



## BUSINESS LAW SECTION

### CORPORATIONS COMMITTEE

THE STATE BAR OF CALIFORNIA

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### *STATUTORY CLOSE CORPORATIONS*

### LEGISLATIVE PROPOSAL (BLS-2010-05)

**TO:** Office of Governmental Affairs

**FROM:** David M. Hernand, Vice-Chair, Legislation, Corporations Committee (the "Committee"), Business Law Section (the "Section")

**DATE:** July 31, 2009

**RE:** Proposal to **add** Sections 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, and 2063 to the California Corporations Code; to **amend** Sections 154, 202, 203, 204, 300, 418, 902, 1001, 1100, 1152, 1201, 1300, 1800, 1900, 1901, 1902, 1904, 2000 and 25103 of the California Corporations Code; and to **repeal** Sections 158, 186, 421 and 1111 of the California Corporations Code

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### SECTION ACTION AND CONTACTS

Date of Approval by Section Executive Committee (the "Executive Committee"): June 5, 2009

Approval Vote:

For: 15      Against: 0

Date of Approval by Legislative Subcommittee of the Executive Committee: July 31, 2009

Approval Vote:

For: 6      Against: 0

Date of Approval by the Committee: May 28, 2009

Approval Vote:

For: 18      Against: 0

Date of Approval by Committee drafting subcommittee: May 22, 2009

Approval Vote:

For: 5      Against: 0

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## HISTORY, DIGEST AND PURPOSE

The mission statement of the Committee provides that it shall study, consider, and take a position on and advocate that position with respect to, among other things, “[n]eeded changes to the California Corporations Code” and “[o]ther statutory changes that would promote efficiency or effectiveness in practice if made.” The Committee has concluded that it is consistent with that mission to propose a new chapter of the California Corporations Code (the “Code”) concerning closely held California corporations electing to be governed pursuant to special statutes. This new chapter, if enacted, would promote efficiency and effectiveness in practice in that it would relocate substantially all of the relevant provisions of the Code to one new chapter, and would make other necessary changes.

### History.

A corporation historically has been referred to as a “close corporation” or “closely held” when its shares are not publicly traded and are held by a single shareholder or closely-knit group of shareholders who are active in conducting the corporation’s business. In this context, the term “close corporation” is merely descriptive and has no legal significance.

The incorporators or shareholders of closely held corporations formed and organized under California law currently may elect, pursuant to Section 158 of the Code, for the corporation to be a “close corporation” as that term is defined in the Code and thus to receive the benefits of and to be governed by special statutes of the Code.<sup>1</sup> The shareholders of these “statutory” close corporations are, for example, expressly authorized by Sections 186 and 300(b) to agree in writing to manage the corporation without board meetings and as if the corporation were a partnership, or to arrange their relationship in such a manner that would otherwise be appropriate only among partners.<sup>2</sup> These statutory deviations from the usual rules of corporate governance enable these corporations to operate more like partnerships, which is particularly useful to owners of closely held operating companies (such as family owned businesses, including agribusinesses) and by owners of businesses that are not eligible to be organized as limited liability companies or limited liability partnerships (such as medical doctors and various other providers of professional services – *see* Section 17375).

The Committee believes that the Code’s organization in this area could be greatly improved. The provisions that specifically apply to statutory close corporations were enacted as part of the broader adoption of the General Corporation Law in 1975. These provisions are scattered throughout the Code and clutter up many of the sections that apply to corporations that have not elected to be statutory close corporations. The current organization of the Code therefore makes it difficult for corporate law practitioners to use the statutory close corporation provisions efficiently and correctly.

Moving the provisions of the Code that apply to statutory close corporations to a separate chapter will also simplify the provisions that apply to all corporations generally. This reorganization alone will advance efficiency.

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<sup>1</sup> Unless otherwise specifically stated, all section references contained in this Legislative Proposal are references to currently existing or proposed new statutes of the Code.

<sup>2</sup> Closely held corporations that make the election to be governed by the relevant special statutes of the Code are referred to in the balance of this Legislative Proposal as “statutory close corporations.”

The Committee also believes that some significant improvements should be made to the Code to make statutory close corporations more useful. These improvements would be made in the new chapter.

1. The rules for determining the number of persons who are shareholders of record would be revised to conform more closely to the S corporation rules.
2. The corporation would be authorized to eliminate or dispense with the general requirement of a board of directors while it has statutory close corporate status.
3. The corporation would not have the power to have more shareholders of record than statute allows (instead of causing close corporation status to terminate if the number were exceeded as current law provides), and the corporation's status as a statutory close corporation would terminate only as the result of an amendment to its articles (i.e., the status as a statutory close corporation would not be subject to termination as a result of inadvertence or matters outside the control of the corporation).
4. The shareholders would be able to agree that one shareholder, or shareholders with less than 50% of the voting power, could elect to dissolve voluntarily.
5. The shareholders would be able to agree that more than one shareholder could be required for standing to petition for involuntary dissolution (though the shareholding requirement could not be set at more than what is required for a corporation that is not a statutory close corporation).

#### **Relevant Existing Code Sections.**

**Section 158:** Section 158(a) defines the term "close corporation." This is the term used currently in the Code to refer to a closely held corporation as to which special statutory provisions of the Code apply. Section 158(a) requires the corporation's articles to contain a specific statement that "This corporation is a close corporation," and a statement of the maximum number of shareholders of record that the corporation may have, which may not exceed 35. Sections 158(b) and (c) provide the mechanics and shareholder vote required for electing into or out of statutory close corporation status. Section 158(d) specifies how to determine the number of shareholders of record of the corporation. After the issuance of shares, a corporation may amend its articles to elect statutory close corporation status only with unanimous shareholder approval. After the issuance of shares, a corporation may amend its articles and elect out of statutory close corporation status only if the amendment is adopted by at least two-thirds of each class of its outstanding shares (or a lesser stated vote, with certain limitations). Section 158(e) provides that statutory close corporation status terminates if the number of shareholders of record exceeds the maximum, including inadvertently because of a voluntary transfer of shares that is not void (for example, if there is a transfer of a share certificate that does not bear a specific legend).

**Section 186:** Section 186 defines the term "shareholders' agreement." Section 186 requires the agreement to be in writing and among shareholders of a statutory close corporation (or between the corporation and its sole shareholder, if the corporation has only one shareholder), as authorized by Section 300(b).

**Section 300(b)-(e):** Section 300(b) authorizes shareholders of a statutory close corporation to enter into a shareholders' agreement that relates to "any phase" of its affairs, which expressly includes

“management of its business, division of its profits or distribution of its assets on liquidation,” even though the agreement “so relates to the conduct of the affairs of the corporation as to interfere with the discretion of the board” or that it “is an attempt to treat the corporation as if it were a partnership.” Section 300(b) further provides that transferees of shares covered by the agreement will generally be bound by its provisions and will be subject to liability for managerial acts performed while exercising discretion or powers of the board. In addition, Section 300(b) contains provisions governing termination, modification, extension, and revocation of a shareholders’ agreement, effect on a transferor of shares, and an exclusion of voting agreements under Section 706(a). Section 300(c) provides a list of provisions of the Code that the shareholders’ agreement may not alter or waive. Section 300(d) provides for liability to be imposed on shareholders of a statutory close corporation for managerial acts performed or omitted by them, which is otherwise imposed on directors (and that directors are relieved from such liability), to the extent and so long as shareholders exercise the discretion and powers of the board in the management of the corporation’s affairs pursuant to a shareholders’ agreement. Section 300(e) provides that the failure of a statutory close corporation to observe corporate formalities relating to director or shareholder meetings is not a factor to be used to pierce the corporate veil when such formalities have not been followed and the affairs of the corporation have been managed pursuant to a statutorily authorized shareholders’ agreement.

**Sections 418(c) and 418(d):** Section 418(c) requires all certificates representing shares of a statutory close corporation to bear a specific legend on their face. Section 418(d) provides that any attempted *inter vivos* transfer of shares that would cause the corporation to exceed the maximum number of permitted shareholders is void, but only if the shares are certificated and the certificate representing those shares contains the required legend.

**Section 421:** Section 421 provides that so long as a corporation is a statutory close corporation, each holder of certificated shares that bear the required legend is deemed to agree not to transfer shares if the transfer would cause the corporation to exceed the maximum number of permitted shareholders, and is deemed to waive any right to sell shares to a greater number of purchasers or to demand registration under the Securities Act of 1933.

**Section 902(f):** Section 902(f) requires any amendment to the articles reducing the vote required for an amendment to terminate statutory close corporation status to be approved by two-thirds of each class of outstanding shares, or such other vote as is then specified in the articles.

**Section 1111:** Section 1111 provides that a merger involving a disappearing corporation that is a statutory close corporation and a surviving corporation that is not a statutory close corporation must be approved by at least two-thirds of each class of outstanding shares of the statutory close corporation that is disappearing in the merger, or by a lesser vote required by the articles of the disappearing statutory close corporation (but not less than a majority of the outstanding shares of each class).

**Section 1152(b):** Section 1152(b) provides that a plan of conversion of a statutory close corporation to a domestic other business entity must be approved by at least two-thirds of each class of outstanding shares of the converting corporation, or by a lesser vote required by the articles of the converting corporation (but not less than a majority of the outstanding shares of each class).

**Section 1201(e):** Section 1201(e) provides that the principal terms of an agreement of reorganization, such as by exchange reorganization or sale-of-assets reorganization, in which shareholders of a statutory close corporation receive shares of a corporation that is not a statutory close corporation, must be approved by at least two-thirds of each class of outstanding shares of the statutory close corporation, or by a lesser vote required by the articles (but not less than a majority of the outstanding shares of each class).

**Section 1300(a):** Section 1300(a) prescribes dissenters' rights, including for shareholders of a statutory close corporation whose approval is required under Section 1201(e) or whose corporation is converting to another entity under Section 1151 (by operation of Section 1159).

**Section 1800(a)(2):** Section 1800(a)(2) provides that any shareholder of a statutory close corporation has standing to petition for involuntary dissolution of the corporation on grounds stated in Section 1800(b).

**Section 25103(e):** Section 25103(e) generally provides an exemption from the qualification and permitting requirements of the Corporate Securities Law of 1968 for changes to the rights, preferences, privileges or restrictions of or on outstanding equity securities, except for certain changes that "materially and adversely affect any class of equity securities," which are not exempt. Section 25103(e) expressly provides that changes in rights, preferences, privileges and restrictions of or on outstanding equity securities do not "materially and adversely affect any class of holders of equity securities" if they arise from (1) an amendment to the articles that causes a corporation to become a statutory close corporation, (2) an amendment to the articles that causes a corporation to terminate its statutory close corporation status, (3) an "involuntary cessation" of statutory close corporation status caused by the corporation exceeding its maximum permitted number of shareholders of record, or (4) the termination of a shareholders' agreement.

Other existing Code sections that mention statutory close corporations or shareholders' agreements and that are addressed by the proposal are the following: **Section 154** (which provides that all references in the applicable portions of the Code to a vote required by the "articles" include any vote required by a shareholders' agreement); **Section 203** (which provides that no distinction shall exist between classes or series of shares or the holders thereof, except as set forth in the articles or in any shareholders' agreement); and **Section 204(a)** (which provides that the shareholders of a statutory close corporation may include in their shareholders' agreement any of the optional provisions that are required to be included in the articles of all other general corporations to be effective).

## **Proposal.**

Sections 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, and 2063 are proposed to be added and organized in a new Chapter 20A of Division 1 of Title 1 of the Code. Sections 154, 202, 203, 204, 300, 418, 902, 1001, 1100, 1152, 1201, 1300, 1800, 1900, 1901, 1902, 1904, 2000 and 25103 of the Code are proposed to be amended, and Sections 158, 186, 421 and 1111 of the Code are proposed to be repealed.

## **Reasons for the Proposal.**

The general reasons for the proposed changes are (i) to reorganize the provisions of the Code applicable to statutory close corporations into a separate chapter to facilitate the use of both the provisions of the Code applicable to statutory close corporations as well as the provisions of the Code applicable to corporations that are not statutory close corporations, (ii) to enhance the ability of practitioners to use the statutory close corporation provisions efficiently and correctly, and (iii) to make five significant improvements to make statutory close corporations more useful, easier to organize and govern, and more stable.

More specifically, *Section 2050* would be added to state that the other chapters of the General Corporation Law would continue to apply to statutory close corporations to the extent that their provisions are not otherwise modified by the provisions of the new Chapter 20A, and to expressly provide that statutory close corporation status is available for professional corporations organized under the Moscone-Knox Professional Corporation Act.

*Section 2051* would be added and would replace Sections 158(a), 158(b), 158(d), and 418(d). Section 2051(a) would change the defined term for a closely held corporation that is subject to the special statutes of the chapter to “statutory close corporation.” Section 2051(a) would further (i) require all outstanding shares of the corporation to be certificated, and (ii) provide that the corporation would not have the power to issue shares or to register a transfer of shares that would cause the number of shareholders of record to exceed its maximum permitted number. The requirement of certificated shares and the limitation on the power of the corporation to exceed its maximum permitted number of shareholders of record would stabilize the statutory close corporation by eliminating the possibility of inadvertent termination (or “involuntary cessation,” as it is referred to in Section 25103(e)). Section 2051(b) would continue the requirement of unanimous shareholder approval for a corporation to amend its articles to elect into statutory close corporation status. The maximum permitted number of shareholders of record of the statutory close corporation would be left at 35; however, Sections 2051(c) and 2051(d) would expand the counting rules for determining the number of persons who are shareholders of record.<sup>3</sup> Section 2051(e) would further provide a mechanism for the shareholders to restrict or eliminate any of the expanded counting rules to further limit the number of persons that may be shareholders of record.

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<sup>3</sup> The proposed expanded counting rules are more similar to the shareholder counting rules applicable to an “S corporation” as defined under the Internal Revenue Code (26 U.S.C. § 1361), which is a corporation that has elected to be taxed like a partnership, much like the statutory close corporation is an election by a corporation to be governed like a partnership. *See also*, Cal. Rev. & Tax Code 23800.

**Section 2052** would be added and would replace portions of Sections 300(b) and 418(c). Section 2052(a) would continue the requirement of a specific legend on the certificates representing shares of a statutory close corporation; however, (i) the legend would not be required to be “on the face” of the certificate, but rather would be required to be simply “on the certificate,” as defined at Section 174, and (ii) the legend would provide additional notice including a specific reference to the new chapter of the Code. Section 2052(b) would continue the rule of Section 300(b) which binds transferees with knowledge to a shareholders’ agreement, and imposes liability on them for managerial acts performed while exercising discretion or powers of the board.

**Section 2053** would be added and would replace portions of Sections 300(b), 300(c) and 300(d), and a relevant sentence in Section 204(a). Section 2053(a) would continue to allow a statutory close corporation to use a written shareholders’ agreement to regulate the affairs of the corporation in lieu of being subject to provisions of the Code generally to govern corporate affairs. Section 2053(a) would continue to permit the corporation to include in the shareholders’ agreement any of the optional provisions that are required to be included in the articles of all other general corporations to be effective. Section 2053(b) would add to the list of expressly permitted deviations from general corporate law that shareholders of a statutory close corporation may, in a shareholders’ agreement, agree to eliminate or dispense with the general requirement of a board of directors. Section 2053(c) would continue the requirement of liability for shareholders of a statutory close corporation for managerial acts performed or omitted by them, which is otherwise imposed on directors (and that directors are relieved from such liability), to the extent and so long as the shareholders exercise the discretion and powers of a board in the management of the corporation’s affairs pursuant to the shareholders’ agreement. Section 2053(d) would expressly provide that any agreement to eliminate or dispense with the board must be effectuated by a statement in the articles as required by new Section 2054. Section 2053(e) would continue the authorization for shareholders to agree in the shareholders’ agreement that less than unanimous approval be required to modify it. Section 2053(f) would continue the requirement that a transferee of shares of a statutory close corporation with actual knowledge or notice of the shareholders’ agreement is bound by it and will be subject to liability for managerial acts performed while exercising discretion or power of the board; however, Section 2053(f) would also cover recipients of an original issuance of shares with actual knowledge or notice of the shareholders’ agreement (and would thereby avoid termination of the shareholders’ agreement by such an issuance), provided that Section 2053(f) would also require the corporation to provide to any prospective recipient of an original issuance of shares, upon request and without charge, copies of the articles, bylaws and any shareholders’ agreement on file with the corporation. Section 2053(g) would continue the requirement that a shareholders’ agreement terminates when the corporation ceases to be a statutory close corporation, except if and to the extent the agreement provides otherwise and is otherwise enforceable. Section 2053(h) would continue the requirement that certain statutes may not be altered or waived by a statutory close corporation’s shareholders’ agreement. Section 2053(i) would clarify that the specific provisions would not invalidate or otherwise affect any other shareholders’ agreements.

**Section 2054** would be added and authorize a statutory close corporation to eliminate or dispense with the general requirement of a board of directors. Section 2054(a) would require a special statement in the articles to effectuate it. Section 2054(b) would require approval by all outstanding shares (or by incorporators or directors, if shares have not been issued, generally consistent with Section 901). Section 2054(c) would provide certain enabling provisions. For reinstatement of a requirement of a board (by deletion of the special statement from the articles), Section 2054(d) would require approval by at least two-thirds of each class and series of shares, whether or not otherwise entitled to vote.

**Section 2055** would be added to provide expressly that the statutory close corporation may dispense with annual meetings of shareholders, which are otherwise generally required by Section 600(b). Section 2055 would permit the corporation to dispense with annual meetings of shareholders by a provision in a shareholders' agreement or in the articles or bylaws.

**Section 2056** would be added to provide expressly that an individual who acts in the capacity of more than one officer of a statutory close corporation, which is common, may execute documents once, and, in so doing, act in all capacities held. This new provision is consistent with Section 312(a).

**Section 2057** would be added and would replace Section 300(e). Section 2057 would continue to provide that the failure of a statutory close corporation's management, board and shareholders to follow corporate formalities relating to board and shareholder meetings will not be a factor tending to establish that shareholders have personal liability for corporate obligations (i.e., that the shareholders are the "alter ego" of the corporation).

**Section 2058** would be added and would replace Section 1111. Section 2058 would assemble in one statutory provision all of the special voting requirements applicable to statutory close corporations in mergers, sales of assets, reorganizations and entity conversions. Section 2058(a) would apply to a merger of a disappearing statutory close corporation and a surviving corporation that is not a statutory close corporation, and would continue generally to require approval by two-thirds of each class. Section 2058(b) would apply to a sale of all or substantially all of the assets of a statutory close corporation, would generally require a two-thirds shareholder approval, and would otherwise be consistent with Sections 1001(a) and 1001(d). Section 2058(c) would apply to a corporate reorganization, as defined in Section 181, in which shareholders of a statutory close corporation receive shares of a corporation that is not a statutory close corporation, and would continue the current requirement of Section 1201(e) generally to require a two-thirds shareholder approval. Section 2058(d) would apply to an entity conversion of a statutory close corporation and would continue the current requirement of Section 1152(b) generally to require a two-thirds shareholder approval. Dissenters' rights would continue to apply to any statutory close corporation whose shareholder approval is required in a merger or asset sale that is part of a corporate reorganization, pursuant to Section 1300(a), as well as to a converting statutory close corporation by operation of Section 1159.

**Section 2059** would be added and would replace Sections 158(c), 158(e) and 158(f). Section 2059(a) would continue authorization for a statutory close corporation to terminate voluntarily its special status; but termination of the special status would be able to be effected only by an amendment to the articles, eliminating the possibility of inadvertent termination (or "involuntary cessation"). Any statement to eliminate or dispense with the board of directors would be required to be deleted and the amendment would be required to fix the number of directors or state a permissible size range, or state that a relevant bylaw is then in effect. Section 2059(b) would continue generally to require two-thirds approval by shareholders to amend the articles to terminate statutory close corporation status. Section 2059(c) would continue the authorization for shareholders to agree to vote for an amendment terminating statutory close corporation status at the time or upon the happening of an event specified, or otherwise.

**Section 2060** would be added and would expressly provide that termination of statutory close corporation status, in and of itself, would not affect the rights of shareholders under any other agreement or the articles or bylaws unless prohibited by law.



**Section 2061** would be added and would modify the rule of Section 1900(a) for statutory close corporations. Section 1900(a) requires for corporations generally that approval by shareholders with at least 50% of the voting power is required for voluntary dissolution. Section 2061(a) would permit a statutory close corporation to authorize in its articles one or more shareholders, or the holders of a specified number or percentage of shares, to elect to dissolve the corporation. Section 2061(a) would authorize the shareholders of a statutory close corporation to agree that as few as one shareholder, or shareholders with less than 50% of the voting power, could elect to dissolve. Section 2061(a) would require notice to all other shareholders and commencement of wind up and liquidation within 31 days. Section 2061(b) would generally require approval by all outstanding shares (or by incorporators or directors, if shares have not been issued, generally consistent with Section 901) to amend the articles of a statutory close corporation to add, change or delete the authority to elect to dissolve. Section 2061(b) would permit the articles to require a lesser vote, but not less than two-thirds of all outstanding shares, whether or not otherwise entitled to vote.

**Section 2062** would be added and would modify the rule of Section 1800(a)(2) for statutory close corporations. Section 1800(a)(2) currently authorizes any one shareholder of a statutory close corporation to petition for involuntary dissolution, assuming sufficient grounds for involuntary dissolution exist. Section 2062(a) would continue the general authorization for one shareholder to file, unless the articles require more than one shareholder to do so. Section 2062(b) would authorize a statutory close corporation to require in its articles that more than one shareholder be required to petition for involuntary dissolution of the corporation. Section 2062(b) would require the articles to state that the requirement of more than one shareholder to petition for involuntary dissolution shall not abridge the right to petition for involuntary dissolution under Section 1800(a)(2)(i) through (iii) (i.e., the right held by shareholders representing 33 1/3 percent or more of the outstanding shares as converted, 33 1/3 percent or more of the outstanding common shares, or 33 1/3 percent or more of the equity of the corporation, in each case exclusive of certain persons), or under Section 1800(a)(3). Section 2062(c) would generally require approval by all outstanding shares (or by incorporators or directors, if shares have not been issued, consistent with Section 901) to amend the articles of a statutory close corporation to add, change or delete a provision in the articles requiring more than one shareholder to petition for involuntary dissolution. Section 2062(c) would permit the articles to require a lesser vote, but not less than two-thirds of all outstanding shares, whether or not otherwise entitled to vote. Section 2062(d) would provide that the right of a shareholder to petition for involuntary dissolution would not be exclusive and would be in addition to the shareholder's other rights and remedies.

**Section 2063** would be added to provide specific transition provisions. Section 2063(a) would provide that the new chapter, when effective, would apply to all existing statutory close corporations. Section 2063(b) would require all existing statutory close corporations to comply with the requirements of and be subject to the new chapter, except that (1) an amendment to the articles to insert the word "statutory" before "close corporation" would not be required, (2) shares issued by a statutory close corporation prior to the effective date of the new chapter would not need to be certificated if they were not certificated prior to the effective date, and (3) certificates representing shares of a statutory close corporation that were issued prior to the effective date of the new chapter and contain the legend required under prior law would not need to be re-issued with the new legend required by Section 2052(a).

**Section 154** would be amended to delete the sentence providing that references to a vote required by the articles refers to a vote required by a shareholders' agreement in the case of a statutory close corporation. This provision would now be found in the last sentence of Section 2053(a).

**Section 158** would be repealed. Sections 158(a), 158 (b) and 158(d) would be replaced by Section 2051. Sections 158(c), 158(e) and 158(f) would be replaced by Section 2059. Section 158(g) would not be replaced.

**Section 186** would be repealed and replaced by Section 2053.

**Section 202** would be amended to reference a requirement of compliance with Section 2051(a) for a statutory close corporation.

**Section 203** would be amended to clarify that the shareholders' agreement referenced there is the one authorized by Section 2053.

**Section 204** would be amended to delete the first sentence appearing after subdivision (a)(11), which would be replaced in Section 2053(a).

**Section 300** would be amended by repealing subdivisions (b) through (e), which would be replaced by Sections 2052, 2053 and 2057.

**Section 418** would be amended by deleting in subdivision (c) the share certificate legend and cross referencing the new legend required by Section 2052, as well as by repealing subdivision (d).

**Section 421** would be repealed.

**Section 902(f)** would be amended to include a cross reference to Section 2059.

**Section 1001(a)** would be amended to include a cross reference to Section 2058(b).

**Section 1100** would be amended to include a cross reference to Section 2058(a).

**Section 1111** would be repealed and replaced by Section 2058(a).

**Section 1152(b)** would be amended to cross reference to Section 2058(d).

**Section 1201(e)** would be amended to cross reference to Section 2058(c).

**Section 1300(a)** would be amended to cross reference to Section 2058(c).

**Section 1800(a)(2)** would be amended to include a cross reference to Section 2062, and Section 1800(e) would be amended to delete a cross reference to Section 300.

**Sections 1900(a), 1901(b) and 1902(a)** would be amended to cross reference to Section 2061(a).

**Section 1904** would be amended to change the reference "close corporation" to "statutory close corporation."

**Section 2000(a)** would be amended to add a cross reference to Section 2061(a), and **Section 2000(e)** would be amended to delete a cross reference to Section 300.

*Section 25103(e)* would be amended to change cross references from Sections 158 and 300(b) to Section 2051, 2053 and 2059, and to repeal subdivision (e)(iii).

#### **APPLICATION**

If adopted, the proposed amendments to the Affected Sections described above would become effective January 1, 2011.

#### **PENDING LITIGATION**

There is none to our knowledge.

#### **LIKELY SUPPORT AND OPPOSITION**

We anticipate that the proposed new provisions and amendments described above would receive unanimous support from California corporations, foreign corporations operating in California, investors and corporate law practitioners, with particularly strong support from closely-held, family-owned, professional and certain special-purpose corporations, their owners and attorneys. No opposition is expected.

#### **FISCAL IMPACT**

No negative fiscal impact is expected. The proposed amendments would potentially require the Secretary of State to review and apply new requirements for articles and amendments to articles of the subject corporations.

#### **GERMANENESS**

The subject matter of the proposed new provisions and amendments described above is one in which the members of the Section (and, in particular, the members of the Committee) have special expertise because they are called upon to interpret provisions of the Code and provide guidance on California corporate and securities law matters. The subject matter requires the special knowledge, training, experience and technical expertise of the Section.

#### **TEXT OF PROPOSAL**

##### **SECTION 1. LEGISLATIVE INTENT.**

It is the intent of the Legislature to create a new chapter in Division 1 of Title 1 of the Corporations Code to contain substantially all of the provisions of the California General Corporation Law concerning statutory close corporations, and to revise some of the provisions to make statutory close corporations more useful.

SECTION 2. THE FOLLOWING SECTIONS ARE ADDED AS A NEW CHAPTER 20A TO DIVISION 1 OF TITLE 1 OF THE CORPORATIONS CODE:

§ 2050.

(a) The other chapters of the General Corporation Law apply to statutory close corporations (Section 2051) organized under this chapter, except to the extent modified by the provisions of this chapter.

(b) This chapter applies to professional corporations organized under the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3) whose articles conform to the requirements of subdivision (a) of Section 2051.

§ 2051.

(a) “Statutory close corporation” means a corporation whose articles contain, in addition to the statements required by Section 202, a statement that all of the corporation’s issued shares of all classes may be held of record by not more than a specified number of persons, not exceeding 35, and the statements: “This corporation is a statutory close corporation. The rights and obligations of shareholders of this corporation may differ materially from the rights and obligations of shareholders in other corporations, and transfer of shares in this corporation may be restricted. This corporation does not have the power to issue shares or to register a transfer of shares that would cause the number of persons who are shareholders of record to exceed the specified number set forth in its articles. Refer to Chapter 20A of the General Corporation Law and the articles and any bylaws and shareholders’ agreement for restrictions.” The name of the corporation must contain either the word “corporation,” “incorporated” or “limited,” or an abbreviation of one of those words.

(b) The corporation shall not have the power to issue shares or to register a transfer of shares, whether such transfer was made voluntarily or involuntarily, by operation of law or otherwise, that would cause the number of persons who are shareholders of record to exceed the specified number set forth in the articles pursuant to this section.

(c) The shares issued by the corporation and outstanding shall be represented by certificates.

(d) The special statements referred to in subdivision (a) may be included in the articles by amendment; provided, however, that if such an amendment is adopted after the issuance of shares, it may be adopted only by the affirmative vote of all of the issued and outstanding shares of all classes.

(e) In determining the number of persons who are shareholders of record for the purposes of subdivision (a):

(1) Spouses shall be counted as one person regardless of how shares may be held by either or both of them, and registered domestic partners shall be counted as one person regardless of how shares may be held by either or both of them.

(2) All members of a family shall be counted as one person regardless of how many shares may be held by them.

(3) A trust shall be counted as one person regardless of the number of trustees or beneficiaries (except that any such trust whose beneficial interests were offered for sale or sold shall be counted according to the number of holders of beneficial interests therein).

(4) A partnership, limited liability company, corporation, or other form of business entity or association holding shares shall be counted as one (except that any such entity or association whose interests or shares were offered for sale or sold shall be counted according to the number of holders of beneficial interests therein).

(f) The term “members of a family” means all common ancestors, any lineal descendant of each common ancestor, and any spouse, adopted child or registered domestic partner, or former spouse or former registered domestic partner, of each common ancestor or any such lineal descendant, and the estates of each of them. An individual shall not be considered to be a common ancestor if the individual is more than 6 generations removed from the youngest generation of shareholders who would (but for this section) be members of a family. For purposes of the preceding sentence, a spouse or registered domestic partner, or former spouse or former registered domestic partner, shall each be treated as being of the same generation as the individual to whom the individual is or was married or registered as domestic partners.

(g) Any of the provisions of subdivision (e) may be eliminated, and the definition of subdivision (f) may be restricted, but only if the elimination or restriction is set forth in the articles or, if the articles so permit, in the bylaws, or in a shareholders’ agreement authorized by Section 2053.

§ 2052.

(a) All certificates representing shares of a statutory close corporation (Section 2051) shall contain, in addition to any other statements required by this section and Section 409, 417 and 418, the following conspicuous legend on the certificate (Section 174): “This corporation is a statutory close corporation. The rights and obligations of shareholders of this corporation may differ materially from the rights and obligations of shareholders in other corporations, and transfer of these shares may be restricted. This corporation does not have the power to issue shares or to register a transfer of shares that would cause the number of persons who are shareholders of record to exceed the specified number set forth in its articles. Refer to Chapter 20A of the General Corporation Law and the articles and any bylaws and shareholders’ agreement for restrictions.”

(b) A transferee of shares covered by a shareholders’ agreement authorized by Section 2053, who has actual knowledge or notice thereof, or notice thereof by a legend on the certificate representing those shares pursuant to subdivision (a), is bound by its provisions and may be subject to liability under subdivision (c) of Section 2053.

(c) A statutory close corporation shall provide without charge to any shareholder, upon the shareholder’s written request, copies of the articles, bylaws and any shareholders’ agreement on file with the secretary of the corporation.

§ 2053.

(a) All shareholders of a statutory close corporation (Section 2051) may agree in writing to regulate any phase of the affairs of the corporation, including but not limited to the exercise of its corporate powers, the management of its business and affairs, the division of its profits or losses, the distribution of its assets on liquidation, and the relationship among the shareholders, pursuant to a shareholders’ agreement made in accordance with and subject to this section. If the corporation has only one shareholder, the shareholders’ agreement authorized by this section shall be in writing and may be entered into by the shareholder and the corporation. A copy of the shareholders’ agreement shall be filed with the secretary of the corporation. Any of

the optional provisions that may be included in the articles of incorporation under Section 204 may be included in a shareholders' agreement authorized by this section rather than in the articles, and all references in this division to a vote required or permitted by the articles includes any vote required by a shareholders' agreement authorized by this section.

(b) A shareholders' agreement authorized by this section is effective although the shareholders agree, and notwithstanding Section 300 or any other provision of this division:

(1) To eliminate or dispense with the board (Section 155), subject to subdivision (d);

(2) To interfere with or restrict the discretion or powers of the board, or grant unequal voting rights to the directors or shareholders;

(3) To conduct the affairs of the corporation in an attempt to treat the corporation as if it were a partnership; or

(4) To create a relationship among the shareholders or between the shareholders and the corporation that would otherwise be appropriate only among partners.

(c) To the extent and so long as the discretion or powers of the board in its management of corporate affairs is controlled by a shareholders' agreement, each shareholder shall have liability for managerial acts performed or omitted by the shareholder pursuant thereto that is otherwise imposed by this division upon directors, and the directors shall be relieved to that extent from that liability.

(d) A provision in a shareholders' agreement authorized by this section agreeing to eliminate or dispense with the board is not effective unless the articles contain a statement to that effect as required by Section 2054.

(e) Any amendment, extension, or other modification to a shareholders' agreement authorized by this section shall be approved in writing by all shareholders who are parties, unless the shareholders' agreement provides otherwise.

(f) A shareholder who receives an original issuance of shares by a statutory close corporation, who has actual knowledge or notice of a shareholders' agreement authorized by this section, or notice thereof by a legend on the certificate representing those shares pursuant to subdivision (a) of Section 2052, is bound by its provisions and may be subject to liability under subdivision (c) of this section. The corporation shall provide without charge to any prospective recipient of an original issuance of shares, upon request, copies of the articles, bylaws and any shareholders' agreement on file with the secretary of the corporation.

(g) A shareholders' agreement authorized by this section shall terminate when the corporation ceases to be a statutory close corporation, except that if the agreement so provides it shall continue to the extent it is enforceable apart from this section. This section does not apply to an agreement authorized by subdivision (a) of Section 706.

(h) No shareholders' agreement entered into pursuant to this section may alter or waive the provisions of this chapter (commencing with Section 2050), or Sections 417, 418, 500, 501, 506, 2009, 2010, and 2011, or Chapters 15 (commencing with Section 1500), 16 (commencing with Section 1600), 18 (commencing with Section 1800), and 22 (commencing with Section 2200). All other provisions of this division may be altered or waived as between the parties thereto in a shareholders' agreement authorized by this section, including, but not limited to, any other provision in this division for a vote required or permitted by the articles, except the required filing of any document with the Secretary of State.

(i) Nothing in this section invalidates or otherwise affects any agreement that is not authorized by this section, by or among shareholders of any corporation, whether or not the corporation is a statutory close corporation.

§ 2054.

(a) A statutory close corporation (Section 2051) may eliminate or dispense with the board (Section 155) if its articles contain a statement to that effect.

(b) An amendment to the articles to eliminate or dispense with the board shall be approved by all outstanding shares, whether or not otherwise entitled to vote or, before shares have been issued, by all the incorporators if directors were not named in the original articles and have not been elected, or, if directors were named in the original articles or have been elected, by all the directors.

(c) While the corporation is operating without a board as authorized by subdivision (a):

(1) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, the shareholders;

(2) Each shareholder shall have liability for managerial acts performed or omitted by the shareholder that is otherwise imposed by this division upon directors;

(3) The corporation is not required to comply with subdivision (a) of Section 212;

(4) Action requiring approval by the board or both the board and shareholders is authorized if approved by the shareholders (Section 153) or as otherwise required by a shareholders' agreement;

(5) A requirement that a document delivered for filing contain a statement that specified action has been taken by the board is satisfied by a statement that the corporation is a statutory close corporation without a board and that the action was approved by the shareholders (Section 153) or as otherwise required by a shareholders' agreement (Section 2053); and

(6) The shareholders by resolution may appoint one or more shareholders or other persons to sign documents as "signing agent" of the corporation or with a similar designation.

(d) An amendment to the articles deleting the statement to eliminate or dispense with the board shall be approved by the affirmative vote of at least two-thirds of each class and series of outstanding shares, whether or not otherwise entitled to vote.

§ 2055.

By a provision in the articles, bylaws or a shareholders' agreement authorized by Section 2053, the shareholders may dispense with annual meetings.

§ 2056.

Subject to any contrary provision contained in the articles, bylaws, shareholders' agreement authorized by Section 2053, or a resolution adopted by the board or shareholders, an individual who holds more than one office in a statutory close corporation (Section 2051) may execute, acknowledge or verify in more than one capacity, and in the capacities held, any document required to be executed, acknowledged or verified by the holders of two or more offices.

§ 2057.

The failure of a statutory close corporation (Section 2051) to observe corporate formalities relating to meetings of directors or shareholders in connection with the management of its affairs, pursuant to a shareholders' agreement authorized by Section 2053, shall not be considered a factor tending to establish that the shareholders have personal liability for corporate obligations.

§ 2058.

(a) If any disappearing corporation in a merger (Chapter 11, commencing with Section 1100) is a statutory close corporation (Section 2051) and the surviving corporation is not a statutory close corporation, the merger shall be approved by the affirmative vote of at least two thirds of each class and series of the outstanding shares of the disappearing corporation; provided, however, that the articles or a shareholders' agreement authorized by Section 2053 may provide for a greater or lesser vote, but not less than a majority of the outstanding shares of each class and series.

(b) Any sale, lease, conveyance, exchange, transfer or other disposition of all or substantially all of the assets of a statutory close corporation, if not made in the usual and regular course of business, shall be approved by the affirmative vote of at least two-thirds of each class and series of the outstanding shares of the corporation; provided, however, that the articles or a shareholders' agreement authorized by Section 2053 may provide for a greater or lesser vote, but not less than a majority of the outstanding shares of each class and series, and provided that Section 1001(d) does not require a minimum of 90% of the voting power of the corporation.

(c) The principal terms of a reorganization (Section 181) shall be approved by the affirmative vote of at least two-thirds of each class of the outstanding shares of a statutory close corporation if the reorganization would result in the holders thereof receiving shares of a corporation that is not a statutory close corporation; provided, however, that the articles or a shareholders' agreement authorized by Section 2053 may provide for a greater or lesser vote, but not less than a majority of the outstanding shares of each class and series.

(d) If a converting corporation (subdivision (c) of Section 1150) is a statutory close corporation, the conversion shall be approved by the affirmative vote of at least two-thirds of each class of the outstanding shares of that converting corporation; provided, however, that the articles or a shareholders' agreement authorized by Section 2053 may provide for a greater or lesser vote, but not less than a majority of the outstanding shares of each class and series.

§ 2059.

(a) The status of a corporation as a statutory close corporation (Section 2051) may be terminated only by amending its articles in accordance with this section. The amendment shall delete the statements required by subdivision (a) of Section 2051 and any other provision not permissible for a corporation that is not a statutory close corporation, including but not limited to any statement to eliminate or dispense with the board (Section 155) authorized by subdivision (a) of section 2054. If, before the amendment, the corporation eliminated or dispensed with the board under Section 2054, the amendment shall fix the number of directors of the corporation, or state that the number of directors shall be not less than a stated minimum nor more than a stated maximum (which in no case shall be greater than two times the stated minimum minus one), with the exact number of directors to be fixed within the limits specified by approval of the shareholders (Section 153) in a manner provided, or, if there is then in effect a bylaw setting



forth such provision, state that there is such a bylaw then in effect, and the corporation shall otherwise comply with Section 212 and with Section 300. The corporation shall cease to be a statutory close corporation upon the filing of the amendment to its articles.

(b) An amendment terminating the status of a corporation as a statutory close corporation shall be approved by the affirmative vote of at least two-thirds of each class and series of the outstanding shares, whether or not otherwise entitled to vote; provided, however, that the articles may provide for a greater or lesser vote, but not less than a majority of the outstanding shares of each class and series, whether or not otherwise entitled to vote.

(c) Nothing contained in this section invalidates any agreement among shareholders to vote for amending the articles to delete the special provisions referred to in subdivision (a) of Section 2051 at the time or upon the happening of an event specified or otherwise.

§ 2060.

Termination of the status of a corporation as a statutory close corporation (Section 2051) does not affect any right of a shareholder or of the corporation under any agreement or the articles or bylaws unless otherwise prohibited by applicable law.

§ 2061.

(a) The articles of a statutory close corporation (Section 2051) may contain a provision authorizing one or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to elect to dissolve the corporation at will or upon the occurrence of a specified event or contingency, provided that the provision shall not abridge the right of a shareholder or shareholders entitled under subdivision (a) of Section 1900 to elect voluntarily to wind up and dissolve. The shareholder or shareholders electing to dissolve the corporation under this section shall give written notice of the election to dissolve to all the other shareholders. Thirty-one days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and dissolve under and subject to Chapters 19 (commencing with Section 1900) and 20 (commencing with Section 2000).

(b) Unless the articles expressly authorize the amendment by a vote that is not less than two-thirds of all the outstanding shares, whether or not otherwise entitled to vote, an amendment to the articles to add, change, or delete a provision in the articles providing authority to elect to dissolve a statutory close corporation described in subdivision (a) shall be approved by the affirmative vote of all the outstanding shares, whether or not otherwise entitled to vote, or, if no shares have been issued, by all the incorporators if directors were not named in the original articles and have not been elected, or, if directors were named in the original articles or have been elected, by all the directors.

§ 2062.

(a) A verified complaint for involuntary dissolution of a statutory close corporation (Section 2051) on any one or more of the grounds specified in subdivision (b) of Section 1800 may be filed by any shareholder of the corporation, unless the articles of the corporation require more than one shareholder to do so pursuant to subdivision (b).

(b) The articles of a statutory close corporation may contain a provision requiring more than one shareholder to be required to file a verified complaint for involuntary dissolution, provided that the provision shall state that it does not abridge the right of a shareholder or

shareholders entitled under subdivision (a)(2)(i) through (iii) or subdivision (a)(3) of Section 1800 to do so.

(c) Unless the articles expressly authorize the amendment by a vote that is not less than two-thirds of all the outstanding shares, whether or not otherwise entitled to vote, an amendment to the articles to add, change, or delete a provision in the articles requiring more than one shareholder to file a verified complaint for involuntary dissolution of a statutory close corporation described in subdivision (a) shall be approved by the affirmative vote of all the outstanding shares, whether or not otherwise entitled to vote, or, if no shares have been issued, by all the incorporators if directors were not named in the original articles and have not been elected, or, if directors were named in the original articles or have been elected, by all the directors.

(d) Any right of a shareholder to commence an involuntary dissolution proceeding under this section is in addition to any other right or remedy the shareholder may have under applicable law.

§ 2063.

(a) Except as provided in subdivision (b), this chapter applies (i) to all corporations whose articles, prior to the effective date of this chapter, contain a provision that all of the corporation's issued shares of all classes shall be held of record by not more than a specified number of persons, not exceeding 35, and a statement "This corporation is a close corporation," and (ii) to all corporations electing the status of statutory close corporation (Section 2051) pursuant to and on or after the effective date of this chapter.

(b) Corporations described in subdivision (a)(i) shall be deemed statutory close corporations subject to this chapter, except that the following additional provisions shall be applicable:

(1) Use of the word "statutory" in front of "close corporation" shall not be required in articles filed prior to the effective date of this chapter;

(2) Shares issued prior to the effective date of this chapter shall not be required to be certificated; and

(3) The legend on share certificates required by subdivision (a) of Section 2052 shall not be required for any share certificate issued prior to the effective date of this chapter that contains the following conspicuous legend on the face thereof: "This corporation is a close corporation. The number of holders of record of its shares of all classes cannot exceed \_\_\_\_ [a number not in excess of 35]. Any attempted voluntary inter vivos transfer which would violate this requirement is void. Refer to the articles, bylaws and any agreements on file with the secretary of the corporation for further restrictions."

SECTION 3. THE FOLLOWING SECTIONS OF THE CORPORATIONS CODE ARE AMENDED OR REPEALED AS FOLLOWS:

§ 154.

"Articles" includes the articles of incorporation, amendments thereto, amended articles, restated articles, certificate of incorporation and certificates of determination. ~~All references in this division to a vote required by the "articles" include, in the case of a close corporation (Section 158), any vote required by a shareholders' agreement.~~

§ 158.

*[Repealed]*

~~(a) "Close corporation" means a corporation whose articles contain, in addition to the provisions required by Section 202, a provision that all of the corporation's issued shares of all classes shall be held of record by not more than a specified number of persons, not exceeding 35, and a statement "This corporation is a close corporation."~~

~~(b) The special provisions referred to in subdivision (a) may be included in the articles by amendment, but if such amendment is adopted after the issuance of shares only by the affirmative vote of all of the issued and outstanding shares of all classes.~~

~~(c) The special provisions referred to in subdivision (a) may be deleted from the articles by amendment, or the number of shareholders specified may be changed by amendment, but if such amendment is adopted after the issuance of shares only by the affirmative vote of at least two thirds of each class of the outstanding shares; provided, however, that the articles may provide for a lesser vote, but not less than a majority of the outstanding shares, or may deny a vote to any class, or both.~~

~~(d) In determining the number of shareholders for the purposes of the provision in the articles authorized by this section, a husband and wife and the personal representative of either shall be counted as one regardless of how shares may be held by either or both of them, a trust or personal representative of a decedent holding shares shall be counted as one regardless of the number of trustees or beneficiaries and a partnership or corporation or business association holding shares shall be counted as one (except that any such trust or entity the primary purpose of which was the acquisition or voting of the shares shall be counted according to the number of beneficial interests therein).~~

~~(e) A corporation shall cease to be a close corporation upon the filing of an amendment to its articles pursuant to subdivision (c) or if it shall have more than the maximum number of holders of record of its shares specified in its articles as a result of an inter vivos transfer of shares which is not void under subdivision (d) of Section 418, the transfer of shares on distribution by will or pursuant to the laws of descent and distribution, the dissolution of a partnership or corporation or business association or the termination of a trust which holds shares, by court decree upon dissolution of a marriage or otherwise by operation of law. Promptly upon acquiring more than the specified number of holders of record of its shares, a close corporation shall execute and file an amendment to its articles deleting the special provisions referred to in subdivision (a) and deleting any other provisions not permissible for a corporation which is not a close corporation, which amendment shall be promptly approved and filed by the board and need not be approved by the outstanding shares.~~

~~(f) Nothing contained in this section shall invalidate any agreement among the shareholders to vote for the deletion from the articles of the special provisions referred to in subdivision (a) upon the lapse of a specified period of time or upon the occurrence of a certain event or condition or otherwise.~~

~~(g) The following sections contain specific references to close corporations: 186, 202, 204, 300, 418, 421, 1111, 1201, 1800 and 1904.~~

§ 186.

*[Repealed]*

~~“Shareholders’ agreement” means a written agreement among all of the shareholders of a close corporation, or if a close corporation has only one shareholder between such shareholder and the corporation, as authorized by subdivision (b) of Section 300.~~

§ 202.

The articles of incorporation shall set forth:

(a) The name of the corporation; provided, however, that in order for the corporation to be a *statutory close corporation* (Section 2051), ~~subject to the provisions of this division applicable to a close corporation (Section 158),~~ the name of the corporation must *comply with subdivision (a) of Section 2051.* ~~contain the word “corporation”, “incorporated” or “limited” or an abbreviation of one of such words.~~

(b) (1) The applicable one of the following statements:

(i) The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code; or

(ii) The purpose of the corporation is to engage in the profession of \_\_\_\_\_ (with the insertion of a profession permitted to be incorporated by the California Corporations Code) and any other lawful activities (other than the banking or trust company business) not prohibited to a corporation engaging in such profession by applicable laws and regulations.

(2) In case the corporation is a corporation subject to the Banking Law, the articles shall set forth a statement of purpose which is prescribed in the applicable provision of the Banking Law.

(3) In case the corporation is a corporation subject to the Insurance Code as an insurer, the articles shall additionally state that the business of the corporation is to be an insurer.

(4) If the corporation is intended to be a "professional corporation" within the meaning of the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3), the articles shall additionally contain the statement required by Section 13404.

The articles shall not set forth any further or additional statement with respect to the purposes or powers of the corporation, except by way of limitation or except as expressly required by any law of this state other than this division or any federal or other statute or regulation (including the Internal Revenue Code and regulations thereunder as a condition of acquiring or maintaining a particular status for tax purposes).

(c) The name and address in this state of the corporation's initial agent for service of process in accordance with subdivision (b) of Section 1502.

(d) If the corporation is authorized to issue only one class of shares, the total number of shares which the corporation is authorized to issue.

(e) If the corporation is authorized to issue more than one class of shares, or if any class of shares is to have two or more series:

(1) The total number of shares of each class the corporation is authorized to issue, and the total number of shares of each series which the corporation is authorized to issue or that the board is authorized to fix the number of shares of any such series;

(2) The designation of each class, and the designation of each series or that the board may determine the designation of any such series; and

(3) The rights, preferences, privileges and restrictions granted to or imposed upon the respective classes or series of shares or the holders thereof, or that the board, within any limits and restrictions stated, may determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued class of shares or any wholly unissued series of any class of shares. As to any series the number of shares of which is authorized to be fixed by the board, the articles may also authorize the board, within the limits and restrictions stated therein or stated in any resolution or resolutions of the board originally fixing the number of shares constituting any series, to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any such series subsequent to the issue of shares of that series. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

§ 203.

Except as specified in the articles or in any shareholders' agreement (*Section 2053*), no distinction shall exist between classes or series of shares or the holders thereof.

§ 204.

The articles of incorporation may set forth:

(a) Any or all of the following provisions, which shall not be effective unless expressly provided in the articles:

(1) Granting, with or without limitations, the power to levy assessments upon the shares or any class of shares.

(2) Granting to shareholders preemptive rights to subscribe to any or all issues of shares or securities.

(3) Special qualifications of persons who may be shareholders.

(4) A provision limiting the duration of the corporation's existence to a specified date.

(5) A provision requiring, for any or all corporate actions (except as provided in Section 303, subdivision (b) of Section 402.5, subdivision (c) of Section 708 and Section 1900) the vote of a larger proportion or of all of the shares of any class or series, or the vote or quorum for taking action of a larger proportion or of all of the directors, than is otherwise required by this division.

(6) A provision limiting or restricting the business in which the corporation may engage or the powers which the corporation may exercise or both.

(7) A provision conferring upon the holders of any evidences of indebtedness, issued or to be issued by the corporation, the right to vote in the election of directors and on any other matters on which shareholders may vote.

(8) A provision conferring upon shareholders the right to determine the consideration for which shares shall be issued.

(9) A provision requiring the approval of the shareholders (Section 153) or the approval of the outstanding shares (Section 152) for any corporate action, even though not otherwise required by this division.

(10) Provisions eliminating or limiting the personal liability of a director for monetary damages in an action brought by or in the right of the corporation for breach of a director's duties to the corporation and its shareholders, as set forth in Section 309, provided, however, that (A)

such a provision may not eliminate or limit the liability of directors (i) for acts or omissions that involve intentional misconduct or a knowing and culpable violation of law, (ii) for acts or omissions that a director believes to be contrary to the best interests of the corporation or its shareholders or that involve the absence of good faith on the part of the director, (iii) for any transaction from which a director derived an improper personal benefit, (iv) for acts or omissions that show a reckless disregard for the director's duty to the corporation or its shareholders in circumstances in which the director was aware, or should have been aware, in the ordinary course of performing a director's duties, of a risk of serious injury to the corporation or its shareholders, (v) for acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of the director's duty to the corporation or its shareholders, (vi) under Section 310, or (vii) under Section 316, (B) no such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective, and (C) no such provision shall eliminate or limit the liability of an officer for any act or omission as an officer, notwithstanding that the officer is also a director or that his or her actions, if negligent or improper, have been ratified by the directors.

(11) A provision authorizing, whether by bylaw, agreement, or otherwise, the indemnification of agents (as defined in Section 317) in excess of that expressly permitted by Section 317 for those agents of the corporation for breach of duty to the corporation and its stockholders, provided, however, that the provision may not provide for indemnification of any agent for any acts or omissions or transactions from which a director may not be relieved of liability as set forth in the exception to paragraph (10) or as to circumstances in which indemnity is expressly prohibited by Section 317.

~~Notwithstanding this subdivision, in the case of a close corporation any of the provisions referred to above may be validly included in a shareholders' agreement.~~ Notwithstanding this subdivision, bylaws may require for all or any actions by the board the affirmative vote of a majority of the authorized number of directors. Nothing contained in this subdivision shall affect the enforceability, as between the parties thereto, of any lawful agreement not otherwise contrary to public policy.

(b) Reasonable restrictions upon the right to transfer or hypothecate shares of any class or classes or series, but no restriction shall be binding with respect to shares issued prior to the adoption of the restriction unless the holders of such shares voted in favor of the restriction.

(c) The names and addresses of the persons appointed to act as initial directors.

(d) Any other provision, not in conflict with law, for the management of the business and for the conduct of the affairs of the corporation, including any provision which is required or permitted by this division to be stated in the bylaws.

§ 300.

~~(a)~~ Subject to the provisions of this division and any limitations in the articles relating to action required to be approved by the shareholders (Section 153) or by the outstanding shares (Section 152), or by a less than majority vote of a class or series of preferred shares (Section 402.5), the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board. The board may delegate the management of the day-to-day operation of the business of the corporation to a management company or other person provided that the business and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board. *The business and affairs of a statutory close corporation (Section 2051) may be managed as provided in Chapter 20A of this Division (commencing with Section 2050).*

~~(b) Notwithstanding subdivision (a) or any other provision of this division, but subject to subdivision (c), no shareholders' agreement, which relates to any phase of the affairs of a close corporation, including but not limited to management of its business, division of its profits or distribution of its assets on liquidation, shall be invalid as between the parties thereto on the ground that it so relates to the conduct of the affairs of the corporation as to interfere with the discretion of the board or that it is an attempt to treat the corporation as if it were a partnership or to arrange their relationships in a manner that would be appropriate only between partners. A transferee of shares covered by such an agreement which is filed with the secretary of the corporation for inspection by any prospective purchaser of shares, who has actual knowledge thereof or notice thereof by a notation on the certificate pursuant to Section 418, is bound by its provisions and is a party thereto for the purposes of subdivision (d). Original issuance of shares by the corporation to a new shareholder who does not become a party to the agreement terminates the agreement, except that if the agreement so provides it shall continue to the extent it is enforceable apart from this subdivision. The agreement may not be modified, extended or revoked without the consent of such a transferee, subject to any provision of the agreement permitting modification, extension or revocation by less than unanimous agreement of the parties. A transferor of shares covered by such an agreement ceases to be a party thereto upon ceasing to be a shareholder of the corporation unless the transferor is a party thereto other than as a shareholder. An agreement made pursuant to this subdivision shall terminate when the corporation ceases to be a close corporation, except that if the agreement so provides it shall continue to the extent it is enforceable apart from this subdivision. This subdivision does not apply to an agreement authorized by subdivision (a) of Section 706.~~

~~(c) No agreement entered into pursuant to subdivision (b) may alter or waive any of the provisions of Sections 158, 417, 418, 500, 501, and 1111, subdivision (c) of Section 1201, Sections 2009, 2010, and 2011, or of Chapters 15 (commencing with Section 1500), 16 (commencing with Section 1600), 18 (commencing with Section 1800), and 22 (commencing with Section 2200). All other provisions of this division may be altered or waived as between the parties thereto in a shareholders' agreement, except the required filing of any document with the Secretary of State.~~

~~(d) An agreement of the type referred to in subdivision (b) shall, to the extent and so long as the discretion or powers of the board in its management of corporate affairs is controlled by such agreement, impose upon each shareholder who is a party thereto liability for managerial acts performed or omitted by such person pursuant thereto that is otherwise imposed by this division upon directors, and the directors shall be relieved to that extent from such liability.~~

~~(e) The failure of a close corporation to observe corporate formalities relating to meetings of directors or shareholders in connection with the management of its affairs, pursuant to an agreement authorized by subdivision (b), shall not be considered a factor tending to establish that the shareholders have personal liability for corporate obligations.~~

§ 418.

(a) There shall also appear on the certificate, the initial transaction statement, and written statements (unless stated or summarized under subdivision (a) or (b) of Section 417) the statements required by all of the following clauses to the extent applicable:

(1) The fact that the shares are subject to restrictions upon transfer.

(2) If the shares are assessable or are not fully paid, a statement that they are assessable or the statements required by subdivision (d) of Section 409 if they are not fully paid.

(3) The fact that the shares are subject to a voting agreement under subdivision (a) of Section 706 or an irrevocable proxy under subdivision (e) of Section 705 or restrictions upon voting rights contractually imposed by the corporation.

(4) The fact that the shares are redeemable.

(5) The fact that the shares are convertible and the period for conversion.

Any such statement or reference thereto (Section 174) on the face of the certificate, the initial transaction statement, and written statements required by paragraph (1) or (2) shall be conspicuous.

(b) Unless stated on the certificate, the initial transaction statement, and written statements as required by subdivision (a), no restriction upon transfer, no right of redemption and no voting agreement under subdivision (a) of Section 706, no irrevocable proxy under subdivision (e) of Section 705, and no voting restriction imposed by the corporation shall be enforceable against a transferee of the shares without actual knowledge of such restriction, right, agreement or proxy. With regard only to liability to assessment or for the unpaid portion of the subscription price, unless stated on the certificate as required by subdivision (a), that liability shall not be enforceable against a transferee of the shares. For the purpose of this subdivision, "transferee" includes a purchaser from the corporation.

(c) All certificates representing shares of a *statutory* close corporation (*Section 2051*) shall *comply with Section 2052*. ~~contain in addition to any other statements required by this section, the following conspicuous legend on the face thereof: "This corporation is a close corporation. The number of holders of record of its shares of all classes cannot exceed \_\_\_\_\_ [a number not in excess of 35]. Any attempted voluntary inter vivos transfer which would violate this requirement is void. Refer to the articles, bylaws and any agreements on file with the secretary of the corporation for further restrictions."~~

~~(d) Any attempted voluntary inter vivos transfer of the shares of a close corporation which would result in the number of holders of record of its shares exceeding the maximum number specified in its articles is void if the certificate contains the legend required by subdivision (c).~~

§ 421.

*[Repealed]*

~~Each holder of shares of a close corporation, whether original or subsequent, by accepting the certificates for the shares which contain the legend required by subdivision (c) of Section 418 agrees and consents that such holder cannot make any transfer of shares which would violate the provisions of subdivision (d) of Section 418 and waives any right which such holder might otherwise have under any other law to sell such shares to a greater number of purchasers or to demand any registration thereof under the Securities Act of 1933, as now or hereafter amended, or as provided in any statute adopted in substitution therefor, or otherwise, so long as the corporation is a close corporation.~~

§ 902.

(a) After any shares have been issued, amendments may be adopted if approved by the board and approved by the outstanding shares (Section 152), either before or after the approval by the board.



(b) Notwithstanding subdivision (a), an amendment extending the corporate existence or making the corporate existence perpetual may be adopted by a corporation organized prior to August 14, 1929, with approval by the board alone.

(c) Notwithstanding subdivision (a), unless the corporation has more than one class of shares outstanding, an amendment effecting only a stock split (including an increase in the authorized number of shares in proportion thereto) may be adopted with approval by the board alone.

(d) Notwithstanding subdivision (a), an amendment deleting the names and addresses of the first directors or the name and address of the initial agent may be adopted with approval by the board alone.

(e) Whenever the articles require for corporate action the vote of a larger proportion or of all of the shares of any class or series, or of a larger proportion or of all of the directors, than is otherwise required by this division, the provision in the articles requiring such greater vote shall not be altered, amended or repealed except by such greater vote unless otherwise provided in the articles.

(f) Notwithstanding subdivision (a), any amendment *to the articles of a statutory close corporation (Section 2051) terminating its status as a statutory close corporation or reducing the vote required for such an amendment pursuant to subdivision (c) of Section 158* may not be adopted unless approved ~~by the affirmative vote of at least two thirds of each class of outstanding shares or such other vote as may then be specified by the articles of the corporation in accordance with Section 2059.~~

§ 1001.

(a) A corporation may sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its assets when the principal terms are approved by the board, and, unless the transaction is in the usual and regular course of its business, approved by the outstanding shares (Section 152), either before or after approval by the board and before or after the transaction. A transaction constituting a reorganization (Section 181) is subject to the provisions of Chapter 12 (commencing with Section 1200) and not this section (other than subdivision (d)). A transaction constituting a conversion (Section 161.9) is subject to the provisions of Chapter 11.5 (commencing with Section 1150) and not this section. *Any sale, lease, conveyance, exchange, transfer or other disposition of all or substantially all of the assets of a statutory close corporation (Section 2051), if not made in the usual and regular course of business, shall be approved as provided in subdivision (b) of Section 2058.*

(b) Notwithstanding approval of the outstanding shares (Section 152), the board may abandon the proposed transaction without further action by the shareholders, subject to the contractual rights, if any, of third parties.

(c) The sale, lease, conveyance, exchange, transfer or other disposition may be made upon those terms and conditions and for that consideration as the board may deem in the best interests of the corporation. The consideration may be money, securities, or other property.

(d) If the acquiring party in a transaction pursuant to subdivision (a) of this section or subdivision (g) of Section 2001 is in control of or under common control with the disposing corporation, the principal terms of the sale shall be approved by at least 90 percent of the voting power of the disposing corporation unless the disposition is to a domestic or foreign corporation or other business entity in consideration of the nonredeemable common shares or nonredeemable equity securities of the acquiring party or its parent.

(e) Subdivision (d) does not apply to any transaction if the Commissioner of Corporations, the Commissioner of Financial Institutions, the Insurance Commissioner or the Public Utilities Commission has approved the terms and conditions of the transaction and the fairness of those terms and conditions pursuant to Section 25142, Section 696.5 of the Financial Code, Section 838.5 of the Insurance Code, or Section 822 of the Public Utilities Code.

§ 1100.

Any two or more corporations may be merged into one of those corporations. A corporation may merge with one or more domestic corporations (Section 167), foreign corporations (Section 171), or other business entities (Section 174.5) pursuant to this chapter. Mergers in which a foreign corporation but no other business entity is a constituent party are governed by Section 1108, and mergers in which an other business entity is a constituent party are governed by Section 1113. *If any disappearing corporation in a merger is a statutory close corporation (Section 2051) and the surviving corporation is not a statutory close corporation, the merger shall be approved as provided in subdivision (a) of Section 2058.*

§ 1111.

*[Repealed]*

~~If any disappearing corporation in a merger is a close corporation and the surviving corporation is not a close corporation, the merger shall be approved by the affirmative vote of at least two thirds of each class of the outstanding shares of such disappearing corporation; provided, however, that the articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.~~

§ 1152.

(a) A corporation that desires to convert to a domestic other business entity shall approve a plan of conversion. The plan of conversion shall state all of the following:

- (1) The terms and conditions of the conversion.
- (2) The jurisdiction of the organization of the converted entity and of the converting corporation and the name of the converted entity after conversion.
- (3) The manner of converting the shares of each of the shareholders of the converting corporation into securities of, or interests in, the converted entity.
- (4) The provisions of the governing documents for the converted entity, including the partnership agreement or limited liability company articles of organization and operating agreement, to which the holders of interests in the converted entity are to be bound.
- (5) Any other details or provisions that are required by the laws under which the converted entity is organized, or that are desired by the converting corporation.

(b) The plan of conversion shall be approved by the board of the converting corporation (Section 151), and the principal terms of the plan of the conversion shall be approved by the outstanding shares (Section 152) of each class of the converting corporation. The approval of the outstanding shares may be given before or after approval by the board. Notwithstanding the foregoing, if a converting corporation is a *statutory* close corporation (*Section 2051*), the conversion shall be approved *as provided in subdivision (d) of Section 2058.* ~~by the affirmative vote of at least two thirds of each class of outstanding shares of that converting corporation;~~

~~provided, however, that the articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.~~

(c) If the corporation is converting into a general or limited partnership or into a limited liability company, then in addition to the approval of the shareholders set forth in subdivision (b), the plan of conversion shall be approved by each shareholder who will become a general partner or manager, as applicable, of the converted entity pursuant to the plan of conversion unless the shareholders have dissenters' rights pursuant to Section 1159 and Chapter 13 (commencing with Section 1300).

(d) Upon the effectiveness of the conversion, all shareholders of the converting corporation, except those that exercise dissenters' rights as provided in Section 1159 and Chapter 13 (commencing with Section 1300), shall be deemed parties to any agreement or agreements constituting the governing documents for the converted entity adopted as part of the plan of conversion, irrespective of whether or not a shareholder has executed the plan of conversion or those governing documents for the converted entity. Any adoption of governing documents made pursuant thereto shall be effective at the effective time or date of the conversion.

(e) Notwithstanding its prior approval by the board and the outstanding shares or either of them, a plan of conversion may be amended before the conversion takes effect if the amendment is approved by the board and, if it changes any of the principal terms of the plan of conversion, by the shareholders of the converting corporation in the same manner and to the same extent as was required for approval of the original plan of conversion.

(f) A plan of conversion may be abandoned by the board of a converting corporation, or by the shareholders of a converting corporation if the abandonment is approved by the outstanding shares, in each case in the same manner as required for approval of the plan of conversion, subject to the contractual rights of third parties, at any time before the conversion is effective.

(g) The converted entity shall keep the plan of conversion at (1) the principal place of business of the converted entity if the converted entity is a domestic partnership or (2) at the office at which records are to be kept under Section 15614 or 15901.11 if the converted entity is a domestic limited partnership or at the office at which records are to be kept under Section 17057 if the converted entity is a domestic limited liability company. Upon the request of a shareholder of a converting corporation, the authorized person on behalf of the converted entity shall promptly deliver to the shareholder, at the expense of the converted entity, a copy of the plan of conversion. A waiver by a shareholder of the rights provided in this subdivision shall be unenforceable.

§ 1201.

(a) The principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of each class of each corporation the approval of whose board is required under Section 1200, except as provided in subdivision (b) and except that (unless otherwise provided in the articles) no approval of any class of outstanding preferred shares of the surviving or acquiring corporation or parent party shall be required if the rights, preferences, privileges and restrictions granted to or imposed upon that class of shares remain unchanged (subject to the provisions of subdivision (c)). For the purpose of this subdivision, two classes of common shares differing only as to voting rights shall be considered as a single class of shares.

(b) No approval of the outstanding shares (Section 152) is required by subdivision (a) in the case of any corporation if that corporation, or its shareholders immediately before the

reorganization, or both, shall own (immediately after the reorganization) equity securities, other than any warrant or right to subscribe to or purchase those equity securities, of the surviving or acquiring corporation or a parent party (subdivision (d) of Section 1200) possessing more than five-sixths of the voting power of the surviving or acquiring corporation or parent party. In making the determination of ownership by the shareholders of a corporation, immediately after the reorganization, of equity securities pursuant to the preceding sentence, equity securities which they owned immediately before the reorganization as shareholders of another party to the transaction shall be disregarded. For the purpose of this section only, the voting power of a corporation shall be calculated by assuming the conversion of all equity securities convertible (immediately or at some future time) into shares entitled to vote but not assuming the exercise of any warrant or right to subscribe to or purchase those shares.

(c) Notwithstanding subdivision (b), the principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of the surviving corporation in a merger reorganization if any amendment is made to its articles which would otherwise require that approval.

(d) Notwithstanding subdivision (b), the principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of any class of a corporation which is a party to a merger or sale-of-assets reorganization if holders of shares of that class receive shares of the surviving or acquiring corporation or parent party having different rights, preferences, privileges or restrictions than those surrendered. Shares in a foreign corporation received in exchange for shares in a domestic corporation have different rights, preferences, privileges and restrictions within the meaning of the preceding sentence.

(e) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved *as provided in subdivision (c) of Section 2058* ~~by the affirmative vote of at least two-thirds of each class of the outstanding shares of any close corporation if the reorganization would result in ~~their~~ the holders of outstanding shares of a statutory close corporation (Section 2051) receiving shares of a corporation which is not a statutory close corporation. However, the articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.~~

(f) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of any class of a corporation which is a party to a merger reorganization if holders of shares of that class receive interests of a surviving other business entity in the merger.

(g) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by all shareholders of any class or series if, as a result of the reorganization, the holders of that class or series become personally liable for any obligations of a party to the reorganization, unless all holders of that class or series have the dissenters' rights provided in Chapter 13 (commencing with Section 1300).

(h) Any approval required by this section may be given before or after the approval by the board. Notwithstanding approval required by this section, the board may abandon the proposed reorganization without further action by the shareholders, subject to the contractual rights, if any, of third parties.

#### § 1300.

(a) If the approval of the outstanding shares (Section 152) of a corporation is required for a reorganization under subdivisions (a) and (b) or subdivision ~~(e)~~ or (f) of Section 1201, *or if approval by shareholders of a statutory close corporation (Section 2051) is required under*

*subdivision (c) of Section 2058*, each shareholder of the corporation entitled to vote on the transaction and each shareholder of a subsidiary corporation in a short-form merger may, by complying with this chapter, require the corporation in which the shareholder holds shares to purchase for cash at their fair market value the shares owned by the shareholder which are dissenting shares as defined in subdivision (b). The fair market value shall be determined as of the day before the first announcement of the terms of the proposed reorganization or short-form merger, excluding any appreciation or depreciation in consequence of the proposed action, but adjusted for any stock split, reverse stock split, or share dividend which becomes effective thereafter.

(b) As used in this chapter, "dissenting shares" means shares which come within all of the following descriptions:

(1) Which were not immediately prior to the reorganization or short-form merger either (A) listed on any national securities exchange certified by the Commissioner of Corporations under subdivision (o) of Section 25100 or (B) listed on the National Market System of the NASDAQ Stock Market, and the notice of meeting of shareholders to act upon the reorganization summarizes this section and Sections 1301, 1302, 1303 and 1304; provided, however, that this provision does not apply to any shares with respect to which there exists any restriction on transfer imposed by the corporation or by any law or regulation; and provided, further, that this provision does not apply to any class of shares described in subparagraph (A) or (B) if demands for payment are filed with respect to 5 percent or more of the outstanding shares of that class.

(2) Which were outstanding on the date for the determination of shareholders entitled to vote on the reorganization and (A) were not voted in favor of the reorganization or, (B) if described in subparagraph (A) or (B) of paragraph (1) (without regard to the provisos in that paragraph), were voted against the reorganization, or which were held of record on the effective date of a short-form merger; provided, however, that subparagraph (A) rather than subparagraph (B) of this paragraph applies in any case where the approval required by Section 1201 is sought by written consent rather than at a meeting.

(3) Which the dissenting shareholder has demanded that the corporation purchase at their fair market value, in accordance with Section 1301.

(4) Which the dissenting shareholder has submitted for endorsement, in accordance with Section 1302.

(c) As used in this chapter, "dissenting shareholder" means the recordholder of dissenting shares and includes a transferee of record.

#### § 1800.

(a) A verified complaint for involuntary dissolution of a corporation on any one or more of the grounds specified in subdivision (b) may be filed in the superior court of the proper county by any of the following persons:

(1) One-half or more of the directors in office.

(2) A shareholder or shareholders who hold shares representing not less than 33 1/3 percent of (i) the total number of outstanding shares (assuming conversion of any preferred shares convertible into common shares) or (ii) the outstanding common shares or (iii) the equity of the corporation, exclusive in each case of shares owned by persons who have personally participated in any of the transactions enumerated in paragraph (4) of subdivision (b), or any shareholder or shareholders of a *statutory* close corporation (*Section 2051*) pursuant to *Section 2062*.

(3) Any shareholder if the ground for dissolution is that the period for which the corporation was formed has terminated without extension thereof.

(4) Any other person expressly authorized to do so in the articles.

(b) The grounds for involuntary dissolution are that:

(1) The corporation has abandoned its business for more than one year.

(2) The corporation has an even number of directors who are equally divided and cannot agree as to the management of its affairs, so that its business can no longer be conducted to advantage or so that there is danger that its property and business will be impaired or lost, and the holders of the voting shares of the corporation are so divided into factions that they cannot elect a board consisting of an uneven number.

(3) There is internal dissension and two or more factions of shareholders in the corporation are so deadlocked that its business can no longer be conducted with advantage to its shareholders or, *unless the corporation is a statutory close corporation (Section 2051) and is operating without directors in accordance with subdivision (a) of Section 2054*, the shareholders have failed at two consecutive annual meetings at which all voting power was exercised, to elect successors to directors whose terms have expired or would have expired upon election of their successors.

(4) Those in control of the corporation have been guilty of or have knowingly countenanced persistent and pervasive fraud, mismanagement or abuse of authority or persistent unfairness toward any shareholders or its property is being misapplied or wasted by its directors or officers.

(5) In the case of any corporation with 35 or fewer shareholders (determined as provided in Section 605), liquidation is reasonably necessary for the protection of the rights or interests of the complaining shareholder or shareholders.

(6) The period for which the corporation was formed has terminated without extension of such period.

(c) At any time prior to the trial of the action any shareholder or creditor may intervene therein.

(d) This section does not apply to any corporation subject to the Banking Law (Division 1 (commencing with Section 99) of the Financial Code), the Public Utilities Act (Part 1 (commencing with 201) of Division 1 of the Public Utilities Code), the Savings and Loan Association Law (Division 2 (commencing with Section 5000) of the Financial Code) or Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

(e) For the purposes of this section, "shareholder" includes a beneficial owner of shares who has entered into an agreement under Section ~~300~~ or 706.

§ 1900.

(a) Any corporation may elect voluntarily to wind up and dissolve by the vote of shareholders holding shares representing 50 percent or more of the voting power; *provided, however, that if the corporation is a statutory close corporation (Section 2051), the vote of shareholders required may be as otherwise set forth in the articles pursuant to subdivision (a) of Section 2061.*

(b) Any corporation which comes within one of the following descriptions may elect by approval by the board to wind up and dissolve:

(1) A corporation as to which an order for relief has been entered under Chapter 7 of the federal bankruptcy law.

(2) A corporation which has disposed of all of its assets and has not conducted any business for a period of five years immediately preceding the adoption of the resolution electing to dissolve the corporation.

(3) A corporation which has issued no shares.

§ 1901.

(a) Whenever a corporation has elected to wind up and dissolve a certificate evidencing such election shall forthwith be filed.

(b) The certificate shall be an officers' certificate or shall be signed and verified by at least a majority of the directors then in office or by one or more shareholders authorized to do so by shareholders holding shares representing 50 percent or more of the voting power ~~and or~~, *in the case of a statutory close corporation (Section 2051), such other percentage of the voting power or otherwise having the power to dissolve the corporation as may be set forth in the articles pursuant to subdivision (a) of Section 2061. The certificate shall set forth:*

(1) That the corporation has elected to wind up and dissolve.

(2) If the election was made by the vote of shareholders, the number of shares voting for the election and that the election was made by shareholders representing at least 50 percent of the voting power *or, in the case of a statutory close corporation, such percentage of the voting power or otherwise having the power to dissolve the corporation as may be set forth in the articles.*

(3) If the certificate is executed by a shareholder or shareholders, that the subscribing shareholder or shareholders were authorized to execute the certificate by shareholders holding shares representing at least 50 percent of the voting power *or, in the case of a statutory close corporation, such percentage of the voting power as may be set forth in the articles.*

(4) If the election was made by the board pursuant to subdivision (b) of Section 1900, the certificate shall also set forth the circumstances showing the corporation to be within one of the categories described in said subdivision.

(c) If an election to dissolve made pursuant to subdivision (a) of Section 1900 *or subdivision (a) of Section 2061* is made by the vote of all the outstanding shares and a statement to that effect is added to the certificate of dissolution pursuant to Section 1905, the separate filing of the certificate of election pursuant to this section is not required.

§ 1902.

(a) A voluntary election to wind up and dissolve may be revoked prior to distribution of any assets by the vote of shareholders holding shares representing a majority of the voting power *or, in the case of a statutory close corporation (Section 2501), such percentage of the voting power as may be set forth in the articles pursuant to subdivision (a) of Section 1900 and subdivision (a) of Section 2061*, or by approval by the board if the election was by the board pursuant to subdivision (b) of Section 1900. Thereupon a certificate evidencing the revocation shall be signed, verified and filed in the manner prescribed by Section 1901.

(b) The certificate shall set forth:

(1) That the corporation has revoked its election to wind up and dissolve.

(2) That no assets have been distributed pursuant to the election.

(3) If the revocation was made by the vote of shareholders, the number of shares voting for the revocation and the total number of outstanding shares the holders of which were entitled to vote on the revocation.

(4) If the election and revocation was by the board, that shall be stated.

§ 1904.

If a corporation is in the process of voluntary winding up, the superior court of the proper county, upon the petition of (a) the corporation, or (b) a shareholder or shareholders who hold shares representing 5 percent or more of the total number of any class of outstanding shares, or (c) any shareholder or shareholders of a *statutory* close corporation (*Section 2051*), or (d) three or more creditors, and upon such notice to the corporation and to other persons interested in the corporation as shareholders and creditors as the court may order, may take jurisdiction over such voluntary winding up proceeding if that appears necessary for the protection of any parties in interest. The court, if it assumes jurisdiction, may make such orders as to any and all matters concerning the winding up of the affairs of the corporation and for the protection of its shareholders and creditors as justice and equity may require. The provisions of Chapter 18 (commencing with Section 1800) (except Sections 1800 and 1801) shall apply to such court proceedings.

§ 2000.

(a) Subject to any contrary provision in the articles, in any suit for involuntary dissolution, or in any proceeding for voluntary dissolution initiated by the vote of shareholders representing only 50 percent of the voting power, *or less if permitted pursuant to subdivision (a) of Section 2061*, the corporation or, if it does not elect to purchase, the holders of 50 percent or more of the voting power of the corporation (the "purchasing parties") may avoid the dissolution of the corporation and the appointment of any receiver by purchasing for cash the shares owned by the plaintiffs or by the shareholders so initiating the proceeding (the "moving parties") at their fair value. The fair value shall be determined on the basis of the liquidation value as of the valuation date but taking into account the possibility, if any, of sale of the entire business as a going concern in a liquidation. In fixing the value, the amount of any damages resulting if the initiation of the dissolution is a breach by any moving party or parties of an agreement with the purchasing party or parties may be deducted from the amount payable to such moving party or parties, unless the ground for dissolution is that specified in paragraph (4) of subdivision (b) of Section 1800. The election of the corporation to purchase may be made by the approval of the outstanding shares (Section 152) excluding shares held by the moving parties.

(b) If the purchasing parties (1) elect to purchase the shares owned by the moving parties, and (2) are unable to agree with the moving parties upon the fair value of such shares, and (3) give bond with sufficient security to pay the estimated reasonable expenses (including attorneys' fees) of the moving parties if such expenses are recoverable under subdivision (c), the court upon application of the purchasing parties, either in the pending action or in a proceeding initiated in the superior court of the proper county by the purchasing parties in the case of a voluntary election to wind up and dissolve, shall stay the winding up and dissolution proceeding and shall proceed to ascertain and fix the fair value of the shares owned by the moving parties.

(c) The court shall appoint three disinterested appraisers to appraise the fair value of the shares owned by the moving parties, and shall make an order referring the matter to the appraisers so appointed for the purpose of ascertaining such value. The order shall prescribe the time and manner of producing evidence, if evidence is required. The award of the appraisers or



of a majority of them, when confirmed by the court, shall be final and conclusive upon all parties. The court shall enter a decree which shall provide in the alternative for winding up and dissolution of the corporation unless payment is made for the shares within the time specified by the decree. If the purchasing parties do not make payment for the shares within the time specified, judgment shall be entered against them and the surety or sureties on the bond for the amount of the expenses (including attorneys' fees) of the moving parties. Any shareholder aggrieved by the action of the court may appeal therefrom.

(d) If the purchasing parties desire to prevent the winding up and dissolution, they shall pay to the moving parties the value of their shares ascertained and decreed within the time specified pursuant to this section, or, in case of an appeal, as fixed on appeal. On receiving such payment or the tender thereof, the moving parties shall transfer their shares to the purchasing parties.

(e) For the purposes of this section, "shareholder" includes a beneficial owner of shares who has entered into an agreement under Section ~~300~~ or 706.

(f) For the purposes of this section, the valuation date shall be (1) in the case of a suit for involuntary dissolution under Section 1800, the date upon which that action was commenced, or (2) in the case of a proceeding for voluntary dissolution initiated by the vote of shareholders representing only 50 percent of the voting power, the date upon which that proceeding was initiated. However, in either case the court may, upon the hearing of a motion by any party, and for good cause shown, designate some other date as the valuation date.

#### § 25103.

The following transactions are exempted from the provisions of Section 25110 and Section 25120:

(a) Any negotiations or agreements prior to general solicitation of approval by the holders of equity securities, and subject to that approval, of (1) a change in the rights, preferences, privileges, or restrictions of or on outstanding securities, (2) a merger, consolidation, or sale of assets in consideration of the issuance of securities, or (3) an entity conversion transaction.

(b) Any change in the rights, preferences, privileges, or restrictions of or on outstanding securities or any entity conversion transaction, unless the holders of at least 25 percent of the outstanding shares or units of any class of securities that will be directly or indirectly affected substantially and adversely by that change or transaction have addresses in this state according to the records of the issuer.

(c) Any exchange incident to a merger, consolidation, or sale of assets in consideration of the issuance of securities of another issuer, unless at least 25 percent of the outstanding securities of any class, any holders of which are to receive securities in the exchange, are held by persons who have addresses in this state according to the records of the issuer of which they are holders. This exemption is not available for a rollup transaction as defined by Section 25014.6. The exemption is also not available for a transaction excluded from the definition of rollup transaction by virtue of paragraph (5) or (6) of subdivision (b) of Section 25014.6 if the transaction is one of a series of transactions that directly or indirectly through acquisition or otherwise involves the combination or reorganization of one or more rollup participants.

(d) For the purposes of subdivision (b) and subdivision (c) of this section, (1) any securities held to the knowledge of the issuer in the names of broker-dealers or nominees of broker-dealers and (2) any securities controlled by any one person who controls directly or

indirectly 50 percent or more of the outstanding securities of that class shall not be considered outstanding. The determination of whether 25 percent of the outstanding securities are held by persons having addresses in this state, for the purposes of subdivision (b) and subdivision (c) of this section, shall be made as of the record date for the determination of the security holders entitled to vote on or consent to the action, if approval of those holders is required, or, if not, as of the date of directors' approval of that action.

(e) Any change (other than a stock split or reverse stock split) in the rights, preferences, privileges, or restrictions of or on outstanding equity securities, except the following if they materially and adversely affect any class of equity securities: (1) to add, change, or delete assessment provisions; (2) to change the rights to dividends thereon; (3) to change the redemption provisions; (4) to make them redeemable; (5) to change the amount payable on liquidation; (6) to change, add, or delete conversion rights; (7) to change, add, or delete voting rights; (8) to change, add, or delete preemptive rights; (9) to change, add, or delete sinking fund provisions; (10) to rearrange the relative priorities of outstanding equity securities; (11) to impose, change, or delete restrictions upon the transfer of equity securities in the organizational documents for the entity; (12) to change the right of holders of equity securities with respect to the calling of special meetings of holders of equity securities; and (13) to change, add, or delete any rights, preferences, privileges, or restrictions of, or on, the outstanding shares or memberships of a mutual water company or other corporation or entity organized primarily to provide services or facilities to its shareholders or members. Changes in the rights, preferences, privileges, or restrictions of or on outstanding equity securities do not materially and adversely affect any class of holders of equity securities within the meaning of this subdivision if they arise from (i) the addition to articles of incorporation of the provisions described or referred to in subdivision (a) of Section ~~1582051~~ upon the conversion of an existing corporation to a *statutory* close corporation (*Section 2051*) pursuant to subdivision (b) of Section ~~1582051~~, (ii) the deletion from the articles of incorporation of the provisions described or referred to in subdivision (a) of Section ~~1582051~~ upon the voluntary termination of *statutory* close corporation status pursuant to subdivisions ~~(e) and (e)(a) and (b)~~ of Section ~~1582059~~, or (iii) ~~the involuntary cessation of close corporation status pursuant to subdivision (e) of Section 158, or (iv) the termination of a shareholders' agreement (Section 2053) pursuant to subdivision (b)(g) of Section 3002053.~~

(f) Any stock split or reverse stock split, except the following: (1) any stock split or reverse stock split if the corporation has more than one class of shares outstanding and the split would have a material effect on the proportionate interests of the respective classes as to voting, dividends, or distributions; (2) any stock split of a stock that is traded in the market and its market price as of the date of directors' approval of the stock split adjusted to give effect to the split was less than two dollars (\$2) per share; and (3) any reverse stock split if the corporation has the option of paying cash for any fractional shares created by the reverse split and as a result of that action the proportionate interests of the shareholders would be substantially altered. Any shares issued upon a stock split or reverse stock split exempted by this subdivision shall be subject to any conditions previously imposed by the commissioner applicable to the shares with respect to which they are issued.

(g) Any change in the rights of outstanding debt securities, except the following if they substantially and adversely affect any class of securities: (1) to change the rights to interest thereon; (2) to change their redemption provisions; (3) to make them redeemable; (4) to extend the maturity thereof or to change the amount payable thereon at maturity; (5) to change their voting rights; (6) to change their conversion rights; (7) to change sinking fund provisions; and (8) to make them subordinate to other indebtedness.

(h) Any exchange incident to a merger, consolidation, or sale of assets, other than a rollup transaction (as defined in Section 25014.6), in consideration of the issuance of equity securities of another entity or any entity conversion transaction that meets the following conditions:

(1) The exchange incident to a merger, consolidation, or sale of assets or the entity conversion transaction, had the exchange transaction involved the issuance of a security in a transaction subject to the provisions of Section 25110, would have been exempt from qualification by subdivision (f) of Section 25102, without giving effect to paragraph (3) thereof, and either of the following is applicable:

(A) (i) Not less than 75 percent of the outstanding equity securities of each constituent or converting entity entitled to vote on the proposed transaction voted in favor of the transaction, (ii) not more than 10 percent of the outstanding equity securities of each constituent or converting entity entitled to vote on the proposed transaction voted against the transaction, and (iii) each constituent or converting entity whose security holders are entitled to vote on the proposed transaction is subject to a state statute that has provisions for dissenters' rights for holders of equity securities entitled to vote on the proposed transaction that do not vote in favor of or voted against the transaction.

(B) (i) The transaction is solely for the purposes of changing the issuer's state of incorporation or organization, or form of organization, (ii) all the securities of the same class or series, unless all the security holders of the class or series consent, are treated equally, and (iii) the holders of nonredeemable voting equity securities receive nonredeemable voting equity securities.

(2) The commissioner may, by rule, require the acquiring or surviving entity to file a notice of transaction under this section. However, the failure to file the notice or the failure to file the notice within the time specified by the rule of the commissioner shall not affect the availability of this exemption. An acquiring or surviving entity that fails to file the notice as provided by rule of the commissioner shall, within 15 business days after demand by the commissioner, file the notice and pay to the commissioner a fee equal to the fee payable had the transaction been qualified under Section 25110 or 25120.

(i) Any exchange of securities in connection with any merger or consolidation or sale of corporate assets in consideration wholly or in part of the issuance of securities or any entity conversion transaction under, or pursuant to, a plan of reorganization or arrangement that pursuant to the provisions of the United States Bankruptcy Code (Title 11 of the United States Code) has been confirmed or is subject to confirmation by the decree or order of a court of competent jurisdiction.

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