FIRST REGULAR SESSION

HOUSE BILL NO. 431

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PRATT.

Read 1st time January 17, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1163L.01I

AN ACT

To repeal sections 347.137, 351.015, and 351.459, RSMo, and to enact in lieu thereof three new sections relating to business organizations.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 347.137, 351.015, and 351.459, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 347.137, 351.015, and 351.459, to read as follows:

347.137. 1. A domestic limited liability company shall be dissolved upon the occurrence of any of the following:

(1) Upon the happening of the events specified in the operating agreement or in the articles of organization;

(2) Upon the written consent of all members;

(3) Except as otherwise provided in the operating agreement, an event of withdrawal of a member, if a majority, by number, of the remaining members agree within ninety days after the occurrence of the event of withdrawal to dissolve the limited liability company;

(4) **At any time there are no members; provided, that the limited liability company is not dissolved and is not required to be wound up if:**

(a) Unless otherwise provided in the operating agreement, within ninety days after such other period as is provided for in the operating agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the

EXPLANATION — Matter enclosed in bold-faced brackets **[**thus**]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; provided, that the operating agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; or

(b) A member is admitted to the limited liability company in the manner provided for in the operating agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, within ninety days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, under a provision of the operating agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company;

(5) An event of withdrawal with respect to the sole remaining member;

[(5)**] (6)** Entry of a decree of dissolution under section 347.143; or

[(6)**] (7)** When the limited liability company is not the surviving entity in a merger or consolidation.

2. As soon as possible following the occurrence of any of the events specified in subdivisions (1) to (4) of subsection 1 of this section effecting the dissolution of the limited liability company, the limited liability company shall file a notice of winding up with the secretary which discloses the dissolution of the limited liability company and the commencement of winding up of its business and affairs.

351.015. As used in this chapter, unless the context otherwise requires:

(1) "Articles of incorporation" includes the original articles of incorporation and all amendments thereto, and includes articles of merger or consolidation;

(2) "Authorized shares" means the aggregate number of shares of stock of all classes, whether with or without par value, which the corporation is authorized to issue. Shares of its own stock belonging to a corporation shall be deemed to be "issued" shares but not "outstanding" shares;

(3) "Certificate of stock" means a written instrument signed by or bearing the facsimile signature of the proper corporate officers, as required by this chapter, evidencing the fact that the person therein named is the holder of record of the share or shares therein described;

(4) "Control share acquisition" means the acquisition, directly or indirectly, by any person of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares. For the purposes of this chapter, shares acquired within ninety days of any acquisition of shares or shares acquired pursuant to a plan to make a control share acquisition are considered to have been acquired in the same acquisition. For the purposes of this chapter, a person who acquires shares in the ordinary course of business for the benefit of others in good faith and not for the purpose of circumventing this chapter has voting power only of shares in respect of which that person would be able to exercise or direct the exercise of votes without further instruction from others. The acquisition of any shares of an issuing public corporation does not constitute a control share acquisition if the acquisition is consummated in any of the following circumstances:

(a) Prior to June 13, 1984;

(b) Pursuant to a contract in existence prior to June 13, 1984;

(c) Pursuant to a will or other testamentary disposition, the laws of descent and distribution or by intervivos gift where such gift is made in good faith and not for the purpose of circumventing section 351.407;

(d) Pursuant to a public offering, a private placement, or any other issuance of shares by an issuing public corporation;

(e) By, on behalf of, or pursuant to any benefit or other compensation plan or arrangement of an issuing public corporation;

(f) Pursuant to the conversion of debt securities into shares of an issuing public corporation under the terms of such debt securities;

(g) Pursuant to a binding contract, other than any contract created by, pursuant to, or in connection with a tender offer, whereby the holders of shares representing at least two-thirds of the voting power of an issuing public corporation, such holders acting simultaneously, agreed to sell such shares to any person;

(h) Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing section 351.407;

(i) Pursuant to a merger or consolidation effected in compliance with sections 351.410 to 351.458 if the issuing public corporation is a party to the agreement of merger or consolidation;

(j) Pursuant to a binding contract or other arrangement with any individual, foreign or domestic corporation (whether or not for profit), partnership, limited liability company, unincorporated society or association, or other entity which, at any time within one year prior to the acquisition in question, owned shares representing more than fifty percent of the voting power of the issuing public corporation;

(k) By or from any person whose shares have been previously accorded voting rights pursuant to section 351.407; provided, the acquisition entitles the person making the acquisition, directly or indirectly, alone or as a part of a group, to exercise or direct the exercise of voting power of the corporation in the election of directors within a range of the voting power not in excess of the range of voting power associated with the shares to which voting rights have been previously accorded;

(5) "Control shares" means shares that, except for this chapter, would have voting power with respect to shares of an issuing public corporation that, when added to all other shares of the issuing public corporation owned by a person or in respect to which that person may exercise or direct the exercise of voting power, would entitle that person, immediately after acquisition of the shares, directly or indirectly, alone or as a part of a group, to exercise or direct the exercise of the voting power of the issuing public corporation in the election of directors within any of the following ranges of voting power:

(a) One-fifth or more but less than one-third of all voting power;

(b) One-third or more but less than a majority of all voting power;

(c) A majority or more of all voting power; provided, however, that shares which the person or the group have owned or of which the person or the group could have exercised or directed the voting for more than ten years shall not be deemed to be "control shares" and shall not be aggregated for the purpose of determining inclusion within the above-stated ranges;

(6) "Corporation" or "domestic corporation" includes corporations organized under this chapter or subject to some or all of the provisions of this chapter except a foreign corporation;

(7) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this state;

(8) "Incorporator" means a signer of the original articles of incorporation;

(9) "Interested shares" means the shares of an issuing public corporation in respect of which any of the following persons may exercise or direct the exercise of the voting power of the corporation in the election of directors:

(a) An acquiring person or member of a group with respect to a control share acquisition;

(b) Any officer of the issuing public corporation elected or appointed by the directors of the issuing public corporation;

(c) Any employee of the issuing public corporation who is also a director of such corporation;

(10) "Issuing public corporation" means either a corporation incorporated under the laws of the state of Missouri, or, subdivision (2) of section 351.690 notwithstanding, any insurance company organized pursuant to the laws of Missouri and doing business under the provisions of chapter 376, RSMo, provided that the bylaws of such insurance company expressly state that

such insurance company shall, for the purposes of this chapter, be included within the definition of "issuing public corporation"**[**, that has:

(a) One hundred or more shareholders;

(b) Its principal place of business, its principal office, or substantial assets within Missouri; and

(c) One of the following:

a. More than ten percent of its shareholders resident in Missouri;

b. More than ten percent of its shares owned by Missouri residents; or

c. Ten thousand shareholders resident in Missouri. The residence of a shareholder is presumed to be the address appearing in the records of the corporation. Shares held by banks (except as trustee or guardian), brokers or nominees shall be disregarded for purposes of calculating the percentages or numbers described above**]**;

(11) "Net assets", for the purpose of determining the right of a corporation to purchase its own shares and of determining the right of a corporation to declare and pay dividends and the liabilities of directors therefor, shall not include shares of its own stock belonging to a corporation;

(12) "Paid-in surplus" means all that part of the consideration received by the corporation for, or on account of, all shares issued which does not constitute stated capital minus such formal reductions from said sum as may have been effected in a manner permitted by this chapter;

(13) "Person" includes, without limitation, an individual, a foreign or domestic corporation whether not for profit or for profit, a partnership, a limited liability company, an unincorporated society or association, two or more persons having a joint or common interest, or any other entity;

(14) "Registered office" means that office maintained by the corporation in this state, the address of which is on file in the office of the secretary of state;

(15) "Shareholder" means one who is a holder of record of shares in a corporation;

(16) "Shares" are the units into which the shareholders' rights to participate in the control of the corporation, in its surplus or profits, or in the distribution of its assets, are divided;

(17) "Stated capital" means at any particular time the sum of:

(a) The par value of all shares then issued having a par value; and

(b) The consideration received by the corporation for all shares then issued without par value except such part thereof as may have been allocated otherwise than to stated capital in a manner permitted by law; and

(c) Such amounts not included in paragraphs (a) and (b) of this subdivision as may have been transferred to the stated capital account of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus such formal reductions from said sum as may have been effected in a manner permitted by this chapter;

(18) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

351.459. 1. For the purposes of this section, the following terms mean:

(1) "Affiliate", a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified person;

(2) "Announcement date", when used in reference to any business combination, means the date of the first public announcement of the final, definitive proposal for such business combination;

(3) "Associate", when used to indicate a relationship with any person, means any corporation or organization of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class of voting stock, any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and any relative or spouse of such person, or any relative of such spouse, who has the same home as such person;

(4) "Beneficial owner", when used with respect to any stock, means a person that:

(a) Individually or with or through any of its affiliates or associates, beneficially owns such stock, directly or indirectly; or

(b) Individually or with or through any of its affiliates or associates, has the right to acquire such stock, whether such right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement or understanding, whether or not in writing, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the beneficial owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange; or the right to vote such stock pursuant to any agreement, arrangement or understanding, whether or not in writing; provided, however, that a person shall not be deemed the beneficial owner of any stock under this item if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the Exchange Act and is not then reportable on a Schedule 13D under the Exchange Act, or any comparable or successor report; or

(c) Has any agreement, arrangement or understanding, whether or not in writing, for the purpose of acquiring, holding, voting, except voting pursuant to a revocable proxy or consent as described in paragraph (b) of this subdivision, or disposing of such stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock;

(5) "Business combination", when used in reference to any [resident] domestic corporation and any interested shareholder of such [resident] domestic corporation, means:

(a) Any merger or consolidation of such [resident] domestic corporation or any subsidiary of such [resident] domestic corporation with such interested shareholder or any other corporation, whether or not itself an interested shareholder of such [resident] domestic corporation, which is, or after such merger or consolidation would be, an affiliate or associate of such interested shareholder;

(b) Any sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one transaction or a series of transactions to or with such interested shareholder or any affiliate or associate of such interested shareholder of assets of such [resident] domestic corporation or any subsidiary of such [resident] domestic corporation having an aggregate market value equal to ten percent or more of the aggregate market value of all the assets, determined on a consolidated basis, of such [resident] domestic corporation, having an aggregate market value equal to ten percent or more of the aggregate market value of all the outstanding stock of such [resident] domestic corporation, or representing ten percent or more of the earning power or net income, determined on a consolidated basis, of such [resident] domestic corporation;

(c) The issuance or transfer by such [resident] domestic corporation or any subsidiary of such [resident] domestic corporation, in one transaction or a series of transactions, of any stock of such [resident] domestic corporation or any subsidiary of such [resident] domestic corporation which has an aggregate market value equal to five percent or more of the aggregate market value of all the outstanding stock of such [resident] domestic corporation to such interested shareholder or any affiliate or associate of such interested shareholder except pursuant to the exercise of warrants or rights to purchase stock offered, or a dividend or distribution paid or made, pro rata to all shareholders of such [resident] domestic corporation;

(d) The adoption of any plan or proposal for the liquidation or dissolution of such [resident] domestic corporation proposed by, or pursuant to any agreement, arrangement or understanding, whether or not in writing, with such interested shareholder or any affiliate or associate of such interested shareholder;

(e) Any reclassification of securities, including, without limitation, any stock split, stock dividend, or other distributions of stock in respect of stock, or any reverse stock split, or recapitalization of such [resident] domestic corporation, or any merger or consolidation of such [resident] domestic corporation with any subsidiary of such [resident] domestic corporation, or any other transaction, whether or not with or into or otherwise involving such interested shareholder, proposed by, or pursuant to any agreement, arrangement or understanding, whether or not in writing, with such interested shareholder or any affiliate or associate of such interested shareholder, which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class or series of voting stock or securities convertible into voting stock of such **[**resident**]** domestic corporation or any subsidiary of such **[**resident**]** domestic corporation which is directly or indirectly owned by such interested shareholder or any affiliate or associate of such interested shareholder, except as a result of immaterial changes due to fractional share adjustments; or

(f) Any receipt by such interested shareholder or any affiliate or associate of such interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of such **[**resident**]** domestic corporation, of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by or through such **[**resident**]** domestic corporation;

(6) "Common stock", any stock other than preferred stock;

(7) "Consummation date", with respect to any business combination, means the date of consummation of such business combination, or, in the case of a business combination as to which a shareholder vote is taken, the later of the business day prior to the vote or twenty days prior to the date of consummation of such business combination;

(8) "Control", including the terms "controlling", "controlled by" and "under common control with", the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person's beneficial ownership of ten percent or more of a corporation's outstanding voting stock shall create a presumption that such person has control of such corporation. Notwithstanding the foregoing, a person shall not be deemed to have control of a corporation if such person holds voting stock, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian or trustee for one or more beneficial owners who do not individually or as a group have control of such corporation;

(9) **"Domestic corporation", a corporation incorporated under the laws of the state of Missouri;**

(10) "Exchange Act", the act of Congress known as the "Securities Exchange Act of 1934", as the same has been or hereafter may be amended from time to time;

[(10)**] (11)** "Interested shareholder", when used in reference to any **[**resident**]** domestic corporation, any person, other than such **[**resident**]** domestic corporation or any subsidiary of such resident domestic corporation, that:

(a) Is the beneficial owner, directly or indirectly, of twenty percent or more of the outstanding voting stock of such **[**resident**]** domestic corporation; or

(b) Is an affiliate or associate of such **[**resident**]** domestic corporation and at any time within the five-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of twenty percent or more of the then outstanding voting stock of such **[**resident**]** domestic corporation; provided that, for the purpose of determining whether a person is an interested shareholder, the number of shares of voting stock of such **[**resident**]** domestic corporation deemed to be outstanding shall include shares deemed to be beneficially owned by the person through application of subdivision (4) of this subsection but shall not include any other unissued shares of voting stock of such **[**resident**]** domestic corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise;

[(11)**] (12)** "Market value", when used in reference to stock or property of any **[**resident**]** domestic corporation, means:

(a) In the case of stock, the highest closing sale price during the thirty-day period immediately preceding the date in question of a share of such stock on the composite tape for New York stock exchange listed stocks, or, if such stock is not quoted on such composite tape or if such stock is not listed on such exchange, on the principal United States securities exchange registered under the Exchange Act on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the thirty-day period preceding the date in question on the National Association of Securities Dealers, Inc., Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by the board of directors of such **[**resident**]** domestic corporation in good faith; and

(b) In the case of property other than cash or stock, the fair market value of such property on the date in question as determined by the board of directors of such **[**resident**]** domestic corporation in good faith;

[(12)**] (13)** "Preferred stock", any class or series of stock of a **[**resident**]** domestic corporation which under the bylaws or articles of incorporation of such **[**resident**]** domestic corporation is entitled to receive payment of dividends prior to any payment of dividends on some other class or series of stock, or is entitled in the event of any voluntary liquidation, dissolution or winding up of the **[**resident**]** domestic corporation to receive payment or distribution of a preferential amount before any payments or distributions are received by some other class or series of stock;

[(13) "Resident domestic corporation", a corporation incorporated under the laws of the state of Missouri that has:

(a) One hundred or more shareholders;

(b) Its principal place of business, its principal office, or substantial assets within Missouri; and

(c) One of the following:

a. More than ten percent of its shareholders resident in Missouri;

b. More than ten percent of its shares owned by Missouri residents; or

c. Ten thousand shareholders resident in Missouri.

For purposes of this section, reference to shareholders or ownership of shares shall refer to ownership of voting stock; the residence of a partnership, unincorporated association, trust or similar organization shall be the principal office of such organization; the residence of a shareholder shall otherwise be presumed to be the address appearing in the records of the corporation; and shares held by banks (except as trustee or guardian), brokers or nominees shall be disregarded for purposes of calculating the percentages or numbers described above. No resident domestic corporation, which is organized under the laws of this state, shall cease to be a resident domestic corporation by reason of events occurring or actions taken while such resident domestic corporation is subject to the provisions of this section;**]**

(14) "Stock" means:

(a) Any stock or similar security, any certificate of interest, any participation in any profit-sharing agreement, any voting trust certificate, or any certificate of deposit for stock; and

(b) Any security convertible, with or without consideration, into stock, or any warrant, call or other option or privilege of buying stock without being bound to do so, or any other security carrying any right to acquire, subscribe to or purchase stock;

(15) "Stock acquisition date", with respect to any person and any **[**resident**]** domestic corporation, means the date that such person first becomes an interested shareholder of such **[**resident**]** domestic corporation;

(16) "Subsidiary" of any **[**resident**]** domestic corporation, means any other corporation of which voting stock, having a majority of the outstanding voting stock of such other corporation, is owned, directly or indirectly, by such **[**resident**]** domestic corporation;

(17) "Voting stock", shares of capital stock of a corporation entitled to vote generally in the election of directors.

2. Notwithstanding anything to the contrary contained in this section, except the provisions of subsection 4 of this section, no **[**resident**]** domestic corporation shall engage in any business combination with any interested shareholder of such **[**resident**]** domestic corporation for a period of five years following such interested shareholder's stock acquisition date unless such business combination or the purchase of stock made by such interested shareholder on such interested shareholder's stock acquisition date is approved by the board of directors of such

[resident**]** domestic corporation on or prior to such stock acquisition date. If a good faith proposal is made in writing to the board of directors of such **[**resident**]** domestic corporation regarding a business combination, the board of directors shall respond, in writing, within sixty days or such shorter period, if any, as may be required by the Exchange Act, setting forth its reasons for its decision regarding such proposal. If a good faith proposal to purchase stock is made in writing to the board of directors of such **[**resident**]** domestic corporation, the board of directors, unless it responds affirmatively in writing within sixty days or such shorter period, if any, as may be required by the Exchange Act, shall be deemed to have disapproved such stock purchase.

3. Notwithstanding anything to the contrary contained in this section, except the provisions of subsections 2 and 4 of this section, no **[**resident**]** domestic corporation shall engage at any time in any business combination with any interested shareholder of such **[**resident**]** domestic corporation other than any of the following business combinations:

(1) A business combination approved by the board of directors of such **[**resident**]** domestic corporation prior to such interested shareholder's stock acquisition date, or where the purchase of stock made by such interested shareholder on such interested shareholder's stock acquisition date had been approved by the board of directors of such **[**resident**]** domestic corporation prior to such interested shareholder's stock acquisition date;

(2) A business combination approved by the affirmative vote of the holders of a majority of the outstanding voting stock not beneficially owned by such interested shareholder or any affiliate or associate of such interested shareholder at a meeting called for such purpose no earlier than five years after such interested shareholder's stock acquisition date;

(3) A business combination that meets all of the following conditions:

(a) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of common stock of such **[**resident**]** domestic corporation in such business combination is at least equal to the higher of the following:

a. The highest per share price paid by such interested shareholder at a time when he was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting stock of such **[**resident**]** domestic corporation, for any shares of common stock of the same class or series acquired by it within the five-year period immediately prior to the announcement date with respect to such business combination, or within the five-year period immediately prior to, or in, the transaction in which such interested shareholder became an interested shareholder, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which such highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common stock since such earliest date, up to the amount of such interest; and

b. The market value per share of common stock on the announcement date with respect to such business combination or on such interested shareholder's stock acquisition date, whichever is higher; plus interest compounded annually from such date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common stock since such date, up to the amount of such interest;

(b) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of stock, other than common stock, of such **[**resident**]** domestic corporation is at least equal to the highest of the following, whether or not such interested shareholder has previously acquired any shares of such class or series of stock:

a. The highest per share price paid by such interested shareholder at a time when he was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting stock of such **[**resident**]** domestic corporation, for any shares of such class or series of stock acquired by him within the five-year period immediately prior to the announcement date with respect to such business combination, or within the five-year period immediately prior to, or in, the transaction in which such interested shareholder became an interested shareholder, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which such highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of such class or series of stock since such earliest date, up to the amount of such interest;

b. The highest preferential amount per share to which the holders of shares of such class or series of stock are entitled in the event of any voluntary liquidation, dissolution or winding up of such **[**resident**]** domestic corporation, plus the aggregate amount of any dividends declared or due as to which such holders are entitled prior to payment of dividends on some other class or series of stock, unless the aggregate amount of such dividends is included in such preferential amount; and

c. The market value per share of such class or series of stock on the announcement date with respect to such business combination or on such interested shareholder's stock acquisition date, whichever is higher; plus interest compounded annually from such date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of such class or series of stock since such date, up to the amount of such interest;

(c) The consideration to be received by holders of a particular class or series of outstanding stock, including common stock, of such **[**resident**]** domestic corporation in such business combination is in cash or in the same form as the interested shareholder has used to acquire the largest number of shares of such class or series of stock previously acquired by it, and such consideration shall be distributed promptly;

(d) The holders of all outstanding shares of stock of such **[**resident**]** domestic corporation not beneficially owned by such interested shareholder immediately prior to the consummation of such business combination are entitled to receive in such business combination cash or other consideration for such shares in compliance with paragraphs (a), (b) and (c) of this subdivision;

(e) After such interested shareholder's stock acquisition date and prior to the consummation date with respect to such business combination, such interested shareholder has not become the beneficial owner of any additional shares of voting stock of such **[**resident**]** domestic corporation except:

a. As part of the transaction which resulted in such interested shareholder becoming an interested shareholder;

b. By virtue of proportionate stock splits, stock dividends or other distributions of stock in respect of stock not constituting a business combination under paragraph (e) of subdivision (5) of subsection 1 of this section;

c. Through a business combination meeting all of the conditions of subsection 2 of this section and this subsection; or

d. Through purchase by such interested shareholder at any price which, if such price had been paid in an otherwise permissible business combination the announcement date and consummation date of which were the date of such purchase, would have satisfied the requirements of paragraphs (a), (b) and (c) of this subdivision.

4. The provisions of this section shall not apply to:

(1) Any business combination of a **[**resident**]** domestic corporation that does not have a class of voting stock registered with the securities and exchange commission pursuant to Section 12 of the Exchange Act, unless the articles of incorporation provide otherwise; or

(2) Any business combination of a **[**resident**]** domestic corporation whose articles of incorporation have been amended to provide that such **[**resident**]** domestic corporation shall be subject to the provisions of this section, which did not have a class of voting stock registered with the securities and exchange commission pursuant to Section 12 of the Exchange Act on the effective date of such amendment, and which is a business combination with an interested shareholder whose stock acquisition date is prior to the effective date of such amendment; or

(3) Any business combination of a **[**resident**]** domestic corporation the original articles of incorporation of which contain a provision expressly electing not to be governed by this section, or which adopts an amendment to such **[**resident**]** domestic corporation's bylaws prior to August 1, 1986, expressly electing not to be governed by this section, or which adopts an amendment to such **[**resident**]** domestic corporation's bylaws, approved by the affirmative vote of the holders, other than interested shareholders and their affiliates and associates, expressly electing not to be governed by this section, provided that such amendment to the bylaws shall not be effective until eighteen months after such vote of such **[**resident**]** domestic corporation's shareholders and shall not apply to any business combination of such **[**resident**]** domestic corporation with an interested shareholder whose stock acquisition date is on or prior to the effective date of such amendment; or

(4) Any business combination of a **[**resident**]** domestic corporation with an interested shareholder of such **[**resident**]** domestic corporation which became an interested shareholder inadvertently, if such interested shareholder as soon as practicable, divests itself of a sufficient amount of the voting stock of such **[**resident**]** domestic corporation so that it no longer is the beneficial owner, directly or indirectly, of twenty percent or more of the outstanding voting stock of such **[**resident**]** domestic corporation, and would not at any time within the five-year period preceding the announcement date with respect to such business combination have been an interested shareholder but for such inadvertent acquisition;

(5) Any business combination with an interested shareholder who was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting stock of such **[**resident**]** domestic corporation on December 1, 1985, and remained so to such interested shareholder's stock acquisition date;

(6) Any business combination with an interested shareholder or any of its affiliates or associates, provided that such interested shareholder became an interested shareholder at a time when the restrictions contained in this section did not apply by reason of:

(a) Any of subdivisions (1) through (5) of this subsection; or

(b) The fact that the corporation was not then a **[**resident**]** domestic corporation, provided, however, that this subdivision shall not apply if, at the time such interested shareholder became an interested shareholder, the corporation's articles of incorporation contained a provision authorized by the last sentence of this subsection. This subdivision shall apply regardless of whether the stock acquisition date of such interested shareholder occurred prior to August 28, 1999.

Notwithstanding subdivisions (1), (2), (3), (4) and (5) of this subsection, a corporation, whether or not a **[**resident**]** domestic corporation, may elect by a provision of its original articles of incorporation or any amendment thereto to be governed by this section; provided that any such amendment to the articles of incorporation shall not apply to restrict a business combination between the corporation and an interested shareholder of the corporation or any of its affiliates or associates if the interested shareholder became such prior to the effective date of the amendment.

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