

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE DRS35142-ME-5A (02/03)

Short Title: Amend Article 13 of Business Corporation Act.

(Public)

Sponsors: Senator Clodfelter.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND ARTICLE 13 OF THE NORTH CAROLINA BUSINESS
3 CORPORATION ACT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 13 of Chapter 55 of the General Statutes reads as rewritten:

6 "Article 13.

7 "~~Dissenters'~~ Appraisal Rights.

8 "Part 1. Right to ~~Dissent~~ Appraisal and ~~Obtain~~ Payment for Shares.

9 "**§ 55-13-01. Definitions.**

10 In this ~~Article:~~ Article, the following definitions apply:

- 11 (1) Affiliate. – A person that directly, or indirectly, through one or more
12 intermediaries, controls, is controlled by, or is under common control with
13 another person or is a senior executive thereof. For purposes of
14 G.S. 55-13-01(7), a person is deemed to be an affiliate of its senior
15 executives.
- 16 (2) Beneficial shareholder. – A person who is the beneficial owner of shares
17 held in a voting trust or by a nominee on the beneficial owner's behalf.
- 18 ~~(1)(3)~~ "Corporation" means the Corporation. – The issuer of the shares held by a
19 ~~dissenter before the corporate action, or the surviving or acquiring~~
20 ~~corporation by merger or share exchange of that issuer.~~ shareholder
21 demanding appraisal and, for matters covered in G.S. 55-13-22 through
22 G.S. 55-13-31, the term includes the surviving entity in a merger.
- 23 (2) ~~"Dissenter" means a shareholder who is entitled to dissent from corporate~~
24 ~~action under G.S. 55-13-02 and who exercises that right when and in the~~
25 ~~manner required by G.S. 55-13-20 through 55-13-28.~~
- 26 (4) Expenses. – Reasonable expenses of every kind that are incurred in
27 connection with a matter, including counsel fees.
- 28 ~~(3)(5)~~ "Fair value", with respect to a dissenter's shares, means the value of the
29 shares Fair value. – The value of the corporation's shares (i) immediately
30 before the effectuation of the corporate action as to which the dissenter
31 ~~objects,~~ shareholder asserts appraisal rights, excluding any appreciation or
32 depreciation in anticipation of the corporate action unless exclusion would
33 be inequitable. inequitable, (ii) using customary and current valuation
34 concepts and techniques generally employed for similar business in the
35 context of the transaction requiring appraisal, and (iii) without discounting



1 for lack of marketability or minority status except, if appropriate, for
2 amendments to the articles pursuant to G.S. 55-13-02(a)(5).

3 ~~(4)(6) "Interest" means interest~~ Interest. – Interest from the effective date of the
4 corporate action until the date of payment, at a rate that is fair and equitable
5 under all the circumstances, giving due consideration to the rate currently
6 paid by the corporation on its principal bank loans, if any, but not less than
7 the rate provided in G.S. 24-1, the rate of interest on judgments in this State
8 on the effective date of the corporate action.

9 (7) Interested transaction. – A corporate action described in G.S. 55-13-02(a),
10 other than a merger pursuant to G.S. 55-11-04, involving an interested
11 person and in which any of the shares or assets of the corporation are being
12 acquired or converted. As used in this definition, the following definitions
13 apply:

14 a. Interested person. – A person, or an affiliate of a person, who at any
15 time during the one-year period immediately preceding approval by
16 the board of directors of the corporate action met any of the
17 following conditions:

18 1. Was the beneficial owner of twenty percent (20%) or more of
19 the voting power of the corporation, other than as owner of
20 excluded shares.

21 2. Had the power, contractually or otherwise, other than as
22 owner of excluded shares, to cause the appointment or
23 election of twenty-five percent (25%) or more of the directors
24 to the board of directors of the corporation.

25 3. Was a senior executive or director of the corporation or a
26 senior executive of any affiliate thereof, and that senior
27 executive or director will receive, as a result of the corporate
28 action, a financial benefit not generally available to other
29 shareholders as such, other than any of the following:

30 I. Employment, consulting, retirement, or similar
31 benefits established separately and not as part of or in
32 contemplation of the corporate action.

33 II. Employment, consulting, retirement, or similar
34 benefits established in contemplation of, or as part of,
35 the corporate action that are not more favorable than
36 those existing before the corporate action or, if more
37 favorable, that have been approved on behalf of the
38 corporation in the same manner as is provided in
39 G.S. 55-8-31(a)(1) and (c).

40 III. In the case of a director of the corporation who will, in
41 the corporate action, become a director of the
42 acquiring entity, or one of its affiliates, rights and
43 benefits as a director that are provided on the same
44 basis as those afforded by the acquiring entity
45 generally to other directors of the acquiring entity or
46 such affiliate of the acquiring entity.

47 b. Beneficial owner. – Any person who, directly or indirectly, through
48 any contract, arrangement, or understanding, other than a revocable
49 proxy, has or shares the power to vote, or to direct the voting of,
50 shares. If a member of a national securities exchange is precluded by
51 the rules of the exchange from voting without instruction on

contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted, then that member of a national securities exchange shall not be deemed a "beneficial owner" of any securities held directly or indirectly by the member on behalf of another person solely because the member is the record holder of the securities. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group.

c. Excluded shares. – Shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year prior to the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

(8) Preferred shares. – A class or series of shares the holders of which have preference over any other class or series with respect to distributions.

(5)(9) "Record shareholder" means the Record shareholder. – The person in whose name shares are registered in the records of a the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a the corporation.

(6) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(10) Senior executive. – The chief executive officer, chief operating officer, chief financial officer, or anyone in charge of a principal business unit or function.

(7)(11) "Shareholder" means the Shareholder. – Both a record shareholder or the and a beneficial shareholder.

"§ 55-13-02. Right to dissent. appraisal.

(a) In addition to any rights granted under Article 9, a shareholder is entitled to dissent from, appraisal rights and to obtain payment of the fair value of his shares that shareholder's shares, in the event of, of any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation (other than a parent corporation in a merger whose shares are not affected under G.S. 55-11-04) is a party unless (i) approval by the shareholders of that corporation is not required under G.S. 55-11-03(g) or (ii) such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares; if either (i) shareholder approval is required for the merger by G.S. 55-11-03 and the shareholder is entitled to vote on the merger, except that appraisal rights shall 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) the corporation is a subsidiary and the merger is governed by G.S. 55-11-04.

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, unless such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares; acquired if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged.

(2a) Consummation of a plan of conversion pursuant to Part 2 of Article 11A of this Chapter;

- 1 (3) ~~Consummation of a sale or exchange of all, or substantially all, of the~~
2 ~~property of the corporation other than as permitted by G.S. 55-12-01,~~
3 ~~including a sale in dissolution, but not including a sale pursuant to court~~
4 ~~order or a sale pursuant to a plan by which all or substantially all of the net~~
5 ~~proceeds of the sale will be distributed in cash to the shareholders within one~~
6 ~~year after the date of sale; Consummation of a disposition of assets pursuant~~
7 ~~to G.S. 55-12-02 if the shareholder is entitled to vote on the disposition.~~
- 8 (4) ~~An amendment of the articles of incorporation that materially and adversely~~
9 ~~affects rights in respect of a dissenter's shares because it (i) alters or~~
10 ~~abolishes a preferential right of the shares; (ii) creates, alters, or abolishes a~~
11 ~~right in respect of redemption, including a provision respecting a sinking~~
12 ~~fund for the redemption or repurchase, of the shares; (iii) alters or abolishes~~
13 ~~a preemptive right of the holder of the shares to acquire shares or other~~
14 ~~securities; (iv) excludes or limits the right of the shares to vote on any~~
15 ~~matter, or to cumulate votes, other than an amendment of the articles of~~
16 ~~incorporation permitting action without meeting to be taken by less than all~~
17 ~~shareholders entitled to vote, without advance notice, or both, as provided in~~
18 ~~G.S. 55-7-04; (v) (i) with respect to a class or series of shares that reduces~~
19 ~~the number of shares of a class or series owned by the shareholder to a~~
20 ~~fraction of a share if the corporation has an obligation or right to repurchase~~
21 ~~the fractional share so created is to be acquired for cash under G.S. 55-6-04;~~
22 ~~created or (vi) (ii) changes the corporation into a nonprofit corporation or~~
23 ~~cooperative organization; or organization.~~
- 24 (5) ~~Any corporate action taken pursuant to a shareholder vote to the extent other~~
25 ~~amendment to the articles of incorporation, merger, share exchange, or~~
26 ~~disposition of assets to the extent provided by the articles of incorporation,~~
27 ~~bylaws, or a resolution of the board of directors provides that voting or~~
28 ~~nonvoting shareholders are entitled to dissent and obtain payment for their~~
29 ~~shares; directors.~~
- 30 (6) Consummation of a conversion to a foreign corporation pursuant to Part 2 of
31 Article 11A of this Chapter if the shareholder does not receive shares in the
32 foreign corporation resulting from the conversion that (i) have terms as
33 favorable to the shareholder in all material respects and (ii) represent at least
34 the same percentage interest of the total voting rights of the outstanding
35 shares of the corporation as the shares held by the shareholder before the
36 conversion.
- 37 (7) Consummation of a conversion of the corporation to nonprofit status
38 pursuant to Part 2 of Article 11A of this Chapter.
- 39 (8) Consummation of a conversion of the corporation to an unincorporated
40 entity pursuant to Part 2 of Article 11A of this Chapter.
- 41 (b) ~~A shareholder entitled to dissent and obtain payment for his shares under this~~
42 ~~Article may not challenge the corporate action creating his entitlement, including without~~
43 ~~limitation a merger solely or partly in exchange for cash or other property, unless the action is~~
44 ~~unlawful or fraudulent with respect to the shareholder or the corporation. Notwithstanding~~
45 ~~subsection (a) of this section, the availability of appraisal rights under subdivisions (1), (2), (3),~~
46 ~~(4), (6), and (8) of subsection (a) of this section shall be limited in accordance with the~~
47 ~~following provisions:~~
- 48 (1) Appraisal rights shall not be available for the holders of shares of any class
49 or series of shares that are any of the following:
- 50 a. A covered security under section 18(b)(1)(A) or (B) of the Securities
51 Act of 1933, as amended.

1 b. Traded in an organized market and has at least 2,000 shareholders
2 and a market value of at least twenty million dollars (\$20,000,000)
3 (exclusive of the value of shares held by the corporation's
4 subsidiaries, senior executives, directors, and beneficial shareholders
5 owning more than ten percent (10%) of such shares).

6 c. Issued by an open-end management investment company registered
7 with the Securities and Exchange Commission under the Investment
8 Company Act of 1940, as amended, and may be redeemed at the
9 option of the holder at net asset value.

10 (2) The applicability of subdivision (1) of this subsection shall be determined as
11 of (i) the record date fixed to determine the shareholders entitled to receive
12 notice of, and to vote at, the meeting of shareholders to act upon the
13 corporate action requiring appraisal rights or (ii) the day before the effective
14 date of such corporate action if there is no meeting of shareholders.

15 (3) Subdivision (1) of this subsection shall not be applicable and appraisal rights
16 shall be available pursuant to subsection (a) of this section for the holders of
17 any class or series of shares who are required by the terms of the corporate
18 action requiring appraisal rights to accept for such shares anything other than
19 cash or shares of any class or any series of shares of any corporation, or any
20 other proprietary interest of any other entity, that satisfies the standards set
21 forth in subdivision (1) of this subsection at the time the corporate action
22 becomes effective.

23 (4) Subdivision (1) of this subsection shall not be applicable and appraisal rights
24 shall be available pursuant to subsection (a) of this section for the holders of
25 any class or series of shares where the corporate action is an interested
26 transaction.

27 ~~(c) Notwithstanding any other provision of this Article, there shall be no right of~~
28 ~~shareholders to dissent from, or obtain payment of the fair value of the shares in the event of,~~
29 ~~the corporate actions set forth in subdivisions (1), (2), or (3) of subsection (a) of this section if~~
30 ~~the affected shares are any class or series which, at the record date fixed to determine the~~
31 ~~shareholders entitled to receive notice of and to vote at the meeting at which the plan of merger~~
32 ~~or share exchange or the sale or exchange of property is to be acted on, were (i) listed on a~~
33 ~~national securities exchange or designated as a national market system security on an~~
34 ~~interdealer quotation system by the National Association of Securities Dealers, Inc., or (ii) held~~
35 ~~by at least 2,000 record shareholders. This subsection does not apply in cases in which either:~~

36 ~~(1) The articles of incorporation, bylaws, or a resolution of the board of~~
37 ~~directors of the corporation issuing the shares provide otherwise; or~~

38 ~~(2) In the case of a plan of merger or share exchange, the holders of the class or~~
39 ~~series are required under the plan of merger or share exchange to accept for~~
40 ~~the shares anything except:~~

41 ~~a. Cash;~~

42 ~~b. Shares, or shares and cash in lieu of fractional shares of the surviving~~
43 ~~or acquiring corporation, or of any other corporation which, at the~~
44 ~~record date fixed to determine the shareholders entitled to receive~~
45 ~~notice of and vote at the meeting at which the plan of merger or share~~
46 ~~exchange is to be acted on, were either listed subject to notice of~~
47 ~~issuance on a national securities exchange or designated as a national~~
48 ~~market system security on an interdealer quotation system by the~~
49 ~~National Association of Securities Dealers, Inc., or held by at least~~
50 ~~2,000 record shareholders; or~~

1 e. ~~A combination of cash and shares as set forth in sub-subdivisions a.~~
2 ~~and b. of this subdivision.~~

3 Notwithstanding any other provision of this section, the articles of incorporation as
4 originally filed or any amendment to the articles may limit or eliminate appraisal rights for any
5 class or series of preferred shares. Any amendment to the articles that limits or eliminates
6 appraisal rights for any shares that are outstanding immediately prior to the effective date of the
7 amendment or that the corporation is or may be required to issue or sell thereafter pursuant to
8 any conversion, exchange, or other right existing immediately before the effective date of the
9 amendment, however, shall not apply to any corporate action that becomes effective within one
10 year of that date if the corporate action would otherwise afford appraisal rights.

11 (d) A shareholder holding shares of a class or series that were issued and outstanding as
12 of the effective date of this act but that did not as of that date entitle the shareholder to vote on
13 a corporate action described in subdivision (a)(1), (2), or (3) of this section shall be entitled to
14 appraisal rights, and to obtain payment of the fair value of the shareholder's shares of such class
15 or series, to the same extent as if such shares did entitle the shareholder to vote on such
16 corporate action.

17 **"§ 55-13-03. Dissent by nominees and beneficial owners. Assertion of rights by nominees**
18 **and beneficial owners.**

19 (a) A record shareholder may assert dissenters' appraisal rights as to fewer than all the
20 shares registered in his name only if he dissents the record shareholder's name but owned by a
21 beneficial shareholder only if the record shareholder (i) objects with respect to all shares
22 beneficially of the class or series owned by any one person the beneficial shareholder and (ii)
23 notifies the corporation in writing of the name and address of each person beneficial
24 shareholder on whose behalf he asserts dissenters' rights. appraisal rights are being asserted.
25 The rights of a partial dissenter record shareholder who asserts appraisal rights for only part of
26 the shares held of record in the record shareholder's name under this subsection are shall be
27 determined as if the shares as to which he dissents and his the record shareholder objects and
28 the record shareholder's other shares were registered in the names of different record
29 shareholders.

30 (b) A beneficial shareholder may assert dissenters' appraisal rights as to shares of any
31 class or series held on his behalf of the shareholder only if: if the shareholder does both of the
32 following:

33 (1) ~~He submits~~ Submits to the corporation the record shareholder's written
34 consent to the ~~dissent not~~ assertion of rights no later than the ~~time the~~
35 ~~beneficial shareholder asserts dissenters' rights; and~~ date referred to in
36 G.S. 55-13-22(b)(2)b.

37 (2) ~~He does so~~ Submits written consent under subdivision (1) of this subsection
38 with respect to all shares of ~~which he is~~ the class or series that are
39 beneficially owned by the beneficial shareholder.

40 **"§§ 55-13-04 through 55-13-19. Reserved for future codification purposes.**

41 "Part 2. Procedure for Exercise of Dissenters' Appraisal Rights.

42 **"§ 55-13-20. Notice of dissenters' rights.appraisal rights.**

43 (a) ~~If proposed any~~ any corporate action ~~creating dissenters' rights under G.S. 55-13-02~~
44 specified in G.S. 55-13-02(a) is to be submitted to a vote at a shareholders' meeting, the
45 meeting notice must state that the corporation has concluded that shareholders are are, are not,
46 or may be entitled to assert dissenters' appraisal rights under this Article and be accompanied
47 by Article. If the corporation concludes that appraisal rights are or may be available, a copy of
48 this Article. Article must accompany the meeting notice sent to those record shareholders
49 entitled to exercise appraisal rights.

50 (b) ~~If corporate action creating dissenters' rights under G.S. 55-13-02 is taken without a~~
51 vote of shareholders or is taken by shareholder action without meeting under G.S. 55-7-04, the

1 ~~corporation shall no later than 10 days thereafter~~In a merger pursuant to G.S. 55-11-04, the
2 parent corporation must notify in writing all record shareholders of the subsidiary who are
3 entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice
4 appraisal rights that the corporate action became effective. In the case of any other corporate
5 action specified in G.S. 55-13-02(a) with respect to which shareholders of a class or series do
6 not have the right to vote, but with respect to which those shareholders are entitled to assert
7 appraisal rights, the corporation must notify in writing all record shareholders of such class or
8 series that the corporate action became effective. Notice required under this subsection must be
9 sent within 10 days after the corporate action became effective and include the materials
10 described in G.S. 55-13-22. A shareholder who consents to shareholder action taken without
11 meeting under G.S. 55-7-04 approving a corporate action is not entitled to payment for the
12 shareholder's shares under this Article with respect to that corporate action.

13 (c) ~~If a corporation fails to comply with the requirements of this section, such failure~~
14 ~~shall not invalidate any corporate action taken; but any shareholder may recover from the~~
15 ~~corporation any damage which he suffered from such failure in a civil action brought in his~~
16 ~~own name within three years after the taking of the corporate action creating dissenters' rights~~
17 ~~under G.S. 55-13-02 unless he voted for such corporate action.~~ any corporate action specified
18 in G.S. 55-13-02(a) is to be approved by written consent of the shareholders pursuant to
19 G.S. 55-7-04, then the following must occur:

20 (1) Written notice that appraisal rights are, are not, or may be available must be
21 given to each record shareholder from whom a consent is solicited at the
22 time consent of each shareholder is first solicited and, if the corporation has
23 concluded that appraisal rights are or may be available, must be
24 accompanied by a copy of this Article.

25 (2) Written notice that appraisal rights are, are not, or may be available must be
26 delivered together with the notice to the applicable shareholders required by
27 subsections (d) and (e) of G.S. 55-7-04, may include the materials described
28 in G.S. 55-13-22, and, if the corporation has concluded that appraisal rights
29 are or may be available, must be accompanied by a copy of this Article.

30 (d) If any corporate action described in G.S. 55-13-02(a) is proposed, or a merger
31 pursuant to G.S. 55-11-04 is effected, then the notice referred to in subsection (a) or (c) of this
32 section, if the corporation concludes that appraisal rights are or may be available, and in
33 subsection (b) of this section shall be accompanied by the following:

34 (1) The annual financial statements specified in G.S. 55-16-20(a) of the
35 corporation that issued the shares to be appraised. The date of the financial
36 statements shall not be more than 16 months before the date of the notice
37 and shall comply with G.S. 55-16-20(b). If annual financial statements that
38 meet the requirements of this subdivision are not reasonably available, then
39 the corporation shall provide reasonably equivalent financial information.

40 (2) The latest available quarterly financial statements of the corporation, if any.

41 The right to receive the information described in this subsection may be waived in writing by a
42 shareholder before or after the corporate action.

43 **"§ 55-13-21. Notice of intent to demand payment, payment and consequences of voting or**
44 **consenting.**

45 (a) ~~If proposed a corporate action creating dissenters' rights under G.S. 55-13-02~~
46 ~~specified in G.S. 55-13-02(a) is submitted to a vote at a shareholders' meeting, a shareholder~~
47 ~~who is entitled to vote on the corporate action and who wishes to assert dissenters' rights:~~
48 appraisal rights with respect to any class or series of shares must do the following:

49 (1) ~~Must give~~ Deliver ~~to the corporation, and the corporation must actually~~
50 ~~receive,~~ before the vote is taken taken, written notice of his the shareholder's

1 intent to demand payment for his shares if the proposed action is effectuated;
2 ~~and effectuated.~~

3 (2) ~~Must not vote his~~ Not vote, or cause or permit to be voted, any shares of any
4 ~~class or series~~ in favor of the proposed action.

5 (b) If a corporate action specified in G.S. 55-13-02(a) is to be approved by less than
6 unanimous written consent, a shareholder who is entitled to vote on the corporate action and
7 who wishes to assert appraisal rights with respect to any class or series of shares must not
8 execute a consent in favor of the proposed action with respect to that class or series of shares.

9 (c) ~~A shareholder who does not~~ fails to satisfy the requirements of subsection (a) or (b)
10 ~~of this section~~ is not entitled to payment for his shares under this Article.

11 **"§ 55-13-22. Dissenters' notice. Appraisal notice and form.**

12 (a) ~~If proposed a corporate action creating dissenters' requiring appraisal rights under~~
13 ~~G.S. 55-13-02~~ G.S. 55-13-02(a) is approved at a shareholders' meeting, becomes effective, the
14 corporation shall mail by registered or certified mail, return receipt requested, must deliver a
15 written dissenters' appraisal notice and form required by subdivision (b)(1) of this section to all
16 shareholders who satisfied the requirements of G.S. 55-13-21. In the case of a merger under
17 G.S. 55-11-04, the parent corporation must deliver a written appraisal notice and form to all
18 record shareholders of the subsidiary who may be entitled to assert appraisal rights. In the case
19 of any other corporate action specified in G.S. 55-13-02(a) that becomes effective and with
20 respect to which shareholders of a class or series do not have the right to vote but with respect
21 to which such shareholders are entitled to assert appraisal rights, the corporation must deliver a
22 written appraisal notice and form to all record shareholders of such class or series who may be
23 entitled to assert appraisal rights.

24 (b) ~~The dissenters' appraisal notice must be sent no earlier than the date the corporate~~
25 ~~action specified in G.S. 55-13-02(a) became effective and no later than 10 days after~~
26 ~~shareholder approval, or if no shareholder approval is required, after the approval of the board~~
27 ~~of directors, of the corporate action creating dissenters' rights under G.S. 55-13-02, and must:~~
28 ~~that date. The appraisal notice must include the following:~~

29 (1) A form that specifies the first date of any announcement to shareholders,
30 made prior to the date the corporate action became effective, of the principal
31 terms of the proposed corporate action. If such an announcement was made,
32 the form shall require a shareholder asserting appraisal rights to certify
33 whether beneficial ownership of those shares for which appraisal rights are
34 asserted was acquired before that date. The form shall require a shareholder
35 asserting appraisal rights to certify that the shareholder did not vote for or
36 consent to the transaction.

37 (2) ~~State~~ Disclosure of the following:

38 a. ~~where the payment demand~~ Where the form must be sent and where
39 ~~and when certificates for certificated shares must be deposited;~~
40 ~~deposited, as well as the date by which those certificates must be~~
41 ~~deposited. The certificate deposit date must not be earlier than the~~
42 ~~date for receiving the required form under sub-subdivision b. of this~~
43 ~~subdivision.~~

44 (2) ~~Inform holders of uncertificated shares to what extent transfer of the shares~~
45 ~~will be restricted after the payment demand is received;~~

46 (3) ~~Supply a form for demanding payment;~~

47 (4) b. Set a A date by which the corporation must receive the payment
48 demand, which date may not be fewer than 30 40 nor more than 60
49 days after the date the appraisal notice required under subsection (a)
50 of this section notice is mailed; and form are sent. The form shall
51 also state that the shareholder shall have waived the right to demand

1 appraisal with respect to the shares unless the form is received by the
2 corporation by the specified date.

3 c. The corporation's estimate of the fair value of the shares.

4 d. That, if requested in writing, the corporation will provide, to the
5 shareholder so requesting, within 10 days after the date specified in
6 sub-subdivision b. of this subdivision, the number of shareholders
7 who return the forms by the specified date and the total number of
8 shares owned by them.

9 e. The date by which the notice to withdraw under G.S. 55-13-23 must
10 be received, which date must be within 20 days after the date
11 specified in sub-subdivision b. of this subdivision.

12 ~~(5)~~(3) Be accompanied by a copy of this Article.

13 **"§ 55-13-23. ~~Duty to demand payment. Perfection of rights; right to withdraw.~~**

14 (a) ~~A shareholder sent a dissenters' notice described in G.S. 55-13-22 must demand~~
15 ~~payment and deposit his share certificates in accordance with the terms of the notice. A~~
16 ~~shareholder who receives notice pursuant to G.S. 55-13-22 and who wishes to exercise~~
17 ~~appraisal rights must sign and return the form sent by the corporation and, in the case of~~
18 ~~certificated shares, deposit the shareholder's certificates in accordance with the terms of the~~
19 ~~notice by the date referred to in the notice pursuant to G.S. 55-13-22(b)(2). In addition, if~~
20 ~~applicable, the shareholder must certify on the form whether the beneficial owner of such~~
21 ~~shares acquired beneficial ownership of the shares before the date required to be set forth in the~~
22 ~~notice pursuant to G.S. 55-13-22(b)(1). If a shareholder fails to make this certification, the~~
23 ~~corporation may elect to treat the shareholder's shares as after-acquired shares under~~
24 ~~G.S. 55-13-27. Once a shareholder deposits that shareholder's certificates or, in the case of~~
25 ~~uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder,~~
26 ~~unless the shareholder withdraws pursuant to subsection (b) of this section.~~

27 (b) ~~The shareholder who demands payment and deposits his share certificates under~~
28 ~~subsection (a) retains all other rights of a shareholder until these rights are cancelled or~~
29 ~~modified by the taking of the proposed corporate action. A shareholder who has complied with~~
30 ~~subsection (a) of this section may nevertheless decline to exercise appraisal rights and~~
31 ~~withdraw from the appraisal process by so notifying the corporation in writing by the date set~~
32 ~~forth in the appraisal notice pursuant to G.S. 55-13-22(b)(2)e. A shareholder who fails to so~~
33 ~~withdraw from the appraisal process may not thereafter withdraw without the corporation's~~
34 ~~written consent.~~

35 (c) ~~A shareholder who does not demand payment or deposit his sign and return the form~~
36 ~~and, in the case of certificated shares, deposit that shareholder's share certificates where~~
37 ~~required, each by the date set forth in the dissenters' notice, is notice described in~~
38 ~~G.S. 55-13-22(b) shall not be entitled to payment for his shares under this Article.~~

39 **"§ 55-13-24. ~~Share restrictions. Reserved for future codification purposes.~~**

40 (a) ~~The corporation may restrict the transfer of uncertificated shares from the date the~~
41 ~~demand for their payment is received until the proposed corporate action is taken or the~~
42 ~~restrictions released under G.S. 55-13-26.~~

43 (b) ~~The person for whom dissenters' rights are asserted as to uncertificated shares~~
44 ~~retains all other rights of a shareholder until these rights are cancelled or modified by the taking~~
45 ~~of the proposed corporate action.~~

46 **"§ 55-13-25. Payment.**

47 (a) ~~As soon as the proposed corporate action is taken, or Except as provided in~~
48 ~~G.S. 55-13-27, within 30 days after receipt of a payment demand, the form required by~~
49 ~~G.S. 55-13-22(b) is due, the corporation shall pay each dissenter in cash to the shareholders~~
50 ~~who complied with G.S. 55-13-23 G.S. 55-13-23(a) the amount the corporation estimates to be~~
51 ~~the fair value of his their shares, plus interest accrued to the date of payment. interest.~~

- 1 (b) The payment ~~shall be accompanied by:~~ to each shareholder pursuant to subsection
2 (a) of this section must be accompanied by the following:
- 3 (1) ~~The corporation's most recent available balance sheet as of the end of a fiscal~~
4 ~~year ending~~ The following financial information:
- 5 a. The annual financial statements specified in G.S. 55-16-20(a) of the
6 corporation that issued the shares to be appraised. The date of the
7 financial statements shall not be more than 16 months before the date
8 of payment, an income statement for that year, a statement of cash
9 flows for that year, and the payment and shall comply with
10 G.S. 55-16-20(b). If annual financial statements that meet the
11 requirements of this sub-subdivision are not reasonably available, the
12 corporation shall provide reasonably equivalent financial
13 information.
- 14 b. The latest available ~~interim~~ quarterly financial statements, if any;
15 any.
- 16 (2) ~~An explanation of how~~ A statement of the corporation's estimated
17 corporation's estimate of the fair value of the shares; shares. The estimate
18 must equal or exceed the corporation's estimate given pursuant to
19 G.S. 55-13-22(b)(2)c.
- 20 (3) ~~An explanation of how the interest was calculated;~~
- 21 (4) ~~A statement of the dissenter's~~ that the shareholders described in subsection
22 (a) of this section have the right to demand further payment under
23 G.S. 55-13-28; G.S. 55-13-28 and that if a shareholder does not do so within
24 the time period specified therein, then the shareholder shall be deemed to
25 have accepted such payment in full satisfaction of the corporation's
26 obligations under
- 27 (5) ~~A copy of this Article.~~
- 28 **"§ 55-13-26. Failure to take action. Reserved for future codification purposes.**
- 29 (a) ~~If the corporation does not take the proposed action within 60 days after the date set~~
30 ~~for demanding payment and depositing share certificates, the corporation shall return the~~
31 ~~deposited certificates and release the transfer restrictions imposed on uncertificated shares.~~
- 32 (b) ~~If after returning deposited certificates and releasing transfer restrictions, the~~
33 ~~corporation takes the proposed action, it must send a new dissenters' notice under~~
34 ~~G.S. 55-13-22 and repeat the payment demand procedure.~~
- 35 **"§ 55-13-27. Reserved for future codification purposes. After-acquired shares.**
- 36 (a) A corporation may elect to withhold payment required by G.S. 55-13-25 from any
37 shareholder who was required to but did not certify that beneficial ownership of all of the
38 shareholder's shares for which appraisal rights are asserted was acquired before the date set
39 forth in the appraisal notice sent pursuant to G.S. 55-13-22(b)(1).
- 40 (b) If the corporation elected to withhold payment under subsection (a) of this section, it
41 must, within 30 days after the form required by G.S. 55-13-22(b) is due, notify all shareholders
42 who are described in subsection (a) of this section of the following:
- 43 (1) The information required by G.S. 55-13-25(b)(1).
- 44 (2) The corporation's estimate of fair value pursuant to G.S. 55-13-25(b)(2).
- 45 (3) That they may accept the corporation's estimate of fair value, plus interest, in
46 full satisfaction of their demands or demand appraisal under G.S. 55-13-28.
- 47 (4) That those shareholders who wish to accept such offer must so notify the
48 corporation of their acceptance of the corporation's offer within 30 days after
49 receiving the offer.

(5) That those shareholders who do not satisfy the requirements for demanding appraisal under G.S. 55-13-28 shall be deemed to have accepted the corporation's offer.

(c) Within 10 days after receiving the shareholder's acceptance pursuant to subsection (b) of this section, the corporation must pay in cash the amount it offered under subdivision (b)(2) of this section to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(d) Within 40 days after sending the notice described in subsection (b) of this section, the corporation must pay in cash the amount it offered to pay under subdivision (b)(2) of this section to each shareholder described in subdivision (b)(5) of this section.

"§ 55-13-28. Procedure if shareholder dissatisfied with corporation's payment or failure to perform offer.

(a) ~~A dissenter may~~ A shareholder paid pursuant to G.S. 55-13-25 who is dissatisfied with the amount of the payment must notify the corporation in writing of his ~~own~~ that shareholder's estimate of the fair value of his the shares and amount of interest due, and demand payment of the ~~amount in excess of the payment by the corporation under G.S. 55-13-25~~ for the fair value of his shares and interest due, if:

- (1) ~~The dissenter believes that the amount paid under G.S. 55-13-25 is less than the fair value of his shares or that the interest due is incorrectly calculated;~~
- (2) ~~The corporation fails to make payment under G.S. 55-13-25; or~~
- (3) ~~The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.~~ that estimate plus interest (less any payment under G.S. 55-13-25). A shareholder offered payment under G.S. 55-13-27 who is dissatisfied with that offer must reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares, plus interest.

(b) ~~A dissenter waives his~~ A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value, plus interest, under subsection (a) of this section within 30 days after receiving the corporation's payment or offer of payment under G.S. 55-13-25 or G.S. 55-13-27, respectively, waives the right to demand payment under this section unless he notifies the corporation of his demand in writing ~~(i) under subdivision (a)(1) within 30 days after the corporation made payment for his shares or (ii) under subdivisions (a)(2) and (a)(3) within 30 days after the corporation has failed to perform timely.~~ A dissenter who fails to notify the corporation of his demand under subsection (a) within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment, and shall be entitled only to the payment made or offered pursuant to those respective sections.

"§ 55-13-29. Reserved for future codification purposes.

"Part 3. Judicial Appraisal of Shares.

"§ 55-13-30. Court action.

(a) If a shareholder makes a demand for payment under G.S. 55-13-28 which remains unsettled, the ~~dissenter may~~ corporation shall commence a proceeding within 60 days after the earlier of (i) the date payment is made under G.S. 55-13-25, or (ii) the date of the dissenter's payment demand under G.S. 55-13-28 receiving the payment demand by filing a complaint with the Superior Court Division of the General Court of Justice to determine the fair value of the shares and accrued interest. ~~A dissenter who takes no action~~ If the corporation does not commence the proceeding within the 60-day period shall be deemed to have withdrawn his dissent and demand for payment. period, the corporation shall pay in cash to each shareholder the amount the shareholder demanded pursuant to G.S. 55-13-28, plus interest.

(a1) Repealed by Session Laws 1997-202, s. 4.

1 (b) ~~Reserved for future codification purposes. The corporation shall commence the~~
2 ~~proceeding in the appropriate court of the county where the corporation's principal office (or, if~~
3 ~~none, its registered office) in this State is located. If the corporation is a foreign corporation~~
4 ~~without a registered office in this State, it shall commence the proceeding in the county in this~~
5 ~~State where the principal office or registered office of the domestic corporation merged with~~
6 ~~the foreign corporation was located at the time of the transaction.~~

7 (c) ~~The court corporation shall have the discretion to make all dissenters shareholders~~
8 ~~(whether or not residents of this State) whose demands remain unsettled parties to the~~
9 ~~proceeding as in an action against their shares and all parties must be served with a copy of the~~
10 ~~complaint. Nonresidents may be served by registered or certified mail or by publication as~~
11 ~~provided by law.~~

12 (d) ~~The jurisdiction of the superior court in which the proceeding is commenced under~~
13 ~~subsection (a) (b) of this section is plenary and exclusive. The court may appoint one or more~~
14 ~~persons as appraisers to receive evidence and recommend a decision on the question of fair~~
15 ~~value. The appraisers shall have the powers described in the order appointing them, or in any~~
16 ~~amendment to it. The parties shareholders demanding appraisal rights are entitled to the same~~
17 ~~discovery rights as parties in other civil proceedings. The proceeding shall be tried as in other~~
18 ~~civil actions. However, in a proceeding by a dissenter in a corporation that was a public~~
19 ~~corporation immediately prior to consummation of the corporate action giving rise to the right~~
20 ~~of dissent under G.S. 55-13-02, there is There shall be no right to a trial by jury.~~

21 (e) ~~Each dissenter shareholder made a party to the proceeding is entitled to judgment~~
22 ~~either (i) for the amount, if any, by which the court finds the fair value of his the shareholder's~~
23 ~~shares, plus interest, exceeds the amount paid by the corporation. corporation to the shareholder~~
24 ~~for the shareholder's shares or (ii) for the fair value, plus interest, of the shareholder's shares for~~
25 ~~which the corporation elected to withhold payment under G.S. 55-13-27.~~

26 **"§ 55-13-31. Court costs and ~~counsel fees.~~ expenses.**

27 (a) ~~The court in an appraisal proceeding commenced under G.S. 55-13-30 shall~~
28 ~~determine all court costs of the proceeding, including the reasonable compensation and~~
29 ~~expenses of appraisers appointed by the court, and shall assess the costs as it finds equitable.~~
30 ~~court. The court shall assess the costs against the corporation, except that the court may assess~~
31 ~~costs against all or some of the shareholders demanding appraisal, in amounts the court finds~~
32 ~~equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in~~
33 ~~good faith with respect to the rights provided by this Article.~~

34 (b) ~~The court in an appraisal proceeding may also assess the fees and expenses of~~
35 ~~counsel and experts for the respective parties, in amounts the court finds equitable:~~

36 (1) ~~Against the corporation and in favor of any or all dissenters shareholders~~
37 ~~demanding appraisal if the court finds the corporation did not substantially~~
38 ~~comply with the requirements of G.S. 55-13-20 through 55-13-28; or~~
39 ~~G.S. 55-13-20, 55-13-22, 55-13-25, or 55-13-27.~~

40 (2) ~~Against either the corporation or a dissenter, shareholder demanding~~
41 ~~appraisal, in favor of either or any other party, if the court finds that the~~
42 ~~party against whom the fees and expenses are assessed acted arbitrarily,~~
43 ~~vexatiously, or not in good faith with respect to the rights provided by this~~
44 ~~Article.~~

45 (c) ~~If the court in an appraisal proceeding finds that the services of counsel for any~~
46 ~~dissenter expenses incurred by any shareholder were of substantial benefit to other dissenters~~
47 ~~shareholders similarly situated, situated and that the fees for those services these expenses~~
48 ~~should not be assessed against the corporation, the court may award to these counsel reasonable~~
49 ~~fees to direct that the expenses be paid out of the amounts awarded the dissenters shareholders~~
50 ~~who were benefited.~~

1 (d) To the extent the corporation fails to make a required payment pursuant to
2 G.S. 55-13-25, 55-13-27, or 55-13-28, the shareholder may sue directly for the amount owed
3 and, to the extent successful, shall be entitled to recover from the corporation all expenses of
4 the suit.

5 "Part 4. Other Remedies.

6 **"§ 55-13-40. Other remedies limited.**

7 (a) The legality of a proposed or completed corporate action described in
8 G.S. 55-13-02(a) may not be contested, nor may the corporate action be enjoined, set aside, or
9 rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have
10 approved the corporate action.

11 (b) Subsection (a) of this section does not apply to a corporate action that:

12 (1) Was not authorized and approved in accordance with the applicable
13 provisions of any of the following:

14 a. Article 9, 9A, 10, 11, 11A, or 12 of this Chapter.

15 b. The articles of incorporation or bylaws.

16 c. The resolution of the board of directors authorizing the corporate
17 action.

18 (2) Was procured as a result of fraud, a material misrepresentation, or an
19 omission of a material fact necessary to make statements made, in light of
20 the circumstances in which they were made, not misleading.

21 (3) Constitutes an interested transaction, unless it has been authorized,
22 approved, or ratified by either (i) the board of directors or a committee of the
23 board or (ii) the shareholders, in the same manner as is provided in
24 G.S. 55-8-31(a)(1) and (c) or in G.S. 55-8-31(a)(2) and (d), as if the
25 interested transaction were a director's conflict of interest transaction.

26 (4) Was approved by less than unanimous consent of the voting shareholders
27 pursuant to G.S. 55-7-04, provided that both of the following are true:

28 a. The challenge to the corporate action is brought by a shareholder
29 who did not consent and as to whom notice of the approval of the
30 corporate action was not effective at least 10 days before the
31 corporate action was effected.

32 b. The proceeding challenging the corporate action is commenced
33 within 10 days after notice of the approval of the corporate action is
34 effective as to the shareholder bringing the proceeding."

35 **SECTION 2.** G.S. 53-362 reads as rewritten:

36 **"§ 53-362. Rights Appraisal rights of dissenters to shareholders in mergers, share**
37 **exchanges, or asset transfers.**

38 A shareholder of a State trust company may ~~dissent from~~ exercise appraisal rights in
39 connection with the proposed merger, share exchange, or asset transfer to the extent allowed
40 under, and by following the procedures prescribed by, Article 13 of Chapter 55 of the General
41 Statutes."

42 **SECTION 3.** G.S. 54B-261(a1) reads as rewritten:

43 "(a1) Notwithstanding any other provision of law, any stock association may reorganize
44 its ownership, to provide for ownership by a savings and loan holding company, upon adoption
45 of a plan of reorganization by a favorable vote of not less than two-thirds of the members of the
46 board of directors of the association and approval of such plan of reorganization by the holders
47 of not less than a majority of the issued and outstanding shares of stock of the association. The
48 plan of reorganization shall provide that (i) the resulting ownership shall be vested in a North
49 Carolina corporation, (ii) all stockholders of the stock association shall have the right to
50 exchange shares, (iii) the exchange of stock shall not be subject to State or federal income
51 taxation, (iv) stockholders not wishing to exchange shares shall be entitled to ~~dissenters'~~

1 appraisal rights as provided under Article 13 of Chapter 55 of the General Statutes and (v) the
2 plan of reorganization is fair and equitable to all stockholders."

3 **SECTION 4.** G.S. 54C-195(b) reads as rewritten:

4 "(b) Notwithstanding any other law, a stock savings bank may reorganize its ownership,
5 to provide for ownership by a holding company, upon adoption of a plan of reorganization by a
6 favorable vote of not less than two-thirds of the members of the board of directors of the
7 savings bank and approval of the plan of reorganization by the holders of not less than a
8 majority of the issued and outstanding shares of stock of the savings bank. The plan of
9 reorganization shall provide that (i) the resulting ownership is vested in a North Carolina
10 corporation, (ii) all stockholders of the stock savings bank have the right to exchange shares,
11 (iii) the exchange of stock is not subject to State or federal income taxation, (iv) stockholders
12 not wishing to exchange shares are entitled to ~~dissenters'~~ appraisal rights as provided under
13 ~~G.S. 55-113~~, Article 13 of Chapter 55 of the General Statutes, and (v) the plan of
14 reorganization is fair and equitable to all stockholders."

15 **SECTION 5.** G.S. 55-10-03(e) reads as rewritten:

16 "(e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the
17 shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater vote
18 or a vote by voting groups, the amendment to be adopted must be approved by:

- 19 (1) A majority of the votes entitled to be cast on the amendment by any voting
20 group with respect to which the amendment would create ~~dissenters'~~
21 appraisal rights; and
22 (2) The votes required by G.S. 55-7-25 and G.S. 55-7-26 by every other voting
23 group entitled to vote on the amendment."

24 **SECTION 6.** G.S. 55-11-06(a)(7) reads as rewritten:

25 "(7) If a foreign corporation or foreign nonprofit corporation survives the merger,
26 it is deemed:

- 27 a. To agree that it will promptly pay to ~~dissenting~~ shareholders of any
28 merging domestic corporation exercising appraisal rights the amount,
29 if any, to which they are entitled under Article 13 of this Chapter and
30 otherwise to comply with the requirements of Article 13 as if it were
31 a surviving domestic corporation in the merger.
32 b. To agree that it may be served with process in this State in any
33 proceeding for enforcement (i) of any obligation of any merging
34 domestic corporation, (ii) of the appraisal rights of ~~dissenting~~
35 shareholders of any merging domestic corporation under Article 13
36 of this Chapter, and (iii) of any obligation of the surviving foreign
37 corporation or foreign nonprofit corporation arising from the merger.
38 c. To have appointed the Secretary of State as its agent for service of
39 process in any proceeding for enforcement as specified in
40 sub-subdivision b. of this subdivision. Service of process on the
41 Secretary of State shall be made by delivering to, and leaving with,
42 the Secretary of State, or with any clerk authorized by the Secretary
43 of State to accept service of process, duplicate copies of the process
44 and the fee required by G.S. 55-1-22(b). Upon receipt of service of
45 process on behalf of a surviving foreign corporation or foreign
46 nonprofit corporation in the manner provided for in this section, the
47 Secretary of State shall immediately mail a copy of the process by
48 registered or certified mail, return receipt requested, to the surviving
49 foreign corporation or foreign nonprofit corporation. If the surviving
50 foreign corporation or foreign nonprofit corporation is authorized to
51 transact business or conduct affairs in this State, the address for

1 mailing shall be its principal office designated in the latest document
2 filed with the Secretary of State that is authorized by law to designate
3 the principal office, or, if there is no principal office on file, its
4 registered office. If the surviving foreign corporation or foreign
5 nonprofit corporation is not authorized to transact business or
6 conduct affairs in this State, the address for mailing shall be the
7 mailing address designated pursuant to G.S. 55-11-05(a)."

8 **SECTION 7.** G.S. 55-11-06(b) reads as rewritten:

9 "(b) When a share exchange for the acquisition of shares of a domestic corporation
10 pursuant to G.S. 55-11-02 or G.S. 55-11-07 takes effect:

- 11 (1) The shares of the acquired corporation are exchanged as provided in the plan
12 of share exchange, and the former holders of the shares are entitled only to
13 the exchange rights provided in the plan of share exchange or any right they
14 may have under Article 13 of this Chapter.
- 15 (2) If the acquiring corporation is not a domestic corporation, it is deemed to
16 agree that it will promptly pay to ~~dissenting~~ shareholders of the acquired
17 corporation exercising appraisal rights the amount, if any, to which they are
18 entitled under Article 13 of this Chapter and otherwise to comply with the
19 requirements of Article 13 as if it were an acquiring domestic corporation in
20 the share exchange.
- 21 (3) If the acquiring corporation is not a domestic corporation, the acquiring
22 corporation is deemed:
- 23 a. To agree that it may be served with process in this State in any
24 proceeding for enforcement (i) of the appraisal rights of ~~dissenting~~
25 shareholders of the acquired corporation under Article 13 of this
26 Chapter and (ii) of any obligation of the acquiring corporation arising
27 from the share exchange; and
- 28 b. To have appointed the Secretary of State as its agent for service of
29 process in any proceeding for enforcement as specified in
30 sub-subdivision a. of this subdivision. Service of process on the
31 Secretary of State shall be made by delivering to, and leaving with,
32 the Secretary of State, or with any clerk authorized by the Secretary
33 of State to accept service of process, duplicate copies of the process
34 and the fee required by G.S. 55-1-22(b). Upon receipt of service of
35 process on behalf of an acquiring corporation in the manner provided
36 for in this section, the Secretary of State shall immediately mail a
37 copy of the process by registered or certified mail, return receipt
38 requested, to the acquiring corporation. If the acquiring corporation
39 is authorized to transact business or conduct affairs in this State, the
40 address for mailing shall be its principal office designated in the
41 latest document filed with the Secretary of State that is authorized by
42 law to designate the principal office or, if there is no principal office
43 on file, its registered office. If the acquiring corporation is not
44 authorized to transact business or conduct affairs in this State, the
45 address for mailing shall be the mailing address designated pursuant
46 to G.S. 55-11-05(a)."

47 **SECTION 8.** G.S. 55-11-10(e)(7) reads as rewritten:

48 "(7) If the surviving business entity is not a domestic corporation, the surviving
49 business entity is deemed to agree that it will promptly pay to the ~~dissenting~~
50 shareholders of any merging domestic corporation exercising appraisal rights
51 the amount, if any, to which they are entitled under Article 13 of this

Chapter and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger."

SECTION 9. G.S. 55-11-10(e1)(1) reads as rewritten:

"(1) To agree that it may be served with process in this State in any proceeding for enforcement (i) of any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the appraisal rights of ~~dissenting~~ shareholders of any merging domestic corporation under Article 13 of this Chapter, and (iii) any obligation of the surviving business entity arising from the merger; and".

SECTION 10. G.S. 55-11A-13(a)(6) reads as rewritten:

"(6) The resulting business entity is deemed to agree that it will promptly pay to the ~~dissenting~~ former shareholders of the converting domestic corporation exercising appraisal rights the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were a domestic corporation."

SECTION 11. G.S. 55-11A-13(b)(1) reads as rewritten:

"(1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting domestic corporation, (ii) the appraisal rights of ~~dissenting~~ shareholders of the converting domestic corporation under Article 13 of this Chapter, and (iii) any obligation of the resulting business entity arising from the conversion; and".

SECTION 12. G.S. 55-14A-01(c) reads as rewritten:

"(c) No action taken under this section shall give rise to any ~~dissenters'~~ appraisal rights, except as provided in the plan of reorganization."

SECTION 13. G.S. 55A-11-09(e)(7) reads as rewritten:

"(7) If the surviving business entity is not a domestic business corporation, the surviving business entity is deemed to agree that it will promptly pay to the ~~dissenting~~ shareholders of any merging domestic business corporation exercising appraisal rights the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic business corporation in the merger."

SECTION 14. G.S. 55A-11-09(e1)(1) reads as rewritten:

"(1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic business corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the appraisal rights of ~~dissenting~~ shareholders of any merging domestic business corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and".

SECTION 15. G.S. 57C-9A-23(a)(7) reads as rewritten:

"(7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the ~~dissenting~~ shareholders of any merging domestic corporation exercising appraisal rights the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger."

SECTION 16. G.S. 57C-9A-23(b)(1) reads as rewritten:

1 "(1) To agree that it may be served with process in this State in any proceeding
2 for enforcement of (i) any obligation of any merging domestic limited
3 liability company, domestic corporation, domestic nonprofit corporation,
4 domestic limited partnership, or other partnership as defined in G.S. 59-36
5 that is formed under the laws of this State, (ii) the appraisal rights of
6 ~~dissenting~~ shareholders of any merging domestic corporation under Article
7 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the
8 surviving business entity arising from the merger; and".

9 **SECTION 17.** G.S. 59-73.33(a)(6) reads as rewritten:

10 "(6) If the surviving business entity is not a domestic corporation, the surviving
11 business entity is deemed to agree that it will promptly pay to the ~~dissenting~~
12 shareholders of any merging domestic corporation exercising appraisal rights
13 the amount, if any, to which they are entitled under Article 13 of Chapter 55
14 of the General Statutes and otherwise to comply with the requirements of
15 Article 13 as if it were a surviving domestic corporation in the merger."

16 **SECTION 18.** G.S. 59-73.33(b)(1) reads as rewritten:

17 "(1) To agree that it may be served with process in this State in any proceeding
18 for enforcement of (i) any obligation of any merging domestic limited
19 liability company, domestic corporation, domestic nonprofit corporation,
20 domestic limited partnership, or other partnership as defined in G.S. 59-36
21 that is formed under the laws of this State, (ii) the appraisal rights of
22 ~~dissenting~~ shareholders of any merging domestic corporation under Article
23 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the
24 surviving business entity arising from the merger; and".

25 **SECTION 19.** G.S. 59-1073(a)(7) reads as rewritten:

26 "(7) If the surviving business entity is not a domestic corporation, the surviving
27 business entity is deemed to agree that it will promptly pay to the ~~dissenting~~
28 shareholders of any merging domestic corporation exercising appraisal rights
29 the amount, if any, to which they are entitled under Article 13 of Chapter 55
30 of the General Statutes and otherwise to comply with the requirements of
31 Article 13 as if it were a surviving domestic corporation in the merger."

32 **SECTION 20.** G.S. 59-1073(b)(1) reads as rewritten:

33 "(1) To agree that it may be served with process in this State in any proceeding
34 for enforcement of (i) any obligation of any merging domestic limited
35 liability company, domestic corporation, domestic nonprofit corporation,
36 domestic limited partnership or other partnership as defined in G.S. 59-36
37 that is formed under the laws of this State, (ii) the appraisal rights of
38 ~~dissenting~~ shareholders of any merging domestic corporation under Article
39 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the
40 surviving business entity arising from the merger; and".

41 **SECTION 21.** The Revisor of Statutes shall cause to be printed along with this act
42 all relevant portions of the Official Comments to the 2002 Model Business Corporation Act and
43 all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

44 **SECTION 22.(a)** This section is effective only if Senate Bill 26 of the 2011
45 Regular Session of the General Assembly becomes law.

46 **SECTION 22.(b)** Section 2 of Senate Bill 26 of the 2011 Regular Session of the
47 General Assembly is repealed.

48 **SECTION 22.(c)** G.S. 55-13-02(a), as amended by this act, is further amended by
49 adding a new subdivision to read:

50 "(9) Consummation of a designation of the corporation as a benefit corporation
51 pursuant to Part 2 of Article 18 of this Chapter."

1 **SECTION 22.(d)** G.S. 55-13-02(b), as amended by this act, reads as rewritten:
2 "(b) Notwithstanding subsection (a), the availability of appraisal rights under
3 subdivisions (1), (2), (3), (4), (6), ~~and (8)~~ (8), and (9) of subsection (a) of this section shall be
4 limited in accordance with the following provisions:

5 "

6 **SECTION 23.** This act becomes effective October 1, 2011.