

**DELAWARE [HOUSE OF REPRESENTATIVES / STATE SENATE]
147th GENERAL ASSEMBLY**

_____ BILL NO. _____

AN ACT TO AMEND CHAPTER 18, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED LIABILITY COMPANIES AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED LIABILITY COMPANIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 18-209(b), Chapter 18, Title 6 of the Delaware Code by
2 making insertions as shown by underlining as follows:

3 (b) Pursuant to an agreement of merger or consolidation, 1 or more domestic
4 limited liability companies may merge or consolidate with or into 1 or more domestic limited
5 liability companies or 1 or more other business entities formed or organized under the laws of the
6 State of Delaware or any other state or the United States or any foreign country or other foreign
7 jurisdiction, or any combination thereof, with such domestic limited liability company or other
8 business entity as the agreement shall provide being the surviving or resulting domestic limited
9 liability company or other business entity. Unless otherwise provided in the limited liability
10 company agreement, an agreement of merger or consolidation or a plan of merger shall be
11 approved by each domestic limited liability company which is to merger or consolidate by the
12 members or, if there is more than one class or group of members, then by each class or group of
13 members, in either case, by members who own more than 50 percent of the then current
14 percentage or other interest in the profits of the domestic limited liability company owned by all
15 of the members or by the members in each class or group, as appropriate. In connection with a
16 merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited
17 liability company or other business entity which is a constituent party to the merger or

18 consolidation may be exchanged for or converted into cash, property, rights or securities of, or
19 interests in, the surviving or resulting domestic limited liability company or other business entity
20 or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights
21 or securities of, or interests in, a domestic limited liability company or other business entity
22 which is not the surviving or resulting limited liability company or other business entity in the
23 merger or consolidation, may remain outstanding or may be cancelled. Notwithstanding prior
24 approval, an agreement of merger or consolidation or a plan of merger may be terminated or
25 amended pursuant to a provision for such termination or amendment contained in the agreement
26 of merger or consolidation or plan of merger.

27 Section 2. Amend § 18-212(j), Chapter 18, Title 6 of the Delaware Code by
28 making insertions as shown by underlining as follows:

29 (j) In connection with a domestication hereunder, rights or securities of, or
30 interests in, the non-United States entity that is to be domesticated as a domestic limited liability
31 company may be exchanged for or converted into cash, property, rights or securities of, or
32 interests in, such domestic limited liability company or, in addition to or in lieu thereof, may be
33 exchanged for or converted into cash, property, rights or securities of, or interests in, another
34 domestic limited liability company or other entity, may remain outstanding or may be cancelled.

35 Section 3. Amend § 18-213(f), Chapter 18, Title 6 of the Delaware Code by
36 making insertions as shown by underlining as follows:

37 (f) In connection with a transfer or domestication or continuance of a
38 domestic limited liability company to or in another jurisdiction pursuant to subsection (a) of this
39 section, rights or securities of, or interests in, such limited liability company may be exchanged
40 for or converted into cash, property, rights or securities of, or interests in, the entity or business

41 form in which the limited liability company will exist in such other jurisdiction as a consequence
42 of the transfer or domestication or continuance or, in addition to or in lieu thereof, may be
43 exchanged for or converted into cash, property, rights or securities of, or interests in, another
44 entity or business form, may remain outstanding or may be cancelled.

45 Section 4. Amend § 18-214(i), Chapter 18, Title 6 of the Delaware Code by
46 making insertions as shown by underlining as follows:

47 (i) In connection with a conversion hereunder, rights or securities of or
48 interests in the other entity which is to be converted to a domestic limited liability company may
49 be exchanged for or converted into cash, property, or rights or securities of or interests in such
50 domestic limited liability company or, in addition to or in lieu thereof, may be exchanged for or
51 converted into cash, property, or rights or securities of or interests in another domestic limited
52 liability company or other entity, may remain outstanding or may be cancelled.

53 Section 5. Amend § 18-216(d), Chapter 18, Title 6 of the Delaware Code by
54 making insertions as shown by underlining as follows:

55 (d) In connection with a conversion of a domestic limited liability company to
56 another entity or business form pursuant to this section, rights or securities of or interests in the
57 domestic limited liability company which is to be converted may be exchanged for or converted
58 into cash, property, rights or securities of or interests in the entity or business form into which
59 the domestic limited liability company is being converted or, in addition to or in lieu thereof,
60 may be exchanged for or converted into cash, property, rights or securities of or interests in
61 another entity or business form, may remain outstanding or may be cancelled.

62 Section 6. Amend § 18-703(d), Chapter 18, Title 6 of the Delaware Code by
63 making insertions as shown by underlining as follows:

64 (d) The entry of a charging order is the exclusive remedy by which a
65 judgment creditor of a member or a member's assignee may satisfy a judgment out of the
66 judgment debtor's limited liability company interest and attachment, garnishment, foreclosure or
67 other legal or equitable remedies are not available to the judgment creditor, whether the limited
68 liability company has 1 member or more than 1 member.

69 Section 7. Amend § 18-1101, Chapter 18, Title 6 of the Delaware Code by
70 inserting a new subparagraph (j) at the end thereof to read as follows:

71 (j) The provisions of this chapter shall apply whether a limited liability
72 company has 1 member or more than 1 member.

73 Section 8. Amend § 18-1104, Chapter 18, Title 6 of the Delaware Code by
74 making insertions as shown by underlining as follows:

75 In any case not provided for in this chapter, the rules of law and equity, including
76 the rules of law and equity relating to fiduciary duties and the law merchant, shall govern.

77 Section 9. This Act shall become effective August 1, 2013.

SYNOPSIS

This bill continues the practice of amending periodically the Delaware Limited Liability Company Act (the "Act") to keep it current and to maintain its national preeminence. The following is a section-by-section review of the proposed amendments of the Act.

Section 1. This section amends the provisions of the Act relating to mergers to confirm that rights or securities of, or interests in, a constituent party that is the surviving entity in a merger may remain outstanding in connection with the merger.

Sections 2, 3, 4 and 5. Sections 2, 3, 4 and 5 amend the provisions of the Act relating to domestication, transfer, continuance and conversion to confirm that in connection with a domestication, transfer, continuance or conversion, rights or securities of, or interests in, an entity that is domesticating or converting to a limited liability company and rights or securities of, or interests in, a limited liability company that is transferring to or domesticating or continuing in another jurisdiction or converting to a different type of entity or another jurisdiction may remain outstanding in connection with such domestication, transfer, continuance or conversion.

Section 6. This section amends § 18-703(d) of the Act to confirm that a charging order is the sole and exclusive remedy by which a judgment creditor of a member or a member's assignee may satisfy a judgment out of the judgment debtor's limited liability company interest and that attachment, garnishment, foreclosure or other legal or equitable remedies are not available to the judgment creditor, whether the limited liability company has 1 member or more than 1 member.

Section 7. This section amends § 18-1101 of the Act by adding a new subsection (j) that confirms that the provisions of the Act shall apply whether a limited liability company has 1 member or more than 1 member.

Section 8. The amendment to Section 18-1104 confirms that in some circumstances fiduciary duties not explicitly provided for in the limited liability company agreement apply. For example, a manager of a manager-managed limited liability company would ordinarily have fiduciary duties even in the absence of a provision in the limited liability company agreement establishing such duties. Section 18-1101(c) continues to provide that such duties may be expanded, restricted or eliminated by the limited liability company agreement.

Section 9. This section provides that the proposed amendments of the Act shall become effective August 1, 2013.

Author: _____