

# Proposed Changes to the Model Business Corporation Act—New Chapter 17 on Benefit Corporations

*By the Corporate Laws Committee, ABA Business Law Section*

The Corporate Laws Committee of the ABA Business Law Section (the “Committee”) develops and proposes changes in the Model Business Corporation Act (the “Act”).

The Committee has approved, on second reading, the adoption of a new chapter 17 of the Act permitting the organization of benefit corporations. **The Committee invites comments on proposed chapter 17 from all interested persons. Comments should be addressed to David B.H. Martin, Chair, Corporate Laws Committee, Covington & Burling LLP, One City Center, 850 Tenth St., N.W., Washington, D.C. 20001-4956, or sent to him by e-mail at [dmartin@cov.com](mailto:dmartin@cov.com). Comments should be received by September 30, 2019, in order to be considered by the Committee before adoption of chapter 17 on third reading.**

Benefit corporation statutes allow corporations to opt into a legal structure that requires directors to consider, in addition to shareholder interests, the social, environmental, and other effects of corporate activity, and permit their business decisions to be based on such effects, even if they are adverse to shareholder interests. Adoption of benefit corporation statutes is a relatively recent phenomenon, but one that has expanded rapidly. Thirty-three states and the District of Columbia, as well as some non-U.S. jurisdictions, have adopted benefit corporation statutes.

Corporations adopting this expanded purpose are usually referred to as “benefit corporations.” More than 7,000 benefit corporations have been organized in the United States to date. The Committee published a white paper on benefit corporations in 2013 that provides an overview of the background of benefit corporations and issues involved in drafting statutes to authorize them.<sup>1</sup> In light of (i) the widespread adoption of benefit corporation statutes, (ii) the number of benefit corporations formed to date, (iii) the increased amount of funds under management by investors seeking to invest in companies dedicated to operating in a socially responsible manner, and (iv) continued discussion about the impacts of corporate decision making on society and the potential involvement of the benefit corporation model in that discussion, the Committee believes it appropriate to add benefit corporation provisions to the Act and to address certain issues and concerns with some existing benefit corporation statutes.

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<sup>1</sup> ABA BUS. LAW SECTION CORP. LAWS COMM., BENEFIT CORPORATION WHITE PAPER, 68 BUS. LAW. 1083 (2013).

Most of the states that have adopted benefit corporation statutes follow a model statute developed by B-Lab, a non-profit entity that assists businesses desiring to operate in a way that has a positive effect on society and the environment. A somewhat different statute was developed in Delaware, and has been followed in several other states.<sup>2</sup> The Committee, with the assistance of lawyers involved in drafting the B-Lab model and the Delaware statute, is proposing a statute that includes elements of both. The Committee intends chapter 17 to be a reference for states that have yet to adopt a benefit corporation statute, as well as for those states that enacted such a statute based on earlier versions of the B-Lab model or the Delaware statute and are considering updates.

Chapter 17 reflects developments in benefit corporation statutes since the Committee's Benefit Corporation White Paper was published and, accordingly, differs from the model included in the White Paper in several significant respects, including:

(i) removing the requirement that a benefit corporation identify itself as such in its name, but requiring that a stock certificate or information statement for uncertificated shares of a benefit corporation contain a legend identifying the corporation as a benefit corporation;

(ii) reducing the vote for a corporation to become a benefit corporation from 90 percent of each class or series of shares, whether voting or nonvoting, to two-thirds of the votes entitled to be cast by each voting group entitled to vote on the amendment or transaction, and eliminating the two-thirds vote requirement to change a specific public benefit;

(iii) adding express duties of directors to act in a responsible and sustainable manner and to consider, in addition to the interests of shareholders, the separate interests of stakeholders known to be affected by the business of the corporation;

(iv) requiring a benefit report to be produced annually, rather than every other year, and to be made publicly available, and adding a judicial remedy for shareholders that do not receive an annual benefit report after request; and

(v) in the case of publicly traded companies, permitting holders of at least \$5 million worth of shares to sue derivatively for violations of benefit corporation duties even if they do not own 5 percent of the outstanding shares.

The Committee proposes adding a new Chapter 17 to the Model Act, and making a related amendment to section 13.02 of the Act, as set forth below.<sup>3</sup> Changes to section 13.02 are marked with ~~deletions shown by strikeouts~~ and additions by double underscoring.

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2 For a summary of the differences between the B-Lab model and the Delaware statute, see FREDERICK H. ALEXANDER, *BENEFIT CORPORATION LAW AND GOVERNANCE* 88 (2018).

3 Current chapter 17 of the Model Act would be renumbered as chapter 18, and the sections of current chapter 17 would be renumbered as sections 18.01–18.05, respectively. Accordingly, cross-references to sections of chapter 17 (in sections 1.01, 1.02, 15.01, and 15.03) would be renumbered to correspond to sections of chapter 18.

New chapter 17 would read as follows:

CHAPTER 17

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**Benefit Corporations**

- § 17.01. Application of chapter; definitions
- § 17.02. Name; share certificates
- § 17.03. Certain amendments and transactions; votes required
- § 17.04. Duties of directors
- § 17.05. Annual benefit report
- § 17.06. Rights of action

**§ 17.01. APPLICATION OF CHAPTER; DEFINITIONS**

(a) A corporation electing to become a benefit corporation under this chapter in the manner prescribed in this chapter is subject in all respects to the provisions of this Act, except to the extent this chapter imposes additional or different requirements, in which case such requirements apply. The inclusion of a provision in this chapter does not imply that a contrary or different rule of law applies to a corporation that is not a benefit corporation. This chapter does not affect a statute or rule of law that applies to a corporation that is not a benefit corporation.

(b) As used in this chapter:

“Benefit corporation” means a corporation that includes in its articles of incorporation a statement that the corporation is subject to this chapter.

“Public benefit” means a positive effect, or reduction of negative effects, on one or more communities or categories of persons (other than shareholders solely in their capacity as shareholders) or on the environment, including effects of an artistic, charitable, economic, educational, cultural, literary, medical, religious, social, ecological, or scientific nature.

“Public benefit provision” means a provision in the articles of incorporation which states that the corporation shall pursue one or more identified public benefits.

“Responsible and sustainable manner” means a manner that:

(i) pursues through the business of the corporation the creation of a positive effect on society and the environment, taken as a whole, that is material taking into consideration the corporation’s size and the nature of its business; and

- (ii) considers, in addition to the interests of shareholders generally, the separate interests of stakeholders known to be affected by the conduct of the business of the corporation.

## CROSS-REFERENCES

“Articles of incorporation” defined, see § 1.40.

“Corporation” defined, see § 1.40.

“Person” defined, see § 1.40.

## OFFICIAL COMMENT

### ***Benefit Corporation***

Chapter 17 does not create or imply any limitation on the factors or interests the board of directors of a corporation that is not a benefit corporation may take into account under section 8.30 of the Act.

### ***Public Benefit***

In addition to pursuing the creation of a positive effect on society and the environment, taken as a whole, the articles of incorporation of a benefit corporation may require a benefit corporation to pursue one or more identified public benefits. Public benefits are defined broadly. If the articles of incorporation include a public benefit provision, then directors also are required to act in a manner that pursues the identified public benefit or benefits in discharging their duties as provided in section 17.04. Pursuit of a public benefit may contribute to acting in a responsible and sustainable manner but, depending on the materiality to the corporation of the public benefit chosen, may or may not be sufficient by itself to satisfy that duty.

### ***Responsible and Sustainable***

The requirement in section 17.04(a) that directors act in a responsible and sustainable manner recognizes that corporate operations and business decisions may affect stakeholders other than shareholders. Such operations and decisions have the potential to affect, positively or negatively, critical resources, such as environmental capacities and social stability. The requirement that directors pursue, through the business of the corporation, creation of a positive effect on “society and the environment, taken as a whole” should be viewed in the context of the individual corporation and its ability to create a positive effect that is material considering its size and the nature of its business. It does not require the benefit corporation to create such an effect by itself. For many benefit corporations, pursuit of a positive effect may involve conduct that, in combination with similar conduct by others, can be expected to have a positive effect on society and the environment, taken as a whole. The requirement that the benefit be material makes clear that pursuit of more than a token or incidental benefit is required to satisfy the duty to act in a responsible and sustainable manner. The materiality requirement takes into account the size and nature of a business. It applies the

same quantitative and qualitative considerations that would be applicable in other business contexts to determine whether an effect is “material” to the business of a particular corporation. The reference to “business of the corporation” encompasses both what the corporation does and how it conducts its business and operations.

Acting in a responsible and sustainable manner requires that directors consider the interests of shareholders as well as stakeholders known to be affected by the business of the corporation. Section 17.04(b) includes a nonexclusive list of stakeholder interests to be considered to the extent affected.

## **§ 17.02. NAME; SHARE CERTIFICATES**

- (a) The name of a benefit corporation may contain the words “benefit corporation,” the abbreviation “B.C.,” or the designation “BC,” any of which shall be deemed to satisfy the requirements of section 4.01(a)(1).
- (b) Any share certificate issued by a benefit corporation, and any information statement delivered by a benefit corporation pursuant to section 6.26(b), must note conspicuously that the corporation is a benefit corporation subject to this chapter.

## **CROSS-REFERENCES**

- “Conspicuous” defined, see § 1.40.
- Corporate name, see § 4.01.
- Information statement, see § 6.26.
- Share certificate, see § 6.25.
- Uncertificated share, see § 6.26.

## **OFFICIAL COMMENT**

A benefit corporation may, but need not, identify itself as such in its corporate name. In order to provide investors in a benefit corporation with notice they are investing in a corporation that does not operate solely for the benefit of its shareholders, share certificates and information statements evidencing shares in a benefit corporation must contain a legend identifying the corporation as a benefit corporation.

## **§ 17.03. CERTAIN AMENDMENTS AND TRANSACTIONS; VOTES REQUIRED**

- (a) Unless the articles of incorporation require a greater vote, in addition to any other approval of shareholders required under this Act, the approval of at least two-thirds of the votes entitled to be cast thereon, and, if any class or series of shares is entitled to vote as a separate group thereon, the approval of at least two-thirds of the votes entitled

to be cast by that voting group, shall be required for a corporation that is not a benefit corporation to:

- (1) amend its articles of incorporation to include a statement that it is subject to this chapter; or
  - (2) merge with or into, or enter into a share exchange with, another entity, or effect a domestication or conversion, if, as a result of the merger, share exchange, domestication, or conversion, the shares of any voting group would become, or be converted into or exchanged for the right to receive, shares of a benefit corporation or shares or interests in an entity subject to provisions of organic law analogous to those in this chapter; provided, however, that in the case of this subsection (a)(2), if the shares of one or more, but not all, voting groups are so affected, then only the shares in the voting groups so affected shall be entitled to cast votes under this subsection (a).
- (b) Unless the articles of incorporation require a greater vote, in addition to any other approval of shareholders required under this Act, the approval of at least two-thirds of the votes entitled to be cast thereon, and, if any class or series of shares is entitled to vote as a separate group thereon, the approval of at least two-thirds of the votes entitled to be cast by that voting group, shall be required for a benefit corporation to:
- (1) amend its articles of incorporation to eliminate a statement that the corporation is subject to this chapter; or
  - (2) merge with or into, or enter into a share exchange with, another entity, or effect a domestication or conversion if, as a result of the merger, share exchange, domestication, or conversion, the shares of any voting group would become, or be converted into or exchanged for the right to receive, shares or interests in an entity that is neither a benefit corporation nor an entity subject to provisions of organic law analogous to those in this chapter; provided, however, that in the case of this subsection (b)(2), if the shares of one or more, but not all, voting groups are so affected, then only the shares in the voting groups so affected shall be entitled to cast votes under this subsection (b).

## CROSS-REFERENCES

- Amendment to articles of incorporation, see ch. 10A.  
Classes or series of shares, see §§ 6.01 and 6.02.  
Conversion, see ch. 9C.  
Domestication, see ch. 9B.

Merger, see § 11.02.

“Organic law” defined, see § 1.40.

Share exchange, see § 11.03.

Shareholder vote needed to approve:

amendments to articles of incorporation, see § 10.03.

conversions, see § 9.21.

domestications, see § 9.32.

generally, see §§ 7.25 and 7.26.

mergers and share exchanges, see § 11.04.

“Voting group” defined, see § 1.40.

## OFFICIAL COMMENT

Section 17.03 does not eliminate any vote otherwise required under the Act. Section 17.03(a) increases the shareholder vote otherwise required under the Act for amendments or transactions by which a corporation becomes a benefit corporation or shares of a corporation are converted into shares of a benefit corporation or interests in an analogous domestic entity (e.g., a benefit limited liability company) or foreign entity (e.g., a foreign benefit corporation or benefit limited liability company). The vote is increased because the change from ownership of shares of a corporation to those of a benefit corporation significantly changes the nature of the shareholder’s investment. For the same reason, section 17.03(b) increases the shareholder vote requirement for amendments or transactions by which a benefit corporation ceases to be a benefit corporation or shares of a benefit corporation are converted into shares of a corporation that is not a benefit corporation or interests in a domestic or foreign entity that is not subject to provisions of organic law analogous to those of this chapter. When a transaction described in subsections (a)(2) or (b)(2) has the indicated effects on the shares of only some voting groups, the increased votes called for in subsections (a) and (b) apply only to shares in the affected voting groups.

Section 13.02 provides appraisal rights for shareholders of a corporation that is not a benefit corporation in certain actions and transactions under section 17.03(a) in which they would receive benefit corporation shares or interests in analogous entities. This is because the change to the benefit corporation structure could be viewed by shareholders as fundamentally altering the nature of their investment. The conversion of shares from those of a benefit corporation to those of a corporation or other entity that is not a benefit corporation or analogous entity, although also subject to the increased vote under section 17.03(b) for the reasons discussed above, does not trigger appraisal rights. This is because the change is not viewed as fundamentally altering the shareholder interests.

## § 17.04. DUTIES OF DIRECTORS

- (a) Each member of the board of directors of a benefit corporation, when discharging the duties of a director, shall act: (i) in a responsible and

sustainable manner, and (ii) in a manner that pursues the public benefit or benefits identified in any public benefit provision.

- (b) In fulfilling the duties under subsection (a), a director shall consider, to the extent affected, in addition to the interests of shareholders generally, the separate interests of stakeholders known to be affected by the business of the corporation including:
  - (1) the employees and work forces of the corporation, its subsidiaries, and its suppliers;
  - (2) customers;
  - (3) communities or society, including those of each community in which offices or facilities of the corporation, its subsidiaries, or its suppliers are located; and
  - (4) the local and global environment.
- (c) A director of a benefit corporation shall not, by virtue of the duties imposed by subsections (a) and (b), owe any duty to a person other than the benefit corporation due to any interest of the person in the status of the corporation as a benefit corporation or in any public benefit provision.
- (d) Unless otherwise provided in the articles of incorporation, the violation by a director of the duties imposed by subsections (a) and (b) shall not constitute an intentional infliction of harm on the corporation or the shareholders for purposes of sections 2.02(b)(4) and (5).

## CROSS-REFERENCES

Indemnification, see ch. 8E.

Limiting director liability by provision in articles of incorporation, see § 2.02.

Obligatory indemnification by provision in articles of incorporation, see § 2.02.

“Public benefit” defined, see § 17.01.

“Public benefit provision” defined, see § 17.01.

“Responsible and sustainable manner” defined, see § 17.01.

Standards of conduct for directors, see § 8.30.

Standards of liability for directors, see § 8.31.

## OFFICIAL COMMENT

Section 17.04 is the heart of the benefit corporation provisions. In addition to the duties imposed on directors of all corporations under section 8.30, section 17.04 requires directors of a benefit corporation to pursue through the business of the corporation a positive impact on society and the environment, taken as a whole, and to consider the interests of stakeholders in addition to the interests of

shareholders generally. As noted in the Official Comment to section 17.01, the “business of the corporation” encompasses both what the corporation does and how it conducts its business and operations

The list in section 17.04(b) of stakeholders to be considered is not exclusive, and stakeholders not specifically named but known to be affected by the corporation’s business must be considered. The list is not a checklist and the interests of listed stakeholders need be considered only to the extent they are known to be affected by the decision in question. In considering the interests of stakeholders known to be affected, the extent to which an action or decision affects different stakeholders should also be considered.

The standards of director conduct and liability in sections 8.30 and 8.31 apply to actions of directors of a benefit corporation under sections 17.04(a) and (b). Likewise, the presumptions and standards of judicial review, including those related to the common law business judgment rule, described in the Official Comment to section 8.31, apply to director decisions under sections 17.04(a) and (b), including, as part of such decisions, the weighting and reconciliation of competing or inconsistent shareholder and stakeholder interests. A director being a shareholder of the corporation would not, by itself, be expected to constitute a material financial interest (as defined in section 8.60) when performing the duties of a director under sections 17.04(a) or (b), or prevent the business judgment rule from applying to decisions under sections 17.04(a) or (b). Thus, if directors take into account shareholder and relevant stakeholder interests, the business judgment rule would be expected to apply to any business decision that can rationally be viewed as being consistent with the board’s duty to act in a responsible and sustainable manner and in furtherance of identified public benefit or benefits. This would be the case no matter how much weight is ultimately given to shareholder and to particular stakeholder interests.

For example, in exercising their duty to act in a responsible and sustainable manner, directors of a benefit corporation considering whether to close a facility would be required to consider the effects of closing the facility not only on shareholder interests but also on the separate interests of, among others, the workforce and community. However, after considering those effects, the directors, consistent with their duties under sections 17.04(a) and (b), could decide to close or not close the facility. This would be the case as long as their decision, taking those effects, and the interests of shareholders and other relevant stakeholders into account, can rationally be viewed as consistent with their duty to act in a responsible and sustainable manner, even if adverse to shareholder or stakeholder interests.

Sections 17.04(a) and (b) provide that all directors of a benefit corporation have the duty to act in a responsible and sustainable manner and does not provide for the creation of a “benefit director” with special duties. However, a benefit corporation may choose to assign oversight of responsibility and sustainability to a board committee. Many benefit corporations will have a chief sustainability officer or other officer with a similar role within management.

The provisions of section 17.04(c) make clear that benefit corporation duties may be enforced only by the corporation or by shareholders in a derivative proceeding brought under section 17.06.

Under section 17.04(d), if a corporation has a section 2.02(b)(4) provision in its articles of incorporation limiting the availability of money damages against directors except in certain enumerated circumstances, relief for violation of a director's duties under section 17.04 will be limited to non-monetary equitable relief, absent a financial benefit to a director to which the director is not entitled, an unlawful distribution, or an intentional violation of criminal law. Similarly, section 17.04(d) protects mandatory director indemnification rights granted in the articles of incorporation pursuant to section 2.02(b)(5) by providing that the limitations on indemnification of directors who intentionally harm either the corporation or shareholders are not applicable in the case of violations of sections 17.04(a) and (b).

## § 17.05. ANNUAL BENEFIT REPORT

- (a) No less than annually, a benefit corporation shall prepare a benefit report addressing the efforts of the corporation during the preceding year to operate in a responsible and sustainable manner, to pursue any public benefit or benefits identified in any public benefit provision, and to consider the interests described in section 17.04(b). The annual benefit report must include:
  - (1) the objectives that the board of directors has established for the corporation to operate in a responsible and sustainable manner, to pursue the public benefit or benefits identified in any public benefit provision, and to consider the interests described in section 17.04(b);
  - (2) the standards the board of directors has adopted to measure the corporation's progress in operating in a responsible and sustainable manner, in pursuing the public benefit or benefits identified in any public benefit provision, and in considering the interests described in section 17.04(b);
  - (3) if the articles of incorporation or bylaws require that the corporation use an independent third-party standard in reporting on the corporation's progress in operating in a responsible and sustainable manner, in pursuing the public benefit or benefits identified in any public benefit provision, or in considering the interests described in section 17.04(b), or if the board of directors has chosen to use such a standard, the applicable standard so required or chosen; and
  - (4) an assessment of the corporation's success in meeting the objectives and standards identified in subsections (a)(1) and (a)(2) and, if applicable, subsection (a)(3), and the basis for that assessment.

- (b) The benefit corporation shall deliver to each shareholder, or make available and provide written notice to each shareholder of the availability of, the annual benefit report required by subsection (a) on or before the earlier of:
  - (1) 120 days following the end of the fiscal year of the benefit corporation; or
  - (2) the time that the benefit corporation delivers any other annual reports or annual financial statements to its shareholders.
- (c) Any shareholder that has not received or been given access to an annual benefit report within the time required by subsection (b) may make a written request that the corporation deliver or make available the annual benefit report to the shareholder. If a benefit corporation does not deliver or make available an annual benefit report to the shareholder within five business days of receiving such request, the requesting shareholder may apply to the [name or describe court] for an order requiring delivery of or access to the annual benefit report. The court shall dispose of an action under this subsection (c) on an expedited basis
- (d) A benefit corporation shall post all of its annual benefit reports on the public portion of its website, if any. If a benefit corporation does not have a website, the benefit corporation shall provide a copy of its most recent annual benefit report, without charge, to any person that requests a copy in writing.

## CROSS-REFERENCES

“Deliver” defined, see § 1.40.

Financial statements for shareholders, see § 16.20.

“Public benefit” defined, see § 17.01.

“Public benefit provision” defined, see § 17.01.

“Responsible and sustainable manner” defined, see § 17.01.

## OFFICIAL COMMENT

The purpose of the annual benefit report is to provide a minimum level of visibility into the benefit corporation’s efforts so that shareholders may determine how successful the corporation has been in operating in a responsible and sustainable manner and pursuing the public benefit or benefits identified in any public benefit provision.

Benefit corporations and their shareholders may find that measuring sustainability results against a third-party standard, as referenced in subsection (a)(3), provides added credibility to the corporation’s sustainability efforts. A provision requiring measurement against a third-party standard may identify a particular third-party standard or may require that a third-party standard be utilized with-

out specifying the particular third-party standard to be used. Absent such a provision in the articles of incorporation or bylaws, a benefit corporation is not required to measure its progress against a third-party standard, but is required to disclose the standard it has adopted to assess its progress in operating in a responsible and sustainable manner, in pursuing the public benefit or benefits identified in any public benefit provision, and in considering the interests described in section 17.04(b).

Section 17.05(c) provides a summary remedy to a shareholder that has not received or been given access to an annual benefit report after request, similar to the remedy provided under section 16.20(e)(1) for failure to provide financial statements upon request. Unlike section 16.20(e)(5), section 17.05(c) does not impose on the corporation the expenses incurred by the shareholder in a successful proceeding under section 17.05(e). However, such expenses could be awarded by a court in an appropriate case.

## § 17.06. RIGHTS OF ACTION

- (a) Except in a proceeding authorized under section 17.05(c) or this section, no person other than the corporation, or a shareholder in the right of the corporation pursuant to subsection (b), may bring an action or assert a claim with respect to the violation of any duty applicable to a benefit corporation or any of its directors under this chapter.
- (b) Except for a proceeding brought under section 17.05(c), a proceeding by a shareholder of a benefit corporation claiming violation of any duty applicable to a benefit corporation or any of its directors under this chapter:
  - (1) must be brought in a derivative proceeding pursuant to subchapter 7D; and
  - (2) may be brought only by a shareholder of the benefit corporation that at the time of the act or omission complained of either individually, or together with other shareholders bringing such action collectively, owned directly or indirectly at least five percent of a class of the corporation's outstanding shares or, in the case of a corporation with shares traded on an organized market as described in section 13.02(b)(1)(ii), either that percentage of shares or shares with a market value of at least \$5 million at the time the proceeding is commenced.
- (c) A suit under subsection (b) may not be maintained if, during the pendency of the suit, the shareholder individually fails, or the shareholders collectively fail, to continue to own directly or indirectly the lesser of (i) the number of shares owned at the time the proceeding is commenced, (ii) a number of shares representing five percent of a class of the corpo-

ration's shares, or (iii) a number of shares with a market value of at least \$5 million.

## CROSS-REFERENCES

Derivative proceedings, see ch. 7D.

Duties of directors of a benefit corporation, see § 17.04.

## OFFICIAL COMMENT

In addition to the standing and demand requirements for bringing a derivative suit under sections 7.41 and 7.42, section 17.06(b) adds a minimum ownership threshold for shareholders to be permitted to bring a derivative proceeding for violation of the duties under chapter 17. The minimum ownership requirement does not apply in a suit under section 17.05(c) to receive or be given access to an annual benefit report. In addition, section 17.06(c) imposes a continuous ownership requirement for a shareholder to be able to maintain a derivative proceeding under section 17.06(b).

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The conforming amendments to existing section 13.02 of the Act would read as follows:

### § 13.02. RIGHT TO APPRAISAL

- (a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

\* \* \*

- (7) consummation of a conversion of the corporation to a nonprofit corporation pursuant to section 9.30; ~~or~~
- (8) consummation of a conversion of the corporation to an unincorporated entity pursuant to section 9.30; or
- (9) consummation of an action requiring the approval of shareholders pursuant to section 17.03(a)(1) or a transaction requiring the approval of shareholders pursuant to section 17.03(a)(2), except that appraisal rights shall not be available under this subsection (a)(9) to any shareholder of the corporation with respect to any class or series of shares that would not become, or be converted into or exchanged for the right to receive, shares of a benefit corporation or shares or interests in an entity subject to provisions of organic law analogous to those in chapter 17.

(b) Notwithstanding subsection (a), the availability of appraisal rights under subsections (a)(1), (2), (3), (4), (6), ~~and (8)~~, and (9) shall be limited in accordance with the following provisions:

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Current chapter 17 of the Act would be renumbered as chapter 18, and the sections of current chapter 17 would be renumbered as sections 18.01–18.05, respectively. Accordingly, cross-references to sections of chapter 17 (in sections 1.01, 1.02, 15.01, and 15.03) would be renumbered to correspond to sections of chapter 18.