless be approved by the unanimous consent of all of the interest holders of that other entity, and the merger may thereafter be effected as provided in the other provisions of this chapter. For the purposes of applying this chapter in such a case:
 - (a) The other entity, its interest holders, interests and organic rules taken together will be deemed to be a domestic corporation, shareholders, shares and articles of incorporation, respectively and vice versa as the context may require; and

(b) If the business and affairs of the other entity are managed by a person or persons that are not identical to the interest holders, that group will be deemed to be the board of directors.

(4) The plan of merger must include:

(a) As to each party to the merger, its name, jurisdiction of organization, and type of entity;

(b) The surviving entity's name, jurisdiction of organization, and type of entity, and, if the surviving entity is to be created in the merger, a statement to that effect;

(c) A summary of the material terms and conditions of the merger and the consideration to be received in the merger by shareholders or interest holders;

(d) The manner and basis of converting the shares of each merging domestic corporation and interests of each merging other entity into shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, or other property, or of cancelling some or all of such shares or interests, or any combination of the foregoing;

(e) The articles of incorporation of any domestic corporation, or the public organic record of any other entity, to be created by the merger, or if a new domestic corporation or other entity is not to be created by the merger, any amendments to the surviving entity's articles of incorporation or public organic record; and

(f) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organic rules of any such party.

(5) In addition to the requirements of subsection (4) of this section, a plan of merger may contain amendments to the surviving entity's articles of incorporation or public organic record, a restatement that includes one or more amendments to the surviving entity's articles of incorporation or public organic record, and any other provision not prohibited by law.

(6) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200(3).

(7) A plan of merger may be amended only with the consent of each party to the merger, except as provided in the plan of merger. A domestic party to a merger may approve an amendment to a plan of merger:

(a) In the same manner as the plan was approved, if the plan of merger does not provide for the manner in which it may be amended; or

(b) In the manner provided in the plan of merger, except that shareholders or interest holders that were entitled to vote on or consent to approval of the plan of merger are entitled to vote on or consent to any amendment of the plan of merger that will change:

(i) The amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, or other property to be received under the plan of merger by the shareholders or interest holders of any party to the merger;

(ii) The articles of incorporation of any domestic corporation, or the organic rules of any other entity, that will be the surviving entity of the merger, except for changes permitted by RCW 23B.10.020 or by comparable provisions of the organic law of any such other entity; or

(iii) Any of the other terms or conditions of the plan of merger if the change would adversely affect such shareholders or interest holders in any material respect.

23B.11.030. SHARE EXCHANGE

(1) By complying with this chapter:

(a) A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic corporation, or all of the interests of one or more classes or series of interests of an other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities or interests, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange; or

(b) All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic corporation or an other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities or interests, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

(2) An other entity may be the acquired entity in a share exchange only if the share exchange is permitted by the organic law of that other entity.

(3) If the organic law or organic rules of a domestic other entity do not provide procedures for the approval of a share exchange, a plan of share exchange may be approved, and the share exchange effected, in accordance with the procedures, if any, for a merger. If the organic law or organic rules of a domestic other entity do not provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may nonetheless be approved by the unanimous consent of all of the interest holders of the other entity whose interests will be exchanged under the plan of share exchange, and the share exchange may thereafter be effected as provided in the other provisions of this chapter. For purposes of applying this chapter in such a case:

(a) The other entity, its interest holders, interests and organic rules taken together will be deemed to be a domestic corporation, shareholders, shares and articles of incorporation, respectively and vice versa as the context may require; and

(b) If the business and affairs of the other entity are managed by a person or persons that are not identical to the interest holders, that person or those persons will be deemed to be the board of directors.

(4) The plan of share exchange must include:

(a) The name of each domestic corporation or other entity the shares or interests of which will be acquired and the name of the domestic corporation or other entity that will acquire those shares or interests;

(b) A summary of the material terms and conditions of the share exchange;

(c) The manner and basis of exchanging shares of a domestic corporation or interests in an other entity that is the acquired entity for shares or other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, other property, or any combination of the foregoing; and

(d) Any other provisions required by the organic law governing the acquired entity or its organic rules.

(5) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200(3).

(6) A plan of share exchange may be amended only with the consent of each party to the share exchange, except as provided in the plan of share exchange. A domestic corporation or domestic other entity may approve an amendment to a plan of share exchange:

(a) In the same manner as the plan of share exchange was approved, if the plan of share exchange does not provide for the manner in which it may be amended; or

(b) In the manner provided in the plan of share exchange, except that shareholders or interest holders that were entitled to vote on or consent to approval of the plan of share exchange are entitled to vote on or consent to any amendment of the plan of share exchange that will change:

(i) The amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, or other property to be received under the plan by the shareholders or interest holders of the acquired entity; or

(ii) Any of the other terms or conditions of the plan of share exchange if the change would adversely affect such shareholders or interest holders in any material respect.

23B.11.040. ACTION ON A PLAN OF MERGER OR SHARE EXCHANGE

In the case of a domestic corporation that is a party to a merger or the acquired entity in a share exchange, the plan of merger or share exchange must be approved in the following manner:

(1) The plan of merger or share exchange must first be approved by the board of directors.

(2) Except as provided in subsection (6) of this section, and in RCW 23B.11.045, RCW 23B.11.050 and RCW 23B.11.090, the plan of merger or share exchange must then be approved by the shareholders. In submitting the plan of merger or share exchange to the shareholders for approval, the board of directors must recommend that the shareholders approve the plan or, in the case of an offer referred to in RCW 23B.11.045(1)(b), that the shareholders tender their shares to the offeror in response to the offer, unless (a) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, or (b) RCW 23B.08.245 applies. If either (a) or (b) applies, the board of directors must inform the shareholders of the basis for its so proceeding.

(3) The board of directors may set conditions for the approval of the plan of merger or share exchange by the shareholders or the effectiveness of the plan.

(4) If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation must notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy of the plan or a summary of the material terms and conditions of the proposed merger or share exchange and the consideration to be received by shareholders. If the corporation is to be merged into an existing domestic corporation or other entity, the notice must also include or be accompanied by a copy or summary of the articles of incorporation and bylaws of that domestic corporation or the organic rules of that other entity. If the corporation is to be merged with a domestic corporation or other entity and a new domestic corporation or other entity is to be created as a result of the merger, the notice must include or be accompanied by a copy or a summary of the articles of incorporation and bylaws of the new domestic corporation or the organic rules of the new other entity.

(5) (a) With respect to a corporation formed before August 1, 2024:

(i) Unless the articles of incorporation, or the board of directors acting in accordance with subsection (3) of this section, require a different vote, shareholder approval of the plan of merger or share exchange requires (a) the approval of two-thirds of the votes entitled to be cast on the plan, and (b) the approval of two-thirds of the votes entitled to be cast on the plan by each other voting group entitled under RCW 23B.11.041 or the articles of incorporation to vote separately on the plan; and

(ii) The articles of incorporation may require a different vote than that provided in this subsection, or a different vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan and of each other voting group entitled to vote separately on the plan.

(b) With respect to a corporation formed on or after August 1, 2024, unless the articles of incorporation, or the board of directors acting in accordance with subsection (3) of this section, require a greater vote, shareholder approval of the plan of merger or share exchange requires (i) the approval of a majority of the votes entitled to be cast on the plan, and (ii) the approval of a majority of the votes entitled to be cast on the plan by each other voting group entitled under RCW 23B.11.041 or the articles of incorporation to vote separately on the plan.

(6) Unless the articles of incorporation provide otherwise, approval by the corporation's shareholders of a plan of merger is not required if:

(a) The corporation will survive the merger;

(b) Except for amendments permitted by RCW 23B.10.020, its articles of incorporation will not be changed; and

(c) Each shareholder of the corporation whose shares were outstanding immediately before the merger becomes effective will hold the same number of shares, with identical preferences, rights and limitations, immediately after the merger becomes effective.

(7) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to new owner liability, approval of the plan of merger or share exchange requires the express written consent of each such shareholder to become subject to that new owner liability in connection with the merger or share exchange, unless in the case of a shareholder that already has owner liability with respect to that domestic corporation, (a) the new owner liability is with respect to a domestic corporation (which may be a different or the same domestic corporation in which the person is a shareholder) or other entity, and (b) the terms and conditions of the new owner liability are substantially identical to those of the existing owner liability (other than for changes that eliminate or reduce that owner liability).

23B.11.041. VOTING ON A PLAN OF MERGER OR SHARE EXCHANGE BY VOTING GROUPS

(1) Subject to subsection (2) of this section, separate voting by voting groups is required:

(a) On a plan of merger, by each class or series of shares that:

(i) is to be converted under the plan into shares, other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property, or any combination of the foregoing; or

(ii) is entitled to vote as a separate group on a provision in the plan that constitutes a proposed amendment to the articles of incorporation of a surviving corporation that requires action by separate voting groups under RCW 23B.10.040;

(b) On a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(c) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange, respectively.

(2) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subsections (1)(a)(i) and (1)(b) of this section as to any class or series of shares, except when the plan of merger or share exchange (a) includes what is or would be in effect an amendment subject to subsection (1)(a)(ii), and (b) would not effect a substantive business combination.

(3) If a proposed plan of merger or share exchange that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, then instead of voting as separate voting groups, the holders of shares of the classes or series so affected are to vote together as a single voting group on the proposed plan of merger or share exchange, unless otherwise provided in the articles of incorporation or by the board of directors in accordance with RCW 23B.11.040(3).

(4) Holders of shares of two or more classes or series of shares who would, under a proposed plan, receive the same type of consideration in the form of shares or other securities, interests, obligations, rights to acquire shares, other securities or interests of the surviving or acquiring entity or of any parent entity of the surviving entity, cash or other form of consideration, or the same combination thereof, but in differing amounts resulting solely from application of provisions in the corporation's articles of incorporation governing distribution of consideration received in a merger or share exchange, are affected in the same or a substantially similar way and are not, by reason of receiving the same types or differing amounts of consideration, entitled to vote as separate voting groups on the proposed plan, unless the articles of incorporation expressly require otherwise or the board of directors conditions its submission of the proposed plan on a separate vote by one or more classes or series.

23B.11.045. SHAREHOLDER APPROVAL OF A MERGER OR SHARE EXCHANGE IN CONNECTION WITH A TENDER OFFER

(1) Unless the articles of incorporation provide otherwise, approval by a corporation's shareholders of a plan of merger is not required if:

(a) The plan of merger or share exchange expressly (i) permits or requires the merger or share exchange to be effected under this section, and (ii) provides that, if the merger or share exchange is to be effected under this section, the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirements of subsection (f) of this subsection;

(b) Another party to the merger, the acquiring entity in the share exchange, or a parent of another party to the merger or the acquiring entity in the share exchange, makes an offer to purchase, on the terms stated in the plan of merger or share exchange, any and all of the outstanding shares of the corporation that, absent this section, would be entitled to vote on the plan of merger or share exchange, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror, or by any wholly owned subsidiary of any of the foregoing;

(c) The offer discloses that the plan of merger or share exchange provides that the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirements of subsection (f) of this subsection and that the shares of the corporation that are not tendered in response to the offer will be treated as provided in subsection (h) of this subsection;

- (d) The offer remains open for at least 10 days;
- (e) The offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;
- (f) The (i) shares purchased by the offeror in accordance with the offer; (ii) shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of the foregoing; and (iii) shares subject to an agreement that they are to be transferred, contributed or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of the foregoing in exchange for shares or interests in that offeror, parent, or subsidiary, are collectively entitled to cast at least the minimum number of votes on the merger or share exchange that, absent this section, would be required by this chapter and the articles of incorporation for the approval of the merger or share exchange by the shareholders and by any other voting group entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote on the merger or share exchange were present and voted;
- (g) The offeror or a wholly owned subsidiary of the offeror merges with or into, or effects a share exchange in which it acquires shares of, the corporation; and
- (h) Each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer, and which is not purchased in accordance with the offer, is to be converted in the merger into, or into the right to receive, or is to be exchanged in the share exchange for, or for the right to receive, the same amount and kind of securities, interests, obligations, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in subsection (f)(ii) or (iii) of this section need not be converted into or exchanged for the consideration described in this subsection.

(2) As used in this section:

- (a) “Offer” means the offer referred to in subsection (1)(b) of this section.
- (b) “Offeror” means the person making the offer.
- (c) “Parent” of an entity means a person that owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares of or interests in that entity.
- (d) Shares tendered in response to the offer will be deemed to have been “purchased” in accordance with the offer at the earliest time as of which:
 - (i) The offeror has irrevocably accepted those shares for payment; and
 - (ii) Either: (A) in the case of shares represented by certificates, the offeror, or the offeror’s designated depository or other agent, has physically received the certificates representing those shares; or (B) in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent, or an agent’s message relating to those shares has been received by the offeror or its designated depository or other agent.
- (e) “Wholly owned subsidiary” of a person means an entity of or in which that person owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares or interests.

23B.11.050. MERGER BETWEEN PARENT AND SUBSIDIARY OR BETWEEN SUBSIDIARIES

(1) A domestic corporation or other entity that owns shares of a domestic corporation that are entitled to cast votes comprising at least 90% of the voting power of each class and series of the outstanding

voting shares of that subsidiary corporation may: (a) merge the subsidiary corporation into itself or into (i) another domestic corporation in which the parent entity owns shares that are entitled to cast votes comprising at least 90% of the voting power of each class and series of the outstanding voting shares of that other domestic corporation or (ii) an other entity in which the parent entity owns interests that are entitled to cast votes comprising at least 90% of the total number of votes entitled to be cast by all outstanding interests of that other entity, or (b) merge itself into that subsidiary corporation, in either case without the approval of the board of directors or shareholders of the subsidiary corporation, unless the articles of incorporation or organic rules of the parent entity or the articles of incorporation of the subsidiary corporation provide otherwise. RCW 23B.11.040(7) applies to a merger under this section. The articles of merger relating to a merger under this section do not need to be executed by the subsidiary corporation.

(2) A parent entity must, within ten days after a merger under subsection (1) of this section becomes effective, notify each of the subsidiary corporation's other shareholders that the merger has become effective. The notice must contain or be accompanied by a copy of the plan of merger or a summary of the material terms and conditions of the merger and the consideration to be received by shareholders.

(3) Except as provided in subsections (1) and (2) of this section, a merger under this section will be governed by the provisions of this chapter applicable to mergers generally.

23B.11.060. ARTICLES OF MERGER OR SHARE EXCHANGE

(1) After (i) a plan of merger has been approved as required by this title, or (ii) if the merger is being effected under RCW 23B.11.020(1)(b), the merger has been approved as required by the organic law governing each other entity that is party to the merger, then articles of merger must be executed by each party to the merger except as provided in RCW 23B.11.050(1). The articles of merger must state:

(a) The name, jurisdiction of organization, and type of entity of each party to the merger;

(b) The name, jurisdiction of organization, and type of entity of the surviving entity;

(c) If the surviving entity of the merger is a domestic corporation and its articles of incorporation are amended or amended and restated, or if a new domestic corporation is created as a result of the merger:

(i) The amendments to or the amendment and restatement of the surviving entity's articles of incorporation; or

(ii) The articles of incorporation of the new corporation;

(d) If the surviving entity of the merger is a domestic other entity and its public organic record is amended or amended and restated, or if a new domestic other entity is created as a result of the merger:

(i) The amendments or the amendment and restatement of the surviving entity's public organic record; or

(ii) The public organic record of the new other entity;

(e) If the plan of merger required approval by the shareholders of a domestic corporation that is a party to the merger, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this title and the articles of incorporation;

(f) If the plan of merger did not require approval by the shareholders of a domestic corporation that is a party to the merger, a statement to that effect; and

(g) As to each other entity that is a party to the merger, a statement that the merger was approved in accordance with its organic law or RCW 23B.11.020(3).

(2) After a plan of share exchange has been approved as required by this title, then articles of share exchange must be executed by the acquired entity and the acquiring entity. The articles of share exchange must state:

- (a) The name, jurisdiction of organization, and type of entity of the acquired entity;
- (b) The name, jurisdiction of organization, and type of entity of the acquiring entity; and
- (c) A statement that the plan of share exchange was duly approved by the acquired entity

by:

(i) The required vote or consent of each class or series of shares or interests included in the exchange; and

(ii) The required vote or consent of each other class or series of shares or interests entitled to vote on approval of the exchange by the articles of incorporation or organic rules of the acquired entity or RCW 23B.11.030(3).

(3) In addition to the requirements of subsection (1) or (2) of this section, articles of merger or share exchange may contain any other provision not prohibited by law.

(4) The articles of merger or share exchange must be delivered to the secretary of state for filing and, subject to subsection (5) of this section, the merger or share exchange will become effective at the effective date and time of the articles of merger or share exchange as determined in accordance with RCW 23B.01.230.

(5) With respect to a merger in which one or more other entities is a party or an other entity created by the merger is the surviving entity, the merger will become effective at the later of:

(a) The date and time when all documents required to be filed in foreign jurisdictions to effect the merger have become effective; and

(b) The effective date and time of the articles of merger as determined in accordance with RCW 23B.01.230.

(6) Articles of merger filed under this section may be combined with any filing required under the organic law governing any other entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

23B.11.070. EFFECT OF MERGER OR SHARE EXCHANGE

(1) When a merger becomes effective:

(a) The domestic corporation or other entity that is designated in the plan of merger as the surviving entity continues or comes into existence, as the case may be;

(b) The separate existence of every domestic corporation or other entity that is merged into the surviving entity ceases;

(c) All property owned by, and every contract right possessed by, each domestic corporation or other entity that is merged into the surviving entity are the property and contract rights of the surviving entity without transfer, reversion or impairment;

(d) All debts, obligations and other liabilities of each domestic corporation or other entity that is merged into the surviving entity are debts, obligations or liabilities of the surviving entity;

(e) The name of the surviving entity may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(f) If the surviving entity is a domestic entity, the articles of incorporation and bylaws or the organic rules of the surviving entity are amended, or amended and restated, to the extent provided in the plan of merger;

(g) The articles of incorporation and bylaws or the organic rules of the surviving entity that is a domestic entity and is created by the merger become effective;

(h) The shares of or interests in each entity that is a party to the merger that are to be converted in accordance with the terms of the merger into shares or other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, other property, or any combination of the foregoing, are converted, and the former holders of such shares or interests are entitled only to the rights provided to them by those terms or to any rights they may have under chapter 23B.13 RCW or the organic law governing the other entity;

(i) Except as provided by law or the plan of merger, all the rights, privileges, franchises, and immunities of each entity that is merged into the surviving entity, are the rights, privileges, franchises, and immunities of the surviving entity; and

(j) If the surviving entity exists before the merger:

(i) All the property and contract rights of the surviving entity remain its property and contract rights without transfer, reversion, or impairment;

(ii) The surviving entity remains subject to all its debts, obligations, and other liabilities; and

(iii) Except as provided by law or the plan of merger, the surviving entity continues to hold all of its rights, privileges, franchises, and immunities.

(2) When a share exchange becomes effective, the shares or interests in the acquired entity that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under chapter 23B.13 RCW or under the organic law governing the acquired entity.

(3) Except as provided otherwise in the articles of incorporation of a domestic corporation or the organic law governing or organic rules of an other entity, the effect of a merger or share exchange on owner liability is as follows:

(a) A person who becomes subject to new owner liability in respect of an entity as a result of a merger or share exchange will have that new owner liability only in respect of owner liabilities that arise after the merger or share exchange becomes effective;

(b) If a person had owner liability with respect to a party to the merger or the acquired entity before the merger or share exchange becomes effective with respect to shares or interests of such party or acquired entity (i) which were exchanged in the merger or share exchange, (ii) which were cancelled in the merger, or (iii) the terms and conditions of which relating to owner liability were amended under the terms of the merger:

(i) The merger or share exchange does not discharge that prior owner liability with respect to any owner liabilities that arose before the merger or share exchange becomes effective;

(ii) The provisions of the organic law governing any entity for which the person had that prior owner liability will continue to apply to the collection or discharge of any owner liabilities preserved by subsection (3)(b)(i) of this section, as if the merger or share exchange had not occurred;

(iii) The person will have such rights of contribution from other persons as are provided by the organic law governing the entity for which the person had that prior owner liability with respect to any owner liabilities preserved by subsection (3)(b)(i) of this section, as if the merger or share exchange had not occurred; and

(iv) The person will not, by reason of such prior owner liability, have owner liability with respect to any owner liabilities that arise after the merger or share exchange becomes effective;

(c) If a person has owner liability both before and after a merger becomes effective with unchanged terms and conditions with respect to the entity that is the surviving entity by reason of owning the same shares or interests before and after the merger becomes effective, the merger has no effect on such owner liability; and

(d) A share exchange has no effect on owner liability related to shares or interests of the acquired entity that were not exchanged in the share exchange.

(4) Upon a merger becoming effective, a foreign other entity that is the surviving entity of the merger is deemed to:

(a) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights; and

(b) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under chapter 23B.13 RCW.

(5) Except as provided in the organic law governing a party to a merger or in its articles of incorporation or organic rules, the merger does not give rise to any rights that a shareholder, interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of that party. The merger does not require a party to the merger to wind up its affairs and does not constitute or cause its dissolution or termination.

23B.11.080. ABANDONMENT OF A MERGER OR SHARE EXCHANGE

(1) After a plan of merger or share exchange has been approved as required by this chapter, and before articles of merger or share exchange have become effective, the plan of merger or share exchange may be abandoned by a domestic corporation that is a party to the plan of merger or share exchange without action by its shareholders in accordance with any procedures provided in the plan of merger or share exchange or, if no such procedures are provided in the plan of merger or share exchange, in the manner determined by the board of directors.

(2) If a merger or share exchange is abandoned under subsection (1) of this section after articles of merger or share exchange have been delivered to the secretary of state for filing but before the merger or share exchange has become effective, a statement of abandonment executed by all the parties that executed the articles of merger or share exchange must be delivered to the secretary of state for filing before the articles of merger or share exchange become effective. The statement of abandonment must contain:

(a) The name of each party to the merger or the names of the acquiring and acquired entities in the share exchange;

(b) The date on which the articles of merger or share exchange were delivered to the secretary of state for filing; and

(c) A statement that the merger or share exchange has been abandoned in accordance with this section.

(3) The statement of abandonment will become effective at the effective date and time as determined in accordance with RCW 23B.01.230 and the merger or share exchange will be deemed abandoned and will not become effective.

23B.11.090. MERGER TO EFFECT A HOLDING COMPANY REORGANIZATION

(1) As used in this section:

(a) "Holding company" means the corporation that is or becomes the direct parent of the surviving corporation of a merger accomplished under this section and whose capital stock is issued in that merger;

(b) "Parent constituent corporation" means the parent corporation that merges with or into the subsidiary constituent corporation in the merger; and

(c) "Subsidiary constituent corporation" means the subsidiary corporation with or into which the parent constituent corporation merges in the merger.

(2) Unless the articles of incorporation provide otherwise, a parent constituent corporation may merge with or into a single indirect wholly owned subsidiary of the parent constituent corporation without the approval of the plan of merger by the shareholders of the parent constituent corporation if:

(a) The plan expressly permits or requires the merger to be effected under this subsection;

(b) The holding company and the constituent corporations to the merger are each organized under this title;

(c) At all times from its incorporation until consummation of a merger under this section, the holding company was a direct wholly owned subsidiary of the parent constituent corporation;

(d) Immediately before consummation of a merger under this section, the subsidiary constituent corporation is a direct wholly owned subsidiary of the holding company and an indirect wholly owned subsidiary of the parent constituent corporation;

(e) The parent constituent corporation and the subsidiary constituent corporation are the only constituent entities to the merger;

(f) Immediately after the merger becomes effective, the surviving corporation of the merger becomes or remains a direct wholly owned subsidiary of the holding company;

(g) Each share or fraction of a share of the parent constituent corporation outstanding immediately before the merger becomes effective is converted in the merger into a share or equal fraction of a share of the holding company having the same designations and relative preferences, rights and limitations as the share or fraction of a share of the parent constituent corporation being converted in the merger;

(h) The articles of incorporation and bylaws of the holding company immediately after the merger becomes effective contain provisions identical to the articles of incorporation and bylaws of the parent constituent corporation immediately before the merger becomes effective, other than any provisions regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors and the initial subscribers for shares, and the provisions contained in

any amendment to the articles of incorporation of the parent constituent corporation that were necessary to effect an exchange, reclassification, or cancellation of shares if the exchange, reclassification, or cancellation has become effective;

(i) The articles of incorporation and bylaws of the surviving corporation immediately after the merger becomes effective contain provisions by specific reference to this subsection requiring that any corporate action by or involving the surviving corporation, other than the election or removal of directors of the surviving corporation, must be approved by the shareholders of the holding company (or any successor by merger) by the same vote as is required by this title or under the articles of incorporation or bylaws of the parent constituent corporation immediately before the merger becomes effective, if that corporate action would have required the approval of the of the shareholders of the parent constituent corporation under this title or under the articles of incorporation or bylaws of the parent constituent corporation immediately before the merger becomes effective;

(j) The directors of the parent constituent corporation immediately before the merger becomes effective become or remain the directors of the holding company immediate after the merger becomes effective; and

(k) The board of directors of the parent constituent corporation determines that the shareholders of the of the parent constituent corporation will not recognize gain or loss for United States federal income tax purposes as a result of the merger.

(3) The holding company must, within ten days after the effective date of a merger effected under subsection (2) of this section, notify each person who was a shareholder of the parent constituent corporation immediately before the merger became effective that the merger has become effective. The notice must contain or be accompanied by a copy of the plan of merger or a summary of the material terms and conditions of the merger and the consideration to be received by those shareholders.

(4) To the extent restrictions under chapter 23B.19 RCW applied to the parent constituent corporation or any of its shareholders at the effective time of the merger, those restrictions apply to the holding company and its shareholders immediately after the merger becomes effective as though the holding company were the parent constituent corporation, and all shares of stock of the holding company acquired in the merger will, for the purposes of chapter 23B.19 RCW, be deemed to have been acquired at the time that the corresponding shares of stock of the parent constituent corporation were acquired. No shareholder who, immediately before the merger becomes effective, was not an acquiring person of the parent constituent corporation under chapter 23B.19 RCW will, solely by reason of the merger, become an acquiring person of the holding company under chapter 23B.19 RCW.

(5) To the extent a shareholder of the parent constituent corporation immediately before the merger was eligible to commence a proceeding in the right of the parent constituent corporation in accordance with RCW 23B.07.400, nothing in this section is deemed to limit or extinguish that eligibility.

(6) Except as provided in subsections (2), (3), (4), and (5) of this section, a merger between a parent constituent corporation and a subsidiary constituent corporation will be governed by the provisions of this chapter applicable to mergers generally.

CORRESPONDING CHANGES TO OTHER SECTIONS OF 23B

[Proposed additions are indicated by **underscoring**, and proposed deletions are indicated by **strikeout**]

23B.01.400. DEFINITIONS

(32) “Public company” means a corporation that either has a class of shares registered with the federal securities and exchange commission pursuant to section 12 or which is subject to section 15(d) of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute.

(XX) “Interest” means either or both of the following rights under the organic law governing an other entity:

(a) A right to receive distributions from the other entity either in the ordinary course of business or upon liquidation; or

(b) The right to receive notice of or vote on issues involving the other entity’s internal affairs, other than as an agent, assignee, proxy or person responsible for managing the other entity’s business affairs.

(XX) “Interest holder” means a person who holds of record an interest.

(XX) “Jurisdiction of organization” means the state or country the law of which includes the organic law governing a domestic corporation or other entity.

(XX) “Organic law” means the statute governing the internal affairs of an entity.

(XX) “Organic rules” means the public organic record and private organic rules of an entity.

(XX) “Other entity” means any entity that is not any of the following: a domestic corporation, a domestic or foreign not-for-profit corporation, a series of a limited liability company or similar entity, an estate, a trust, a state, the United States, or a foreign governmental subdivision, agency, or instrumentality. The term includes, but is not limited to, a foreign corporation, a limited partnership, a general partnership, a limited liability company, a joint venture, a joint stock company, and a business trust.

(XX) “Owner liability” means personal liability for a debt, obligation, or liability of an entity that is imposed on a person:

(a) Solely by reason of the person’s status as a shareholder or interest holder;

(b) By the articles of incorporation or bylaws of a corporation authorizing the articles of incorporation or bylaws to make one or more specified shareholders liable in their capacity as shareholders for all or specified debts, obligations or liabilities of the corporation; or

(c) By one or more organic rules of an other entity authorizing the organic rules to make one or more specified interest holders liable in their capacity as interest holders for all or specified debts, obligations or liabilities of the other entity.

(XX) “Private organic rules” means (a) the bylaws of a domestic corporation or (b) the rules, regardless of whether in writing, (i) that govern the internal affairs of an other entity, (ii) which are binding on all of the other entity’s interest holders, and (iii) which are not part of the other entity’s public organic record, if any. Where private organic rules have been amended or restated, the term means the private organic rules as last amended or restated.

(XX) “Public organic record” means (a) the articles of incorporation of a domestic corporation or (b) the document, if any, the filing of which is required to create an other entity. Where a public organic record has been amended or restated, the term means the public organic record as last amended or restated.

(XX) "Voting power" means the total number of votes entitled to be cast by all of the outstanding voting shares of a corporation on the date in question.

(XX) "Voting shares" means the shares of all classes of a corporation entitled to vote generally in the election of directors on the date in question.

23B.07.250. QUORUM AND VOTING REQUIREMENTS

(1) Shares entitled to vote as a separate voting group may approve a corporate action at a meeting only if a quorum of those shares exists with respect to that corporate action. Unless the articles of incorporation or this title provide otherwise, a majority of the votes entitled to be cast on the corporate action by the voting group constitutes a quorum of that voting group for approval of that corporate action. Whenever this title requires a particular quorum for a specified corporate action, the articles of incorporation may not provide for a lower quorum.

(4) An amendment of the articles of incorporation adding, changing, or deleting either (i) ~~[(a)]~~ a quorum for a voting group greater or lesser than specified in subsection (1) of this section, or (ii) ~~[(b)]~~ a voting requirement for a voting group greater than specified in subsections (1) or (3) of this section, is governed by RCW 23B.07.270.

(5) Whenever a provision of this title provides for voting of classes or series as separate voting groups, the rules provided in RCW 23B.10.040(3) for amendments of the articles of incorporation apply to that provision.

23B.07.270. ~~GREATER OR LESSER MODIFYING~~ QUORUM OR VOTING REQUIREMENTS

~~(1) The articles of incorporation may provide for a greater or lesser quorum, but not less than one-third of the votes entitled to be cast, for shareholders, or voting groups of shareholders, than is provided for by this title.~~

~~(2) The articles of incorporation may provide for a greater voting requirement for shareholders, or voting groups of shareholders, than is provided for by this title.~~

~~(3) Under RCW 23B.10.030, 23B.11.030, 23B.12.020, and 23B.14.020, the articles of incorporation may provide for a lesser vote than is otherwise prescribed in those sections or for a lesser vote by separate voting groups, so long as the vote provided for each voting group entitled to vote separately on the plan or transaction is not less than a majority of all the votes entitled to be cast on the plan or transaction by that voting group.~~

~~(4) Except as provided in subsection (5) of this section, an amendment to the articles of incorporation that adds, changes, or deletes a greater or lesser quorum or voting requirement for a particular corporate action must meet the same quorum requirement and be adopted by the same vote and voting groups as are required under the quorum and voting requirements then in effect for approval of the corporate action.~~

~~(5) An amendment to the articles of incorporation that adds, changes, or deletes a greater or lesser quorum or voting requirement for a merger, share exchange, sale of substantially all assets, or dissolution must meet the same quorum requirement and be approved adopted by the same vote and voting groups as are required under the quorum and voting requirements then in effect for approval of the particular corporate action, or to take action under the quorum and voting requirements then in effect or proposed to be approved for amendments to articles of incorporation, whichever is greater.~~

RCW 23B.08.080 REMOVAL OF DIRECTORS BY SHAREHOLDERS

(3) A director may be removed if the number of votes cast to remove exceeds the number of votes cast not to remove the director, except to the extent the articles of incorporation or bylaws require a greater number; except that if ~~if~~ cumulative voting is authorized, and if less than the entire board is to be removed, no director may be removed if, in the case of a meeting, the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal and, if action is taken by less than unanimous written consent, voting shareholders entitled to the number of votes sufficient to elect the director under cumulative voting do not consent to the removal. ~~If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director.~~

(4) A director may be removed by the shareholders only at a special meeting called for the purpose of removing the director and the meeting notice must state that ~~the purpose, or one of the purposes, of the meeting is~~ removal of the director is a purpose of the meeting.

RCW 23B.08.240. QUORUM AND VOTING

(1) Unless the articles of incorporation or bylaws ~~require~~ provide for a greater or lesser number or unless otherwise expressly provided in this title, a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) Notwithstanding subsection (1) of this section, a quorum of ~~a~~ the board of directors specified in or fixed in accordance with the articles of incorporation or bylaws may not consist of ~~in no event be~~ less than one-third of the ~~number of directors~~ specified in or fixed number of directors ~~in accordance with the articles of incorporation or bylaws~~.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors or unless otherwise expressly provided in this title.

(4) A director who is present at a meeting of the board of directors or a committee when corporate action is approved is deemed to have assented to the corporate action unless: (a) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding it or transacting business at the meeting; (b) the director's dissent or abstention as to the corporate action is entered in the minutes of the meeting; or (c) the director delivers written notice of the director's dissent or abstention as to the corporate action to the presiding officer of the meeting before adjournment or to the corporation within a reasonable time after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the corporate action.

23B.09.030. APPROVAL OF ACTION ON A PLAN OF ENTITY CONVERSION

In the case of an entity conversion of a domestic corporation to an other entity, the plan of conversion must be approved in the following manner:

(1) The plan of entity conversion must first be approved adopted by the board of directors of the converting entity and the shareholders entitled to vote must approve the plan.

(2) After adopting a plan of entity conversion, the board of directors of the converting entity must submit the plan of entity conversion for approval by its shareholders.

~~(2)~~ (3) The plan of entity conversion must then be approved by the shareholders of the converting entity. In submitting the plan of entity conversion to the shareholders for approval, the board of directors must recommend that the shareholders approve the plan of entity conversion to the shareholders, unless (a) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation; or (b) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders. If either (a) or (b) applies, the board of directors must inform the shareholders of the basis for its so proceeding.

~~(3)~~ (4) The board of directors may set conditions for the approval of its submission of the plan of entity conversion or the effectiveness of on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled to vote as a separate voting group on the plan of entity conversion.

(5) In the case of an entity conversion of a domestic corporation to a foreign corporation, in addition to any other voting conditions imposed by the board of directors acting pursuant to subsection (4) of this section, approval of the plan of entity conversion requires the affirmative vote of shareholders that would be required to approve a plan of merger under RCW 23B.11.030, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on a plan of merger. Separate voting by additional voting groups is required on a plan of entity conversion if such voting group or groups would be entitled to vote on a plan of merger under the circumstances described in RCW 23B.11.035. The articles of incorporation may require a greater or lesser vote to approve a plan of entity conversion than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of entity conversion and of each other voting group entitled to vote separately on the plan.

(6) In the case of an entity conversion of a domestic corporation to an other entity that is not a foreign corporation, approval of the plan of entity conversion requires the approval of all shareholders of the domestic corporation, whether or not entitled to vote under this title or the articles of incorporation.

(7) If as a result of the conversion one or more shareholders of the domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, in addition to the approval requirements under subsections (5) and (6) of this section, approval of the plan of entity conversion must also require each such shareholder to execute a separate written consent to become subject to such owner liability.

~~(4)~~ (8) If the approval of the shareholders is to be given at a meeting, the domestic corporation converting entity must notify each shareholder, regardless of whether or not entitled to vote, of the proposed meeting of shareholders at which the plan of entity conversion is to be submitted for approval in accordance with RCW 23B.07.050. The notice must state that consideration of the plan of entity conversion is a the purpose, or one of the purposes, of the meeting is to consider the plan of entity conversion and must contain or be accompanied by a copy or summary of the plan of entity conversion.

The notice must include or be accompanied by a copy of the organic rules documents of the surviving entity as they will be in effect immediately after the conversion.

~~(9) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders of the domestic corporation are parties, adopted, or entered into before June 12, 2014, applies to a merger of the domestic corporation, other than a provision that limits or eliminates voting or dissenters' rights, and the document does not refer to an entity conversion of the domestic corporation, the provision is deemed to apply to an entity conversion of the domestic corporation until the provision is subsequently amended.~~

~~(5) In the case of an entity conversion of a domestic corporation to a foreign corporation, in addition to any other voting conditions imposed by Unless the articles of incorporation, or the board of directors acting in accordance with pursuant to subsection (43) of this section, requires a greater vote, shareholder approval of the plan of entity conversion requires (a) the affirmative vote of shareholders that would be required to approve a plan of merger under RCW 23B.11.035 23B.11.040, and (b) the approval of each other voting group that would be entitled under RCW 23B.11.035(7) the circumstances described in RCW 23B.11.041 or the articles of incorporation to vote separately on a plan of merger. The articles of incorporation may require a greater or lesser vote to approve a plan of entity conversion than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of entity conversion and of each other voting group entitled to vote separately on the plan.~~

~~(6) If as a result of the conversion one or more shareholders of the converting entity would become subject to owner liability, approval of the plan of entity conversion must also require each such shareholder to execute a separate written consent to become subject to such owner liability.~~

23B.10.030. AMENDMENT OF ARTICLES OF INCORPORATION BY BOARD OF DIRECTORS AND SHAREHOLDERS

If a corporation has issued shares, an amendment to the articles of incorporation must be approved in the following manner:

(1) The proposed amendment must first be approved by the board of directors ~~A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.~~

(2) ~~For the amendment to be adopted:~~

~~(a) Except as provided in RCW 23B.10.050, RCW 23B.10.070, and RCW 23B.10.080, the amendment must then be approved by the shareholders. In submitting the proposed amendment to the shareholders for approval, The the board of directors must recommend that the shareholders approve the amendment, to the shareholders unless (i) (a) the board of directors makes a determination determines that because of conflicts of interest or other special circumstances it should not make no such a recommendation, or (ii) (b) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and If either (a) or (b) applies, the board of directors must inform the shareholders of the basis for its so proceeding.~~

~~(b) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (5) of this section.~~

(3) ~~The board of directors may set conditions for the approval its submission of the proposed amendment by the shareholders or the effectiveness of the on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed amendment.~~

(4) If the amendment is required to be approved by the shareholders, and if the approval is to be given at a meeting, the The corporation must shall notify each shareholder, regardless of whether or not entitled to vote, of the proposed shareholders' meeting of shareholders at which the amendment is to be submitted for approval in accordance with RCW 23B.07.050. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy of the amendment.

(5) (a) With respect to a corporation formed before August 1, 2024:

(i) Unless the articles of incorporation, or the board of directors acting in accordance with subsection (3) of this section, require a different vote, shareholder approval of the amendment requires (a) the approval of two-thirds, or, in the case of a public company, a majority, of the votes entitled to be cast on the amendment, and (b) the approval of two-thirds, or, in the case of a public company, a majority, of the votes entitled to be cast on the amendment by each other voting group entitled under RCW 23B.10.040 or the articles of incorporation to vote separately on the amendment; and

(ii) The articles of incorporation may require a different vote than that provided in this subsection, or a different vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the amendment and of each other voting group entitled to vote separately on the amendment.

(b) With respect to a corporation formed on or after August 1, 2024, unless the articles of incorporation, or in addition to any other voting conditions imposed by the board of directors acting in accordance with ~~under~~ subsection (3) of this section, require a greater vote, shareholder approval of the amendment requires (a) the approval of a majority of the votes entitled to be cast on the amendment, and (b) the approval of a majority of the votes entitled to be cast on the amendment by each other voting group entitled under RCW 23B.10.040 or the articles of incorporation to vote separately on the amendment. ~~the amendment to be adopted must be approved by two thirds, or, in the case of a public company, a majority, of the voting group comprising all the votes entitled to be cast on the proposed amendment, and of each other voting group entitled under RCW 23B.10.040 or the articles of incorporation to vote separately on the proposed amendment. The articles of incorporation may require a greater vote than that provided for in this subsection. The articles of incorporation of a corporation other than a public company may require a lesser vote than that provided for in this subsection, or may require a lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the proposed amendment and of each other voting group entitled to vote separately on the proposed amendment. Separate voting by additional voting groups is required on a proposed amendment under the circumstances described in RCW 23B.10.040.~~

23B.12.020. SALE OF PROPERTY AND ASSETS OTHER THAN IN THE USUAL AND REGULAR COURSE OF BUSINESS

(8) ~~In addition to any other voting conditions imposed by the board of directors under subsection (6) of this section~~ (a) With respect to a corporation formed before August 1, 2024:

(i) Unless the articles of incorporation, or the board of directors acting in accordance with subsection (6) of this section, require a different vote, shareholder approval of the proposed disposition requires (a) the approval of two-thirds of the votes entitled to be cast on the proposed disposition, and (b) the approval of two-thirds of the votes entitled to be cast on the proposed disposition by each other voting group entitled under the articles of incorporation to vote separately on the proposed disposition, unless shareholder approval is not required under subsection (11) of this section; and

(ii) The articles of incorporation may require a different vote than that provided in this subsection, or a different vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the proposed disposition and of each other voting group entitled to vote separately on the proposed disposition.

(b) With respect to a corporation formed on or after August 1, 2024, unless the articles of incorporation, or the board of directors acting in accordance with subsection (6) of this section, requires a greater vote, ~~the proposed disposition must be approved by two-thirds~~ a majority of the voting group comprising all the votes entitled to be cast on the proposed disposition, and of each other voting group entitled under the articles of incorporation to vote separately on the proposed disposition, unless shareholder approval is not required under subsection (11) of this section. ~~The articles of incorporation may require a greater or lesser vote than provided in this subsection, or a greater or lesser vote by any separate voting groups provided for in the articles of incorporation, so long as the required vote is not less than a majority of all the votes entitled to be cast on the proposed disposition and of each other voting group entitled to vote separately on the proposed disposition.~~

23B.13.020. RIGHT TO DISSENT

(1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) Consummation ~~A plan of a merger, which has become effective,~~ to which the corporation is a party (i) if shareholder approval ~~was~~ is required for the merger by RCW ~~23B.11.030, 23B.11.080, RCW 23B.11.040~~ or the articles of incorporation, or would ~~have been~~ be required but for the provisions of RCW ~~23B.11.030(9)~~ RCW 23B.11.045, and the shareholder ~~is~~ was, or but for the provisions of RCW ~~23B.11.030(9)~~ 23B.11.045 would ~~have been~~ be, entitled to vote on the merger, except that the right to dissent will not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or (ii) if the corporation is ~~was~~ a subsidiary and the ~~plan of merger provided for the merger of the subsidiary with its parent under~~ is governed by RCW ~~23B.11.040~~ 23B.11.050;

23B.17.015. ALTERNATIVE QUORUM AND VOTING REQUIREMENTS

(3) The alternative quorum and voting requirements specified in subsection (2) of this section shall, with respect to any corporation meeting the requirements of subsection (1) of this section, control over and supersede any greater quorum or voting requirements that may be specified in the corporation's articles of incorporation or bylaws or in RCW 23B.02.020, 23B.07.250, 23B.07.270, 23B.10.030, 23B.11.030040, 23B.12.020, or 23B.14.020.

23B.25.100. PLAN OF MERGER OR SHARE EXCHANGE – STATUS AS SOCIAL PURPOSE CORPORATION – VOTING REQUIREMENTS

(1) In addition to approval in accordance with RCW 23B.11.03040, a plan of merger or share exchange pursuant to which a social purpose corporation would not be the surviving corporation must be approved by two-thirds of the voting group comprising all the votes of the corporation entitled to be cast on the plan, and by two-thirds of the holders of the outstanding shares of each class or series, voting as separate voting groups, and of each other voting group entitled under the articles of incorporation to vote separately on the proposed plan. The articles of incorporation may require a greater vote than that provided for in this subsection.

23B.25.130. CORPORATION CONVERTING TO A SOCIAL PURPOSE CORPORATION—CONDITIONS—ELECTION

(1) ~~By complying with this chapter, any~~ Any corporation that is not a social purpose corporation may elect to become a social purpose corporation in accordance with a plan of election. ~~if, pursuant to the proposed election, each of the following conditions are met:~~

(2) ~~The plan of election must provide that each~~ (a) Each share of the same class or series of the electing corporation shall, unless all shareholders of the class or series consent, be treated equally with respect to any cash, rights, securities, or other property to be received by, or any obligations or restrictions to be imposed on, the holder of that share.;

(3) ~~The plan of election must include an amendment to the articles of incorporation to include the matters required to be included in the articles of incorporation in accordance with RCW 23B.25.040(1).~~

(4) ~~The plan of election must be approved in the following manner:~~

~~(a) The plan of election must first be approved by the board of directors.~~

~~(b) The plan of election must then be approved by the shareholders. In submitting the plan of election to the shareholders for approval, the board of directors of the electing corporation must recommend the election to that the shareholders approve the plan of election, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation, in which case the board of directors must inform the shareholders of the basis for its so proceeding, and communicates the basis for its determination to the shareholders with the proposed election; and~~

~~(c) The board of directors may set conditions for the approval of the plan of election by the shareholders or the effectiveness of the plan.~~

~~(d) (e) Unless the articles of incorporation, or the board of directors acting in accordance with subsection (4)(c) of this section, requires a greater vote. In addition to any other voting conditions imposed by the board of directors under subsection (2) of this section, the plan of election must be approved by an affirmative vote of at least two-thirds of the voting group comprising all the votes of the electing corporation's shareholders entitled to be cast on the plan corporate action, and by two-thirds of the holders of the outstanding shares of each class or series, voting as separate voting groups, and each other voting group entitled under the articles of incorporation to vote separately on the plan corporate action.~~

~~(2) The board of directors of a corporation electing to become a social purpose corporation may condition its submission of the proposed election on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled to vote as a separate group on the proposed election.~~

~~(3) To elect to become a social purpose corporation, an electing corporation must amend its articles of incorporation to include the matters required to be set forth in the articles of incorporation pursuant to RCW 23B.25.040(1).~~

23B.25.130. CORPORATION CEASING TO BE A SOCIAL PURPOSE CORPORATION—CONDITIONS—ELECTION

~~(1) By complying with this chapter, any~~ Any social purpose corporation may elect to cease to be a social purpose corporation in accordance with a plan of election, if, pursuant to the proposed election, each of the following conditions are met:

~~(2) The plan of election must provide that each~~ (a) Each share of the same class or series of the electing social purpose corporation shall, unless all shareholders of the class or series consent, be treated equally with respect to any cash, rights, securities, or other property to be received by, or any obligations or restrictions to be imposed on, the holder of that share;

~~(3) The plan of election must include an amendment to the articles of incorporation to remove the matters required to be included in the articles of incorporation in accordance with RCW 23B.25.040(1).~~

~~(4) The plan of election must be approved in the following manner:~~

~~(a) The plan of election must first be approved by the board of directors.~~

~~(b) The plan of election must then be approved by the shareholders. In submitting the plan of election to the shareholders for approval, the board of directors of the electing social purpose corporation must recommend the election to that the shareholders approve the plan of election, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation, in which case the board of directors must inform the shareholders of the basis for its so proceeding. and communicates the basis for its determination to the shareholders with the proposed election; and~~

~~(c) The board of directors may set conditions for the approval of the plan of election by the shareholders or the effectiveness of the plan.~~

~~(d) Unless the articles of incorporation, or the board of directors acting in accordance with subsection (4)(c) of this section, requires a greater vote. In addition to any other voting conditions imposed by the board of directors under subsection (2) of this section, the plan of election must be approved by an affirmative vote of at least two-thirds of the voting group comprising all the votes of the electing social purpose corporation's shareholders entitled to be cast on the plan corporate action, and by two-thirds of the holders of the outstanding shares of each class or series, voting as separate voting groups, and each other voting group entitled under the articles of incorporation to vote separately on the plan corporate action.~~

~~(2) The board of directors of a social purpose corporation electing to cease to be a social purpose corporation may condition its submission of the proposed election on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled to vote as a separate group on the proposed election.~~
