

First Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 19-0470.01 Thomas Morris x4218

SENATE BILL 19-086

---

SENATE SPONSORSHIP

Lee,

HOUSE SPONSORSHIP

Bird,

---

Senate Committees  
Judiciary

House Committees

---

A BILL FOR AN ACT

101 CONCERNING UPDATES TO THE LAWS GOVERNING BUSINESS ENTITIES.

Bill Summary

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 TAKES EFFECT:

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

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

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

1 ~~title~~ THE ORGANIC STATUTES.

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

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

10 (a) Shall either:

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

1 THE SAME FORM AS THE SURVIVING OR ACQUIRING ENTITY.

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

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

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

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

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

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

1 SECTION 7-90-301 (5).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10           (I) ARE CONTINGENT;

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

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

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

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

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

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

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

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

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

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

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

1 (28.6) "RELATED PERSON" MEANS, WITH RESPECT TO AN  
2 INDIVIDUAL:

3 (a) THE INDIVIDUAL'S SPOUSE;

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

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

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

12 (e) A DOMESTIC OR FOREIGN:

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

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

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

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

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



1 CORPORATION.

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

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

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

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

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

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

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

1 LATER THAN THIRTY DAYS AFTER DELIVERY OF THE WRITTEN NOTICE OF  
2 REVOCATION.

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

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

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

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

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

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

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

1           (e) (III) A merger that would result in the conversion of the  
2 corporation's shares into, or exchange of the corporation's shares for, the  
3 right to receive shares or other equity interests in a domestic or foreign  
4 public benefit corporation or similar entity.

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

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

9           (b) Provisions not inconsistent with law regarding:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (3) NO PROVISION OF THE ARTICLES OF INCORPORATION OR THE  
2 BYLAWS MAY PROHIBIT BRINGING AN INTERNAL CORPORATE CLAIM IN THE  
3 COURTS OF THIS STATE OR REQUIRE THE CLAIMS TO BE DETERMINED BY  
4 ARBITRATION.

5 (4) "INTERNAL CORPORATE CLAIM" MEANS:

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

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

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

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

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

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

24 (p) To limit the liability of its directors as provided in section  
25 ~~7-108-402 (1)~~ 7-102-102 (2)(d);

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

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

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

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

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

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

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

26 (I) THE EFFECTIVENESS UNDER THIS SECTION AND UNDER ARTICLE  
27 110 OF THIS TITLE 7 OF AN AMENDMENT TO THE ARTICLES OF

1 INCORPORATION AUTHORIZING, DESIGNATING, OR CREATING THE SHARES;

2 OR

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

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

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

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

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

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

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

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

1           (II) THE EARLIER OF THE DATE ON WHICH THOSE PERSONS FIRST  
2 TOOK THE ACTION OR WERE PURPORTED TO HAVE BEEN ELECTED AS THE  
3 INITIAL BOARD OF DIRECTORS; AND

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

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

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

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



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

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

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

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

1 CORPORATE ACTION REQUIRING RATIFICATION WAS ORIGINALLY TAKEN.

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

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

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

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

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

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

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

5 (b) THE NOTICE MUST CONTAIN:

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

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

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

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

27 (e) THE FAILURE TO GIVE NOTICE DOES NOT INVALIDATE THE

1 RATIFICATION OF THE DEFECTIVE CORPORATION ACTION.

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

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

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

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

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

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

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

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

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

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

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

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

27 (c) THE ARTICLES OF VALIDATION MUST ALSO CONTAIN THE

1 FOLLOWING INFORMATION:

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

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

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

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

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

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

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

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

27 (III) IF A FILING WAS NOT PREVIOUSLY MADE WITH RESPECT TO THE

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

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

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

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

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

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

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

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

1 (IV) MODIFY OR WAIVE ANY OF THE PROCEDURES SPECIFIED IN  
2 SUBSECTION (2) OR (3) OF THIS SECTION TO RATIFY A DEFECTIVE  
3 CORPORATE ACTION.

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

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

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

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

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



1 OF DIRECTORS, AN OFFICER OR AGENT OF THE CORPORATION, OR THE  
2 SHAREHOLDERS.

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

7 (c) "DEFECTIVE CORPORATE ACTION" MEANS:

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

14 (II) AN OVERISSUE.

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

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

19 (II) THE ARTICLES OF INCORPORATION OR BYLAWS;

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

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

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

26 (I) SHARES OF A CLASS OR SERIES IN EXCESS OF THE NUMBER OF  
27 SHARES OF A CLASS OR SERIES THE CORPORATION HAS THE POWER TO ISSUE

1 UNDER SECTION 7-106-101 AT THE TIME OF ISSUANCE; OR

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

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

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

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

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

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

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

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

1 (II) THE VALIDATION EFFECTIVE TIME IS NOT AFFECTED BY THE  
2 FILING OR PENDENCY OF A JUDICIAL PROCEEDING UNDER SUBSECTION (7)  
3 OF THIS SECTION OR OTHERWISE, UNLESS OTHERWISE ORDERED BY THE  
4 COURT.

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

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

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

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

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

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

1           **7-107-204. Shares held by intermediaries and nominees.** (1) A  
2 ~~corporation~~ CORPORATION'S BOARD OF DIRECTORS may establish a  
3 procedure by which ~~the~~ A beneficial owner of shares that are registered  
4 ~~in the name of a nominee~~ is recognized by the corporation IN ITS RECORDS  
5 as the shareholder. The extent, TERMS, CONDITIONS, AND LIMITATIONS of  
6 this ~~recognition may~~ TREATMENT MUST be ~~determined~~ SPECIFIED in the  
7 procedure ~~thus~~ SO established. TO THE EXTENT THAT THE BENEFICIAL  
8 OWNER IS TREATED UNDER THE PROCEDURE AS HAVING RIGHTS OR  
9 PRIVILEGES THAT THE SHAREHOLDER OTHERWISE WOULD HAVE, THE  
10 SHAREHOLDER DOES NOT HAVE THOSE RIGHTS OR PRIVILEGES.

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

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

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

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

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

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

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

27           (g) THE FORM AND CONTENTS OF THE BENEFICIAL OWNERSHIP

1 CERTIFICATE; AND

2 (f) (h) Other aspects of the rights and duties thereby created.

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

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

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

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

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

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

1 appointment revocation;

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

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

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

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

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

1 (5) Corporate action based on the acceptance or rejection of a  
2 vote, BALLOT, consent, waiver, proxy appointment, or proxy appointment  
3 revocation under this section is valid unless a court of competent  
4 jurisdiction determines otherwise.

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

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

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

12 PART 4

13 STANDARDS OF CONDUCT

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

19 (a) In good faith;

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

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

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

1 (a) One or more officers or employees of the corporation whom  
2 the director or officer reasonably believes to be reliable and competent in  
3 ~~the matters presented~~ WITH RESPECT TO THE INFORMATION, OPINIONS,  
4 REPORTS, OR STATEMENTS;

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

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

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

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

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

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



1 WHETHER THE CORPORATION IS SOLVENT OR INSOLVENT.

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

8 (a) WAS NOT IN GOOD FAITH;

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

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

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

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

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

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

1 (2) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (1) OF THIS  
2 SECTION, THE PARTY SEEKING TO HOLD THE DIRECTOR LIABLE HAS:

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

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

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

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

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

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

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

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

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

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

1 RATIFIED, OR EXECUTED A CONSENT FOR THE ACTION IN THE MANNER  
2 PROVIDED IN SECTION 7-108-202, IF THE ACTION WAS AUTHORIZED,  
3 APPROVED, OR RATIFIED:

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

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

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

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

1 compliance with section 7-108-401. In any proceeding commenced under  
2 this section, a director ~~shall have~~ HAS all of the defenses ordinarily  
3 available to a director.

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

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

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

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

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

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

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

27 (III) A contract or transaction between ~~a~~ THE corporation and ~~a~~

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

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

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

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

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

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

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

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

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

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

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

26 (3) A DIRECTOR'S TAKING ADVANTAGE, DIRECTLY OR INDIRECTLY,  
27 OF A CORPORATE OPPORTUNITY SHALL NOT BE ENJOINED OR SET ASIDE AND

1 DOES NOT GIVE RISE TO AN AWARD OF DAMAGES OR OTHER SANCTIONS IN  
2 A PROCEEDING BY A SHAREHOLDER OR BY OR IN THE RIGHT OF THE  
3 CORPORATION, BECAUSE THE DIRECTOR TOOK SUCH ADVANTAGE, IF:

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

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

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

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



1 VOTING GROUP IN OPPOSITION.

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

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

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

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

1           ~~(A) An extension of credit or guaranty maintained by a~~  
2           ~~corporation or entity on August 6, 2003, so long as there is no material~~  
3           ~~modification made to the extension of credit or guaranty or the extension~~  
4           ~~of credit or guaranty is not renewed;~~

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

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

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

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

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

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

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

1           ~~(IV) Subparagraphs (I) to (III) of this paragraph (b) are repealed~~  
2 ~~as of the effective date of any federal law that would permit any activity~~  
3 ~~described in this paragraph (b).~~

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

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

16           **7-109-101. Definitions.** As used in this ~~article~~ ARTICLE 109:

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

1 personal representative of a deceased director.

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

5 **SECTION 39.** In Colorado Revised Statutes, 7-109-102, **amend**  
6 (1), (3), and (4)(a) as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (II) THE PROCEEDING INVOLVES CONDUCT FOR WHICH LIABILITY

1 HAS BEEN ELIMINATED UNDER A PROVISION IN THE ARTICLES OF  
2 INCORPORATION AS AUTHORIZED BY SECTION 7-102-102 (2)(d); AND

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

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

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

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

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

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

1 ADVANCE OF EXPENSES in the following manner:

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

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

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

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

1           **7-109-106. Determination and authorization of**  
2 **indemnification of directors.** (1) A corporation may not indemnify a  
3 director under section 7-109-102 unless authorized in the specific case  
4 after a determination has been made that indemnification of the director  
5 is permissible in the circumstances because the director has met the  
6 standard of conduct set forth in section 7-109-102. A corporation shall  
7 not advance expenses to a director under section 7-109-104 unless  
8 authorized in the specific case after the written affirmation and  
9 undertaking required by section 7-109-104 (1)(a) and (1)(b) are received.  
10 ~~and the determination required by section 7-109-104 (1)(c) has been~~  
11 ~~made.~~

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

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

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



1 SUBSECTION (2)(a) OF THIS SECTION OR, IF THERE ARE FEWER THAN TWO  
2 DISINTERESTED DIRECTORS, BY INDEPENDENT LEGAL COUNSEL SELECTED  
3 BY A MAJORITY VOTE OF THE FULL BOARD OF DIRECTORS; OR

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

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

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

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

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

1           **SECTION 44.** In Colorado Revised Statutes, **amend** 7-109-107  
2 as follows:

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

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

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

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

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

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

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

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

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

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

26 (b) THAT OBLIGATES THE CORPORATION TO PROVIDE  
27 INDEMNIFICATION TO THE FULLEST EXTENT PERMITTED BY LAW OBLIGATES

1 THE CORPORATION TO ADVANCE FUNDS TO PAY FOR OR REIMBURSE  
2 EXPENSES IN ACCORDANCE WITH SECTION 7-109-104 TO THE FULLEST  
3 EXTENT PERMITTED BY LAW, UNLESS THE PROVISION SPECIFICALLY  
4 PROVIDES OTHERWISE.

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

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

26 (4) SUBJECT TO SUBSECTION (2) OF THIS SECTION, A CORPORATION  
27 MAY, BY A PROVISION IN ITS ARTICLES OF INCORPORATION, LIMIT ANY OF

1 THE RIGHTS TO INDEMNIFICATION OR AN ADVANCE OF EXPENSES CREATED  
2 BY OR PURSUANT TO THIS ARTICLE 109.

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

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

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

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

15 **7-111-101. Merger of domestic corporation.** ~~(1)~~ One or more  
16 domestic corporations may merge ~~into another domestic~~ WITH ANY OTHER  
17 entity ~~if the board of directors of each domestic corporation that is a party~~  
18 ~~to the merger and each other entity that is a party to the merger adopts a~~  
19 ~~plan of merger complying with section 7-90-203.3 and the shareholders~~  
20 ~~of each such corporation, if required by section 7-111-103, approve the~~  
21 ~~plan of merger~~ PURSUANT TO SECTION 7-90-203.

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

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

26 **7-111-101.5. Conversion of domestic corporation.** A domestic  
27 corporation may convert into any form of entity ~~permitted by~~ PURSUANT

1 TO section 7-90-201. ~~if the board of directors of the corporation adopts a~~  
2 ~~plan of conversion that complies with section 7-90-201.3 and the~~  
3 ~~shareholders of the corporation, if required by section 7-111-103, approve~~  
4 ~~the plan of conversion.~~

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

7 **7-111-102. Owner's interest exchange involving domestic**  
8 **corporation.** ~~(1) A domestic corporation may acquire all of the~~  
9 ~~outstanding shares of one or more classes or series of one or more~~  
10 ~~domestic corporations if the board of directors of each corporation adopts~~  
11 ~~a plan of share exchange and the shareholders of each corporation~~  
12 ~~approve the plan of share exchange~~ BE PARTY TO AN EXCHANGE OF  
13 OWNERS' INTERESTS WITH ANY OTHER ENTITY PURSUANT TO SECTION  
14 7-90-203.1.

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

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

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

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

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

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

1           **SECTION 51.** In Colorado Revised Statutes, **amend** 7-111-103  
2 as follows:

3           **7-111-103. Action on plan - merger, conversion, or exchange.**

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

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

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

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

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

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

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

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

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

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

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



1 (a) The articles of incorporation of the surviving OR ACQUIRING  
2 corporation will not differ, except for amendments enumerated in section  
3 7-110-102, from its articles of incorporation before the ~~merger~~  
4 TRANSACTION;

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

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

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

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

27 (a) "Participating shares" means shares that entitle their holders

1 to participate without limitation in distributions.

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

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

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

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

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

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

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

11 **7-111-105. Statement of share exchange.** (1) ~~After a plan of~~  
12 ~~share exchange is approved by the shareholders, the acquiring corporation~~  
13 ~~shall deliver to the secretary of state, for filing pursuant to part 3 of article~~  
14 ~~90 of this title, a statement of share exchange stating:~~

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

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

19 (c) ~~A statement that the acquiring corporation acquires shares of~~  
20 ~~the other corporations.~~

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

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

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

27 **7-111-106. Effect of merger, conversion, or share exchange.**

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

2 ~~(1.5) The effect of a conversion shall be as provided in section~~  
3 ~~7-90-202.~~

4 ~~(2) When a share exchange takes effect, the shares of each~~  
5 ~~acquired corporation are exchanged as provided in the plan, and the~~  
6 ~~former holders of the shares are entitled only to the exchange rights~~  
7 ~~provided in the articles of share exchange or to their rights under article~~  
8 ~~113 of this title.~~

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

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

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

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

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

21 (a) ~~(Deleted by amendment, L. 2007, p. 248, § 49, effective May~~  
22 ~~29, 2007.)~~

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

27 (c) The foreign corporation complies with section 7-111-105 if it

1 is the acquiring corporation of the share exchange; and

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

5 ~~(1.5) (Deleted by amendment, L. 2007, p. 248, § 49, effective May~~  
6 ~~29, 2007.)~~

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

9 ~~(a) Shall either:~~

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

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

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

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

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

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

1 ~~corporation of a share exchange.~~

2 ~~(5) This section does not limit the power of a foreign corporation~~  
3 ~~to acquire all or part of the shares of one or more classes or series of a~~  
4 ~~domestic corporation through a voluntary exchange of shares or~~  
5 ~~otherwise.~~

6 **SECTION 57.** In Colorado Revised Statutes, **repeal and reenact,**  
7 **with amendments,** article 113 of title 7 as follows:

8 **ARTICLE 113**

9 **Appraisal Rights**

10 **PART 1**

11 **RIGHT TO APPRAISAL AND PAYMENT FOR SHARES**

12 **7-113-101. Definitions.** AS USED IN THIS ARTICLE 113, UNLESS  
13 THE CONTEXT OTHERWISE REQUIRES:

14 (1) "AFFILIATE" MEANS A PERSON THAT DIRECTLY OR INDIRECTLY,  
15 THROUGH ONE OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY,  
16 OR IS UNDER COMMON CONTROL WITH ANOTHER PERSON OR IS A SENIOR  
17 EXECUTIVE OF THE OTHER PERSON. FOR PURPOSES OF SECTION 7-113-102  
18 (2)(d), A PERSON IS DEEMED TO BE AN AFFILIATE OF ITS SENIOR  
19 EXECUTIVES.

20 (2) "CORPORATION" MEANS THE ISSUER OF THE SHARES HELD BY  
21 A SHAREHOLDER DEMANDING APPRAISAL AND, FOR MATTERS COVERED IN  
22 SECTIONS 7-113-203 TO 7-113-302 AND 7-113-401, INCLUDES THE  
23 SURVIVING ENTITY IN A MERGER.

24 (3) "FAIR VALUE" MEANS THE VALUE OF THE CORPORATION'S  
25 SHARES DETERMINED:

26 (a) IMMEDIATELY BEFORE THE EFFECTUATION OF THE CORPORATE  
27 ACTION TO WHICH THE SHAREHOLDER OBJECTS;

1 (b) USING CUSTOMARY AND CURRENT VALUATION CONCEPTS AND  
2 TECHNIQUES GENERALLY EMPLOYED FOR SIMILAR BUSINESSES IN THE  
3 CONTEXT OF THE TRANSACTION REQUIRING APPRAISAL; AND

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

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

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

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

27 (II) WHEN TWO OR MORE PERSONS AGREE TO ACT TOGETHER FOR

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

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

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

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

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

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

27 (A) EMPLOYMENT, CONSULTING, RETIREMENT, OR SIMILAR



1 BENEFITS ESTABLISHED SEPARATELY, AND NOT AS PART OF, OR IN  
2 CONTEMPLATION OF THE CORPORATE ACTION; OR

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

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

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

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

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

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

27 (I) SHAREHOLDER APPROVAL IS REQUIRED FOR THE MERGER BY

1 SECTION 7-111-103 AND THE SHAREHOLDER IS ENTITLED TO VOTE ON THE  
2 MERGER; EXCEPT THAT APPRAISAL RIGHTS ARE NOT AVAILABLE TO A  
3 SHAREHOLDER OF THE CORPORATION WITH RESPECT TO SHARES OF ANY  
4 CLASS OR SERIES THAT REMAIN OUTSTANDING AFTER CONSUMMATION OF  
5 THE MERGER; OR

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

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

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

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

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

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

1 PROVIDED BY THE ARTICLES OF INCORPORATION, BYLAWS, OR RESOLUTION  
2 OF THE BOARD OF DIRECTORS;

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

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

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

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

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

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

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

1 (b) THE APPLICABILITY OF SUBSECTION (2)(a) OF THIS SECTION IS  
2 DETERMINED AS OF:

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

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

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

14 (I) CASH; OR

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

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

24 (3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,  
25 THE ARTICLES OF INCORPORATION AS ORIGINALLY FILED OR AS AMENDED  
26 MAY LIMIT OR ELIMINATE APPRAISAL RIGHTS FOR ANY CLASS OR SERIES OF  
27 PREFERRED SHARES; EXCEPT THAT AN AMENDMENT TO THE ARTICLES OF

1 INCORPORATION DOES NOT APPLY TO ANY CORPORATE ACTION THAT  
2 BECOMES EFFECTIVE WITHIN ONE YEAR AFTER THE EFFECTIVE DATE OF THE  
3 AMENDMENT IF:

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

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

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

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

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



1 OF THIS ARTICLE 113 MUST ACCOMPANY THE MEETING NOTICE SENT TO  
2 THOSE SHAREHOLDERS ENTITLED TO EXERCISE APPRAISAL RIGHTS.

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

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

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

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

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

1 SECTION IF THE CORPORATION CONCLUDES THAT APPRAISAL RIGHTS ARE  
2 OR MAY BE AVAILABLE AND BY SUBSECTION (2) OF THIS SECTION MUST BE  
3 ACCOMPANIED BY:

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

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

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

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

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

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



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

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

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

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

19           (a) INCLUDE A FORM THAT:

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

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

1 (III) REQUIRES THE SHAREHOLDER ASSERTING APPRAISAL RIGHTS  
2 TO CERTIFY THAT THE SHAREHOLDER DID NOT VOTE FOR OR CONSENT TO  
3 THE TRANSACTION;

4 (b) STATE:

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

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

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

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

26 (V) THE DATE BY WHICH THE NOTICE TO WITHDRAW UNDER  
27 SECTION 7-113-204 MUST BE RECEIVED, WHICH DATE MUST BE WITHIN

1 TWENTY DAYS AFTER THE DATE SPECIFIED IN SUBSECTION (2)(b)(II) OF  
2 THIS SECTION; AND

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

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

22 (2) A SHAREHOLDER WHO HAS COMPLIED WITH SUBSECTION (1) OF  
23 THIS SECTION MAY NEVERTHELESS DECLINE TO EXERCISE APPRAISAL  
24 RIGHTS AND WITHDRAW FROM THE APPRAISAL PROCESS BY SO NOTIFYING  
25 THE CORPORATION IN WRITING BY THE DATE SET FORTH IN THE APPRAISAL  
26 NOTICE GIVEN PURSUANT TO SECTION 7-113-203 (2)(b)(V). A  
27 SHAREHOLDER THAT FAILS TO SO WITHDRAW FROM THE APPRAISAL

1 PROCESS MAY NOT THEREAFTER WITHDRAW WITHOUT THE CORPORATION'S  
2 WRITTEN CONSENT.

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

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

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

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

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

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

1 (2)(b)(III); AND

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

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

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

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

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

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

26 (d) THAT THOSE SHAREHOLDERS THAT WISH TO ACCEPT THE OFFER  
27 MUST NOTIFY THE CORPORATION OF THEIR ACCEPTANCE OF THE

1 CORPORATION'S OFFER WITHIN THIRTY DAYS AFTER RECEIVING THE OFFER;  
2 AND

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

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

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

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



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

8 (3) (a) THE CORPORATION SHALL:

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

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

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

20 (4) THE JURISDICTION OF THE COURT IN WHICH THE PROCEEDING  
21 IS COMMENCED UNDER SUBSECTION (2) OF THIS SECTION IS PLENARY AND  
22 EXCLUSIVE. THE COURT MAY APPOINT ONE OR MORE PERSONS AS  
23 APPRAISERS TO RECEIVE EVIDENCE AND RECOMMEND A DECISION ON THE  
24 QUESTION OF FAIR VALUE. THE APPRAISERS HAVE THE POWERS DESCRIBED  
25 IN THE ORDER APPOINTING THEM OR IN ANY AMENDMENT TO THE ORDER.  
26 THE SHAREHOLDERS DEMANDING APPRAISAL RIGHTS ARE ENTITLED TO THE  
27 SAME DISCOVERY RIGHTS AS PARTIES IN OTHER CIVIL PROCEEDINGS. THERE



1 IS NO RIGHT TO A JURY TRIAL.

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

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

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

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

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

24 (a) AGAINST THE CORPORATION AND IN FAVOR OF ANY OR ALL  
25 SHAREHOLDERS DEMANDING APPRAISAL IF THE COURT FINDS THE  
26 CORPORATION DID NOT SUBSTANTIALLY COMPLY WITH SECTION  
27 7-113-201, 7-113-203, 7-113-205, OR 7-113-206; OR

1 (b) AGAINST EITHER THE CORPORATION OR ONE OR MORE  
2 SHAREHOLDERS DEMANDING APPRAISAL, IN FAVOR OF ANY OTHER PARTY,  
3 IF THE COURT FINDS THAT THE PARTY AGAINST WHOM THE FEES AND  
4 EXPENSES ARE ASSESSED ACTED ARBITRARILY, VEXATIOUSLY, OR NOT IN  
5 GOOD FAITH WITH RESPECT TO THE RIGHTS PROVIDED BY THIS ARTICLE  
6 113.

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

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

#### 19 PART 4

#### 20 OTHER REMEDIES

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

27 (2) SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO A

1 CORPORATE ACTION THAT:

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

4 (I) ARTICLE 109, 110, 111, OR 112 OF THIS TITLE 7;

5 (II) THE ARTICLES OF INCORPORATION OR BYLAWS; OR

6 (III) THE RESOLUTION OF THE BOARD OF DIRECTORS AUTHORIZING  
7 THE CORPORATE ACTION;

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

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

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

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

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

1           **SECTION 58.** In Colorado Revised Statutes, 7-114-301, **amend**  
2 (2)(c), (2)(d), and (4)(a); and **add** (2)(e) and (5) as follows:

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

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

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

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

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

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

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

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

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

1 (b)(1)(A) AND 77r (b)(1)(B);

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

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

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

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

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

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

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

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

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

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

1 RIGHT TO JOIN IN THE ELECTION TO PURCHASE SHARES IN ACCORDANCE  
2 WITH THIS SECTION.

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

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

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

25 (4) IF THE PARTIES ARE UNABLE TO REACH AN AGREEMENT AS  
26 PROVIDED FOR IN SUBSECTION (3) OF THIS SECTION, THE COURT, UPON  
27 APPLICATION OF ANY PARTY, SHALL STAY THE PROCEEDINGS HELD

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

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

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

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

27 (6) UPON ENTRY OF AN ORDER UNDER SUBSECTION (3) OR (5) OF



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

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

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

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

27 **7-116-102. Inspection of corporate records by shareholder.**

1 (4) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 exchange stating:

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

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

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

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

1           **SECTION 69.** In Colorado Revised Statutes, 11-41-134, **amend**  
2 (1) as follows:

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

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

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

1 arising out of a tort as set forth in section ~~7-108-402 (2)~~, C.R.S.  
2 7-108-403, for directors and officers, respectively, of corporations for  
3 profit. Any reference in said sections to shareholders shall be construed  
4 to refer to stockholders for the purposes of this section.

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

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

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