

CHAPTER 142
SB 41 – FINAL VERSION

03/21/13 0868s
5June2013... 1778h
06/12/13 2181EBA

2013 SESSION

13-0262
03/09

SENATE BILL **41**

AN ACT revising the New Hampshire business corporations act, RSA 293-A.

SPONSORS: Sen. Bradley, Dist 3; Sen. Boutin, Dist 16; Sen. Carson, Dist 14; Sen. Hosmer, Dist 7; Sen. Kelly, Dist 10; Sen. Larsen, Dist 15; Sen. Lasky, Dist 13; Sen. Odell, Dist 8; Sen. Rausch, Dist 19; Sen. Soucy, Dist 18; Sen. Stiles, Dist 24; Sen. Watters, Dist 4; Sen. Woodburn, Dist 1; Rep. John Hunt, Ches 11; Rep. Chandler, Carr 1; Rep. G. Richardson, Merr 10; Rep. Butler, Carr 7

COMMITTEE: Commerce

ANALYSIS

This bill revises the New Hampshire business corporations act, RSA 293-A.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT revising the New Hampshire business corporations act, RSA 293-A.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 142:1 New Hampshire Business Corporation Act. RSA 293-A is repealed and reenacted to read
2 as follows:

3 CHAPTER 293-A

4 NEW HAMPSHIRE BUSINESS CORPORATION ACT

5 General Provisions

6 Part A

7 Short Title and Reservation of Power

8 293-A:1.01 Short Title. This chapter shall be known and may be cited as the “New Hampshire
9 Business Corporation Act.”

10 293-A:1.02 Reservation of Power to Amend or Repeal. The general court has power to amend or
11 repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this
12 chapter are governed by the amendment or repeal.

13 Part B

14 Filing Documents

15 293-A:1.20 Requirements for Documents; Extrinsic Facts.

16 (a) A document must satisfy the requirements of this section, and of any other section
17 that adds to or varies these requirements, to be entitled to filing by the secretary of state.

18 (b) This chapter must require or permit filing the document in the office of the secretary
19 of state.

20 (c) The document must contain the information required by this chapter. It may contain
21 other information as well.

22 (d) The document must be typewritten or printed or, if electronically transmitted, it
23 must be in a format that can be retrieved or reproduced in typewritten or printed form.

24 (e) The document must be in the English language. A corporate name need not be in
25 English if written in English letters or Arabic or Roman numerals.

26 (f) The document must be executed:

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1 (1) by the chairman of the board of directors of a domestic or foreign corporation, by
2 its president, or by another of its officers;

3 (2) if directors have not been selected or the corporation has not been formed, by an
4 incorporator; or

5 (3) if the corporation is in the hands of a receiver, trustee, or other court-appointed
6 fiduciary, by that fiduciary.

7 (g) The person executing the document shall sign it and state beneath or opposite the
8 person's signature the person's name and the capacity in which the document is signed. The
9 document may but need not contain:

10 (1) The corporate seal.

11 (2) An attestation by the secretary or an assistant secretary.

12 (3) An acknowledgment, verification, or proof.

13 (h) If the secretary of state has prescribed a mandatory form for the document under
14 RSA 293-A:1.21, the document must be in or on the prescribed form.

15 (i) The document must be delivered to the office of the secretary of state for filing and
16 shall be accompanied by the correct filing fee, and any franchise tax, license fee, or penalty required
17 by this chapter or other law. Delivery may be made by electronic transmission if and to the extent
18 permitted by the secretary of state.

19 (j) Whenever a provision of this chapter permits any of the terms of a plan or a filed
20 document to be dependent on facts objectively ascertainable outside the plan or filed document, the
21 following provisions apply:

22 (1) The manner in which the facts will operate upon the terms of the plan or filed
23 document shall be set forth in the plan or filed document.

24 (2) The facts may include, but are not limited to:

25 (i) any of the following that is available in a nationally recognized news or
26 information medium either in print or electronically: statistical or market indices, market prices of
27 any security or group of securities, interest rates, currency exchange rates, or similar economic or
28 financial data;

29 (ii) a determination or action by any person or body, including the corporation or
30 any other party to a plan or filed document; or

31 (iii) the terms of, or actions taken under, an agreement to which the corporation
32 is a party, or any other agreement or document.

33 (3) As used in this subsection:

34 (i) "filed document" means a document filed with the secretary of state under any
35 provision of this chapter except RSA 293-A:15 or RSA 293-A:16.21; and

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1 (ii) “plan” means a plan of domestication, entity conversion, merger, or share
2 exchange.

3 (4) The following provisions of a plan or filed document may not be made dependent
4 on facts outside the plan or filed document:

5 (i) The name and address of any person required in a filed document.

6 (ii) The registered office of any entity required in a filed document.

7 (iii) The registered agent of any entity required in a filed document.

8 (iv) The number of authorized shares and designation of each class or series of
9 shares.

10 (v) The effective date of a filed document.

11 (vi) Any required statement in a filed document of the date on which the
12 underlying transaction was approved or the manner in which that approval was given.

13 (5) If a provision of a filed document is made dependent on a fact ascertainable
14 outside of the filed document, and that fact is not ascertainable by reference to a source described in
15 RSA 293-A:1.20(j)(2)(i) or a document that is a matter of public record, or the affected shareholders
16 have not received notice of the fact from the corporation, then the corporation shall file with the
17 secretary of state articles of amendment setting forth the fact promptly after the time when the fact
18 referred to is first ascertainable or thereafter changes. Articles of amendment under RSA 293-
19 A:1.20(j)(5) are deemed to be authorized by the authorization of the original filed document or plan to
20 which they relate and may be filed by the corporation without further action by the board of directors
21 or the shareholders.

22 293-A:1.21 Forms.

23 (a) The secretary of state may prescribe and furnish on request forms for:

24 (1) an application for a certificate of existence.

25 (2) a foreign corporation’s application for a certificate of authority to transact
26 business in this state.

27 (3) a foreign corporation’s application for a certificate of withdrawal.

28 (4) the annual report.

29 If the secretary of state so requires, use of these forms is mandatory.

30 (b) The secretary of state may prescribe and furnish on request forms for other
31 documents required or permitted to be filed by this chapter but their use is not mandatory.

32 293-A:1.22 Filing, Service, and Copying Fees.

33 (a) The secretary of state shall collect the following fees for:

34 (1) Articles of incorporation \$ 50

35 (2) Amendment of articles of incorporation \$ 35

36 (3) Restatement of articles of incorporation with

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1	amendment of articles	\$ 35
2	(4) Articles or certificate of merger or articles of	
3	share exchange	\$ 35
4	(5) Articles of domestication	\$ 35
5	(6) Articles of charter surrender	\$ 35
6	(7) Articles of domestication and conversion	\$ 35
7	(8) Articles of entity conversion	\$ 35
8	(9) Statement of Abandonment of a Domestication	\$ 35
9	(9A) Statement of Abandonment of a Merger or Share Exchange	\$ 35
10	(10) Articles of dissolution	\$ 35
11	(11) Articles of revocation of dissolution	\$ 35
12	(12) Application for reinstatement following	
13	administrative dissolution	\$ 135
14	(13) Application for certificate of authority	\$ 50
15	(14) Application for amended certificate of authority	\$ 35
16	(15) Application for certificate of withdrawal	\$ 35
17	(16) Articles of correction	\$ 35
18	(17) Late filing	\$ 50
19	(18) Late reinstatement fee	\$ 500
20	(19) Restatement of articles of incorporation	
21	without amendment	\$ 35
22	(b) The secretary of state shall collect the following fees for:	
23	(1) Application for reserved name	\$ 15
24	(2) Notice of transfer of reserved name	\$ 15
25	(3) Application for registered name	\$ 25
26	(4) Application for renewal of registered name	\$ 25
27	(5) Statement of change of registered agent or registered	
28	office, or both	\$ 15
29	(6) Agent's statement of resignation	No fee
30	(7) Certificate of judicial dissolution	No fee
31	(8) Annual report	\$ 100
32	(9) Application for certificate of existence or authorization	\$ 5
33	(10) Application for certificate of existence or	
34	authorization in long form	\$ 10
35	(11) Any other document required or permitted	
36	to be filed by this chapter	\$ 15

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1 (c) The secretary of state shall collect a fee of \$25 each time process is served on the
2 secretary of state under this chapter. The party to a proceeding causing service of process is entitled
3 to recover this fee as costs if such party prevails in the proceeding.

4 (d) The secretary of state shall collect the following fees for copying and certifying the
5 copy of any filed document relating to a domestic or foreign corporation:

6 (1) \$1 a page for copying; and

7 (2) \$5 for the certificate.

8 (e) The secretary of state may collect fees for certain services, including but not limited to

9 (1) Expedited service or filing requests.

10 (2) Direct access to corporations data.

11 (3) Computer tapes.

12 (4) Microfiche.

13 (5) Customized lists and reports.

14 (6) Corporate information via telephone-based systems or facsimile machine.

15 (7) Other information services.

16 (8) Electronic copies of data and/or images.

17 (f) The secretary of state may establish and collect such fees for the special services
18 listed in subsection (e) as reasonably determined from time to time by the secretary of state.

19 293-A:1.23 Effective Time and Date of Document.

20 (a) Except as provided in subsections (b) and (c) and RSA 293-A:1.24(c), a document
21 accepted for filing is effective:

22 (1) At the date and time of filing, as evidenced by such means as the secretary of
23 state may use for the purpose of recording the date and time of filing; or

24 (2) at the time specified in the document as its effective time on the date it is filed.

25 (b) A document may specify a delayed effective time and date, and if it does so the
26 document becomes effective at the time and date specified. If a delayed effective date but no time is
27 specified, the document is effective at the close of business on that date. A delayed effective date for
28 a document may not be later than the 90th day after the date it is filed.

29 (c) A document filed electronically shall be effective upon the date and time of
30 acceptance by the secretary of state corporate database and application or as specified pursuant to
31 subparagraph (b).

32 293-A:1.24 Correcting Filed Document.

33 (a) A domestic or foreign corporation may correct a document filed with the secretary of
34 state within one year of filing, if:

35 (1) the document contains an inaccuracy; or

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1 (2) the document was defectively executed, attested, sealed, verified, or
2 acknowledged.

3 (b) A document is corrected:

4 (1) by preparing articles of correction that:

5 (i) describe the document (including its filing date) or attach a copy of it to the
6 articles; and

7 (ii) specify the inaccuracy or defect to be corrected; and

8 (iii) correct the inaccuracy or defect; and

9 (2) by delivering the articles to the secretary of state for filing.

10 (c) Articles of correction are effective on the effective date of the document they correct
11 except as to persons relying on the uncorrected document and adversely affected by the correction.
12 As to those persons, articles of correction are effective when filed.

13 293-A:1.25 Filing Duty of Secretary of State.

14 (a) If a document delivered to the office of the secretary of state for filing satisfies the
15 requirements of RSA 293-A:1.20, the secretary of state shall file it.

16 (b) The secretary of state files a document by stamping or otherwise endorsing “Filed”,
17 together with his or her name and official title and the date of receipt on the filed document. After
18 filing a document, except as provided in RSA 293-A:5.03 and RSA 293-A:15.09, the secretary of state
19 shall deliver to the domestic or foreign corporation or its representative a copy of the document with
20 an acknowledgement of the date of filing.

21 (c) If the secretary of state refuses to file a document, it shall be returned to the domestic
22 or foreign corporation or its representative within 30 days after the document was delivered,
23 together with a brief, written explanation of the reason for the refusal.

24 (d) The secretary of state’s duty to file documents under this section is ministerial. The
25 secretary’s filing or refusing to file a document does not:

26 (1) affect the validity or invalidity of the document in whole or part;

27 (2) relate to the correctness or incorrectness of information contained in the
28 document; or

29 (3) create a presumption that the document is valid or invalid or that information
30 contained in the document is correct or incorrect.

31 (e) The secretary of state and those acting on his or her behalf shall incur no liability,
32 either personally or on behalf of the state of New Hampshire, as a result of defects or inconsistencies
33 in the documents recorded by them under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301,
34 RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349 or as a result of negligent
35 acts or omissions in the handling and recording of those documents.

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1 (f) If, at any time, the secretary of state or any of those acting on his or her behalf
2 determines that any document recorded by them under RSA 292, RSA 293-A, RSA 293-B, RSA 294-
3 A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349 contains
4 defects or inconsistencies, the secretary of state shall notify the filer of said document, in writing, of
5 any defects and inconsistencies.

6 293-A:1.26 Appeal From Secretary of State's Refusal to File Document.

7 (a) If the secretary of state refuses to file a document delivered for filing, the domestic or
8 foreign corporation may appeal the refusal within 30 days after the return of the document to the
9 superior court of the county where the corporation's principal office (or, if none in this state, its
10 registered office) is or will be located. The appeal is commenced by petitioning the court to compel
11 filing the document and by attaching to the petition the document and the secretary of state's
12 explanation of his or her refusal to file.

13 (b) The court may summarily order the secretary of state to file the document or take
14 other action the court considers appropriate.

15 (c) The court's final decision may be appealed as in other civil proceedings.

16 293-A:1.27 Evidentiary Effect of Copy of Filed Document. A certificate from the secretary of
17 state delivered attached or affixed to a copy of a document filed by the secretary of state, bearing his
18 or her signature and the seal of this state (both of which may be in facsimile) is conclusive evidence
19 that the original document is on file with the secretary of state.

20 293-A:1.28 Certificate of Existence.

21 (a) Anyone may apply to the secretary of state to furnish a certificate of existence for a
22 domestic corporation or a certificate of authorization for a foreign corporation.

23 (b) A certificate of existence or authorization sets forth:

24 (1) the domestic corporation's corporate name or the foreign corporation's corporate
25 name used in this state;

26 (2) that:

27 (i) the domestic corporation is duly incorporated under the law of this state and
28 the date of its incorporation; or

29 (ii) that the foreign corporation is authorized to transact business in this state;

30 (3) that all fees, taxes, and penalties owed to this state have been paid, if:

31 (i) payment is reflected in the records of the secretary of state; and

32 (ii) nonpayment affects the existence or authorization of the domestic or foreign
33 corporation;

34 (4) that its most recent annual report has been filed with the secretary of state;

35 (5) that articles of dissolution have not been filed; and

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1 business corporation with the secretary of state under any provision of this chapter except RSA 293-
2 A:16.21.

3 (2) “Authorized shares” means the shares of all classes a domestic or foreign
4 corporation is authorized to issue.

5 (3) “Conspicuous” means so written, displayed, or presented that a reasonable
6 person against whom the writing is to operate should have noticed it. For example, text in italics,
7 boldface, contrasting color, capitals, or underlined is conspicuous.

8 (4) “Corporation,” “domestic corporation” or “domestic business corporation” means a
9 corporation for profit, which is not a foreign corporation, incorporated under or subject to the
10 provisions of this chapter.

11 (5) “Deliver” or “delivery” means any method of delivery used in conventional
12 commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in
13 accordance with RSA 293-A:1.41, by electronic transmission.

14 (6) “Distribution” means a direct or indirect transfer of money or other property
15 (except its own shares) or incurrance of indebtedness by a corporation to or for the benefit of its
16 shareholders in respect of any of its shares. A distribution may be in the form of a declaration or
17 payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of
18 indebtedness; or otherwise.

19 (6A) “Document” means (i) any tangible medium on which information is inscribed,
20 and includes any writing or written instrument, or (ii) an electronic record.

21 (6B) “Domestic unincorporated entity” means an unincorporated entity whose
22 internal affairs are governed by the laws of this state.

23 (7) “Effective date of notice” is defined in RSA 293-A:1.41(i).

24 (7A) “Electronic” means relating to technology having electrical, digital, magnetic,
25 wireless, optical, electromagnetic, or similar capabilities.

26 (7B) “Electronic record” means information that is stored in an electronic or other
27 medium and is retrievable in paper form through an automated process used in conventional
28 commercial practice, unless otherwise authorized in accordance with RSA 293-A:1.41(j).

29 (7C) “Electronic transmission” or “electronically transmitted,” means any form or
30 process of communication, not directly involving the physical transfer of paper or another tangible
31 medium, which (a) is suitable for the retention, retrieval, and reproduction of information by the
32 recipient, and (b) is retrievable in paper form by the recipient through an automated process used in
33 conventional commercial practice, unless otherwise authorized in accordance with RSA 293-A:1.41(j).

34 (7D) “Eligible entity” means a domestic or foreign unincorporated entity.

35 (7E) “Eligible interests” means interests or memberships.

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1 (8) “Employee” includes an officer but not a director. A director may accept duties
2 that make the director also an employee.

3 (9) “Entity” includes domestic and foreign business corporation; estate; trust;
4 domestic and foreign unincorporated entity; and state, United States, and foreign government.

5 (9A) The phrase “facts objectively ascertainable” outside of a filed document or plan
6 is defined in RSA 293-A:1.20(j).

7 (9AA) “Expenses” means reasonable expenses of any kind that are incurred in
8 connection with a matter.

9 (9B) “Filing entity” means an unincorporated entity that is of a type that is created
10 by filing a public organic document.

11 (10) “Foreign corporation” means a corporation incorporated under a law other than
12 the law of this state, which would be a business corporation if incorporated under the laws of this
13 state.

14 (10A) “Foreign unincorporated entity” means an unincorporated entity whose
15 internal affairs are governed by an organic law of a jurisdiction other than this state.

16 (11) “Governmental subdivision” includes authority, county, district, and
17 municipality.

18 (12) “Includes” denotes a partial definition.

19 (13) “Individual” means a natural person and includes the estate of an incompetent
20 or deceased individual.

21 (13A) “Interest” means either or both of the following rights under the organic law of
22 an unincorporated entity:

23 (i) the right to receive distributions from the entity either in the ordinary course
24 or upon liquidation; or

25 (ii) the right to receive notice or vote on issues involving its internal affairs,
26 other than as an agent, assignee, proxy or person responsible for managing its business and affairs.

27 (13B) “Interest holder” means a person who holds of record an interest.

28 (14) “Means” denotes an exhaustive definition.

29 (14A) “Nonfiling entity” means an unincorporated entity that is of a type that is not
30 created by filing a public organic document.

31 (15) “Notice” is defined in RSA 293-A:1.41.

32 (15A) “Organic document” means a public organic document or a private organic
33 document.

34 (15B) “Organic law” means the statute governing the internal affairs of a domestic or
35 foreign business or unincorporated entity.

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1 (15C) “Owner liability” means personal liability for a debt, obligation, or liability of a
2 domestic or foreign business or unincorporated entity that is imposed on a person:

3 (i) solely by reason of the person’s status as a shareholder, member, or interest
4 holder; or

5 (ii) by the articles of incorporation, bylaws, or an organic document under a
6 provision of the organic law of an entity authorizing the articles of incorporation, bylaws, or an
7 organic document to make one or more specified shareholders, members, or interest holders liable in
8 their capacity as shareholders, members, or interest holders for all or specified debts, obligations, or
9 liabilities of the entity.

10 (16) “Person” includes an individual and an entity.

11 (17) “Principal office” means the office (in or out of this state) so designated in the
12 annual report where the principal executive offices of a domestic or foreign corporation are located.

13 (17A) “Private organic document” means any document (other than the public
14 organic document, if any) that determines the internal governance of an unincorporated entity.
15 Where a private organic document has been amended or restated, the term means the private
16 organic document as last amended or restated.

17 (17B) “Public organic document” means the document, if any, that is filed of public
18 record to create an unincorporated entity. Where a public organic document has been amended or
19 restated, the term means the public organic document as last amended or restated.

20 (18) “Proceeding” includes civil suit and criminal, administrative, and investigatory
21 action.

22 (18A) “Public corporation” means a corporation that has shares listed on a national
23 securities exchange or regularly traded in a market maintained by one or more members of a
24 national securities association.

25 (18B) “Qualified director” is defined in RSA 293-A:1.43.

26 (19) “Record date” means the date established on which a corporation determines the
27 identity of its shareholders and their shareholdings for purposes of this chapter. The determinations
28 shall be made as of the close of business on the record date unless another time for doing so is
29 specified when the record date is fixed.

30 (20) “Secretary” means the corporate officer to whom the board of directors has
31 delegated responsibility under RSA 293-A:8.40(c) for custody of the minutes of the meetings of the
32 board of directors and of the shareholders and for authenticating records of the corporation.

33 (21) “Shareholder” means the person in whose name shares are registered in the
34 records of a corporation or the beneficial owner of shares to the extent of the rights granted by a
35 nominee certificate on file with a corporation.

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1 (22) “Shares” means the units into which the proprietary interests in a corporation
2 are divided.

3 (22A) “Sign” or “signature” means, with present intent to authenticate or adopt a
4 document, to execute or adopt a tangible symbol to a document, including any manual, facsimile, or
5 conformed signature, or electronic signature under RSA 294-E.

6 (i) to execute or adopt a tangible symbol to a document, and includes any
7 manual, facsimile, or conformed signature; or

8 (ii) to attach to or logically associate with an electronic transmission an
9 electronic sound, symbol, or process, and includes an electronic signature in an electronic
10 transmission.

11 (23) “State,” when referring to a part of the United States, includes a state and
12 commonwealth (and their agencies and governmental subdivisions) and a territory and insular
13 possession (and their agencies and governmental subdivisions) of the United States.

14 (24) “Subscriber” means a person who subscribes for shares in a corporation,
15 whether before or after incorporation.

16 (24A) “Unincorporated entity” means an organization or artificial legal person that
17 either has a separate legal existence or has the power to acquire an estate in real property in its own
18 name and that is not any of the following: a domestic or foreign business or nonprofit corporation, an
19 estate, a trust, a state, the United States, or a foreign government. The term includes a general
20 partnership, limited liability company, limited partnership, business trust, joint stock association,
21 and unincorporated nonprofit association.

22 (25) “United States” includes district, authority, bureau, commission, department,
23 and any other agency of the United States.

24 (26) “Voting group” means all shares of one or more classes or series that under the
25 articles of incorporation or this chapter are entitled to vote and be counted together collectively on a
26 matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this
27 chapter to vote generally on the matter are for that purpose a single voting group.

28 (27) “Voting power” means the current power to vote in the election of directors.

29 (28) “Writing” or “written” means any information in the form of a document.

30 293-A:1.41 Notices and Other Communications.

31 (a) Notice under this chapter must be in writing unless oral notice is reasonable in the
32 circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or
33 other communication under this chapter must be in English.

34 (b) A notice or other communication may be given or sent by any method of delivery,
35 except that electronic transmissions must be in accordance with this section. If these methods of
36 delivery are impracticable, a notice or other communication may be communicated by a newspaper of

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1 general circulation in the area where published, or by radio, television, or other form of public
2 broadcast communication.

3 (c) Notice or other communication to a domestic or foreign corporation authorized to
4 transact business in this state may be delivered to its registered agent at its registered office or to
5 the secretary of the corporation at its principal office shown in its most recent annual report or, in
6 the case of a foreign corporation that has not yet delivered an annual report, in its application for a
7 certificate of authority.

8 (d) Notice or other communications may be delivered by electronic transmission if
9 consented to by the recipient or if authorized by subsection (j).

10 (e) Any consent under subsection (d) may be revoked by the person who consented by
11 written or electronic notice to the person to whom the consent was delivered. Any such consent is
12 deemed revoked if (1) the corporation is unable to deliver 2 consecutive electronic transmissions
13 given by the corporation in accordance with such consent, and (2) such inability becomes known to
14 the secretary or an assistant secretary of the corporation or to the transfer agent, or other person
15 responsible for the giving of notice or other communications; provided, however, the inadvertent
16 failure to treat such inability as a revocation shall not invalidate any meeting or other action.

17 (f) Unless otherwise agreed between the sender and the recipient, an electronic
18 transmission is received when:

19 (1) it enters an information processing system that the recipient has designated or
20 uses for the purposes of receiving electronic transmissions or information of the type sent, and from
21 which the recipient is able to retrieve the electronic transmission; and

22 (2) it is in a form capable of being processed by that system.

23 (g) Receipt of an electronic acknowledgement from an information processing system
24 described in subsection (f)(1) establishes that an electronic transmission was received but, by itself,
25 does not establish that the content sent corresponds to the content received.

26 (h) An electronic transmission is received under this section even if no individual is
27 aware of its receipt.

28 (i) Notice or other communication, if in a comprehensible form or manner, is effective at
29 the earliest of the following:

30 (1) if in physical form, the earliest of when it is actually received, or when it is left
31 at:

32 (i) a shareholder's address shown on the corporation's record of shareholders
33 maintained by the corporation under RSA 293-A:16.01(c);

34 (ii) a director's residence or usual place of business; or

35 (iii) the corporation's principal place of business;

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1 (2) if mailed postage prepaid and correctly addressed to a shareholder, upon deposit
2 in the United States mail;

3 (3) if mailed by United States mail postage prepaid and correctly addressed to a
4 recipient other than a shareholder, the earliest of when it is actually received, or:

5 (i) if sent by registered or certified mail, return receipt requested, the date
6 shown on the return receipt signed by or on behalf of the addressee; or

7 (ii) five days after it is deposited in the United States mail;

8 (4) if an electronic transmission, when it is received as provided in subsection (f); and

9 (5) if oral, when communicated.

10 (j) A notice or other communication may be in the form of an electronic transmission
11 that cannot be directly reproduced in paper form by the recipient through an automated process used
12 in conventional commercial practice only if (i) the electronic transmission is otherwise retrievable in
13 perceivable form, and (ii) the sender and the recipient have consented in writing to the use of such
14 form of electronic transmission.

15 (k) If this chapter prescribes requirements for notices or other communications in
16 particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe
17 requirements for notices or other communications, not inconsistent with this section or other
18 provisions of this chapter, those requirements govern. The articles of incorporation or bylaws may
19 authorize or require delivery of notices of meetings of directors by electronic transmission.

20 293-A:1.42 Number of Shareholders.

21 (a) For purposes of this chapter, the following identified as a shareholder in a
22 corporation's current record of shareholders constitutes one shareholder:

23 (1) three or fewer co-owners;

24 (2) a corporation, partnership, trust, estate, or other entity;

25 (3) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate,
26 or account.

27 (b) For purposes of this chapter, shareholdings registered in substantially similar names
28 constitute one shareholder if it is reasonable to believe that the names represent the same person.

29 293-A:1.43 Qualified Director.

30 (a) A "qualified director" is a director who, at the time action is to be taken under:

31 (1) RSA 293-A:7.44, does not have (i) a material interest in the outcome of the
32 proceeding, or (ii) a material relationship with a person who has such an interest;

33 (2) RSA 293-A:8.53 or RSA 293-A:8.55, (i) is not a party to the proceeding, (ii) is not
34 a director as to whom a transaction is a director's conflicting interest transaction or who sought a
35 disclaimer of the corporation's interest in a business opportunity under RSA 293-A:8.70, which

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1 transaction or disclaimer is challenged in the proceeding, and (iii) does not have a material
2 relationship with a director described in either clause (i) or clause (ii) of this subsection (a)(2);

3 (3) RSA 293-A:8.62, is not a director (i) as to whom the transaction is a director's
4 conflicting interest transaction, or (ii) who has a material relationship with another director as to
5 whom the transaction is a director's conflicting interest transaction; or

6 (4) RSA 293-A:8.70, would be a qualified director under subsection (a)(3) if the
7 business opportunity were a director's conflicting interest transaction.

8 (b) For purposes of this section:

9 (1) "material relationship" means a familial, financial, professional, employment, or
10 other relationship that would reasonably be expected to impair the objectivity of the director's
11 judgment when participating in the action to be taken; and

12 (2) "material interest" means an actual or potential benefit or detriment (other than one
13 which would devolve on the corporation or the shareholders generally) that would reasonably be expected
14 to impair the objectivity of the director's judgment when participating in the action to be taken.

15 (c) The presence of one or more of the following circumstances shall not automatically
16 prevent a director from being a qualified director:

17 (1) nomination or election of the director to the current board by any director who is
18 not a qualified director with respect to the matter (or by any person that has a material relationship
19 with that director), acting alone or participating with others;

20 (2) service as a director of another corporation of which a director who is not a
21 qualified director with respect to the matter (or any individual who has a material relationship with
22 that director), is or was also a director; or

23 (3) with respect to action to be taken under RSA 293-A:7.44, status as a named
24 defendant, as a director against whom action is demanded, or as a director who approved the conduct
25 being challenged.

26 293-A:1.44 Householding.

27 (a) A corporation has delivered written notice or any other report or statement under
28 this chapter, the articles of incorporation or the bylaws to all shareholders who share a common
29 address if:

30 (1) The corporation delivers one copy of the notice, report, or statement to the
31 common address;

32 (2) The corporation addresses the notice, report, or statement to those shareholders
33 either as a group or to each of those shareholders individually or to the shareholders in a form to
34 which each of those shareholders has consented; and

35 (3) Each of those shareholders consents to delivery of a single copy of such notice,
36 report, or statement to the shareholders' common address. Any such consent shall be revocable by

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1 any of such shareholders who deliver written notice of revocation to the corporation. If such written
2 notice of revocation is delivered, the corporation shall begin providing individual notices, reports or
3 other statements to the revoking shareholder no later than 30 days after delivery of the written
4 notice of revocation.

5 (b) Any shareholder who fails to object by written notice to the corporation, within 60
6 days of written notice by the corporation of its intention to send single copies of notices, reports, or
7 statements to shareholders who share a common address as permitted by subsection (a), shall be
8 deemed to have consented to receiving such single copy at the common address.

9 Incorporation

10 293-A:2.01 Incorporators. One or more persons may act as the incorporator or incorporators of a
11 corporation by delivering articles of incorporation and the certificate required by RSA 421-B:11, II(a)
12 to the secretary of state for filing.

13 293-A:2.02 Articles of Incorporation.

14 (a) The articles of incorporation must set forth:

- 15 (1) a corporate name for the corporation that satisfies the requirements of RSA 293-A:4.01;
16 (2) the number of shares the corporation is authorized to issue;
17 (3) the street address of the corporation's initial registered office and the name of its
18 initial registered agent at that office; and
19 (4) the name and address of each incorporator.

20 (b) The articles of incorporation may set forth:

- 21 (1) the names and addresses of the individuals who are to serve as the initial
22 directors;
23 (2) provisions not inconsistent with law regarding:
24 (i) the purpose or purposes for which the corporation is organized;
25 (ii) managing the business and regulating the affairs of the corporation;
26 (iii) defining, limiting, and regulating the powers of the corporation, its board of
27 directors, and shareholders;
28 (iv) a par value for authorized shares or classes of shares;
29 (v) the imposition of personal liability on shareholders for the debts of the
30 corporation to a specified extent and upon specified conditions;
31 (3) any provision that under this chapter is required or permitted to be set forth in
32 the bylaws;
33 (4) a provision eliminating or limiting the liability of a director, an officer, or both, to
34 the corporation or its shareholders for money damages for any action taken, or any failure to take
35 any action, as a director or an officer, except liability for (A) the amount of a financial benefit received
36 by a director or an officer to which the director or officer is not entitled; (B) an intentional infliction

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1 of harm on the corporation or the shareholders; (C) a violation of RSA 293-A:8.33; or (D) an
2 intentional violation of criminal law; and

3 (5) a provision permitting or making obligatory indemnification of a director for
4 liability (as defined in RSA 293-A:8.50(a)(3)) to any person for any action taken, or any failure to
5 take any action, as a director, except liability for (A) receipt of a financial benefit to which the
6 director is not entitled, (B) an intentional infliction of harm on the corporation or its shareholders,
7 (C) a violation of RSA 293-A:8.33, or (D) an intentional violation of criminal law.

8 (c) The articles of incorporation need not set forth any of the corporate powers
9 enumerated in this chapter.

10 (d) Provisions of the articles of incorporation may be made dependent upon facts
11 objectively ascertainable outside the articles of incorporation in accordance with RSA 293-A:1.20(j).

12 293-A:2.03 Incorporation.

13 (a) Unless an effective time or delayed effective time and date are specified in accordance
14 with RSA 293-A:1.23, the corporate existence begins when the articles of incorporation are filed.

15 (b) The secretary of state's filing of the articles of incorporation is conclusive proof that
16 the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the
17 state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

18 293-A:2.04 Liability for Preincorporation Transactions. All persons purporting to act as or on
19 behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and
20 severally liable for all liabilities created while so acting.

21 293-A:2.05 Organization of Corporation.

22 (a) After incorporation:

23 (1) if initial directors are named in the articles of incorporation, the initial directors
24 shall hold an organizational meeting, at the call of a majority of the directors, to complete the
25 organization of the corporation by appointing officers, adopting bylaws, and carrying on any other
26 business brought before the meeting;

27 (2) if initial directors are not named in the articles, the incorporator or incorporators
28 shall hold an organizational meeting at the call of a majority of the incorporators:

29 (i) to elect directors and complete the organization of the corporation; or

30 (ii) to elect a board of directors who shall complete the organization of the
31 corporation.

32 (b) Action required or permitted by this chapter to be taken by incorporators at an
33 organizational meeting may be taken without a meeting if the action taken is evidenced by one or
34 more written consents describing the action taken and signed by each incorporator.

35 (c) An organizational meeting may be held in or out of this state.

36 293-A:2.06 Bylaws.

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1 (a) Every corporation incorporated under this chapter has the purpose of engaging in
2 any lawful business unless a more limited purpose is set forth in the articles of incorporation.

3 (b) A corporation engaging in a business that is subject to regulation under another
4 statute of this state may incorporate under this chapter only if permitted by, and subject to all
5 limitations of, the other statute.

6 293-A:3.02 General Powers.

7 (a) Unless its articles of incorporation provide otherwise, every corporation has
8 perpetual duration and succession in its corporate name and has the same powers as an individual to
9 do all things necessary or convenient to carry out its business and affairs, including without
10 limitation power:

11 (1) to sue and be sued, complain, and defend in its corporate name;

12 (2) to have a corporate seal, which may be altered at will, and to use it, or a facsimile
13 of it, by impressing or affixing it or in any other manner reproducing it;

14 (3) to make and amend bylaws, not inconsistent with its articles of incorporation or
15 with the laws of this state, for managing the business and regulating the affairs of the corporation;

16 (4) to purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and
17 otherwise deal with, real or personal property, or any legal or equitable interest in property,
18 wherever located;

19 (5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or
20 any part of its property;

21 (6) to purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell,
22 mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or
23 obligations of, any other entity;

24 (7) to make contracts and guarantees, incur liabilities, borrow money, issue its notes,
25 bonds, and other obligations (which may be convertible into or include the option to purchase other
26 securities of the corporation), and secure any of its obligations by mortgage or pledge of any of its
27 property, franchises, or income;

28 (8) to lend money, invest and reinvest its funds, and receive and hold real and
29 personal property as security for repayment;

30 (9) to be a promoter, partner, member, associate, or manager of any partnership,
31 joint venture, trust, or other entity;

32 (10) to conduct its business, locate offices, and exercise the powers granted by this
33 chapter within or without this state;

34 (11) to elect directors and appoint officers, employees, and agents of the corporation,
35 define their duties, fix their compensation, and lend them money and credit;

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1 (12) to pay pensions and establish pension plans, pension trusts, profit sharing
2 plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its
3 current or former directors, officers, employees, and agents;

4 (13) to make donations for the public welfare or for charitable, scientific, or
5 educational purposes;

6 (14) to transact any lawful business that will aid governmental policy; and

7 (15) to make payments or donations, or do any other act, not inconsistent with law,
8 that furthers the business and affairs of the corporation.

9 293-A:3.03 Emergency Powers.

10 (a) In anticipation of or during an emergency defined in subsection (d), the board of
11 directors of a corporation may:

12 (1) modify lines of succession to accommodate the incapacity of any director, officer,
13 employee, or agent; and

14 (2) relocate the principal office, designate alternative principal offices or regional
15 offices, or authorize the officers to do so.

16 (b) During an emergency defined in subsection (d), unless emergency bylaws provide
17 otherwise:

18 (1) notice of a meeting of the board of directors need be given only to those directors
19 whom it is practicable to reach and may be given in any practicable manner, including by publication
20 and radio; and

21 (2) one or more officers of the corporation present at a meeting of the board of
22 directors may be deemed to be directors for the meeting, in order of rank and within the same rank
23 in order of seniority, as necessary to achieve a quorum.

24 (c) Corporate action taken in good faith during an emergency under this section to
25 further the ordinary business affairs of the corporation:

26 (1) binds the corporation; and

27 (2) may not be used to impose liability on a corporate director, officer, employee, or
28 agent.

29 (d) An emergency exists for purposes of this section if a quorum of the corporation's
30 directors cannot readily be assembled because of some catastrophic event.

31 293-A:3.04 Ultra Vires.

32 (a) Except as provided in subsection (b), the validity of corporate action may not be
33 challenged on the ground that the corporation lacks or lacked power to act.

34 (b) A corporation's power to act may be challenged:

35 (1) in a proceeding by a shareholder against the corporation to enjoin the act;

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1 (2) in a proceeding by the corporation, directly, derivatively, or through a receiver,
2 trustee, or other legal representative, against an incumbent or former director, officer, employee, or
3 agent of the corporation; or

4 (3) in a proceeding by the attorney general under RSA 293-A:14.30.

5 (c) In a shareholder's proceeding under subsection (b)(1) to enjoin an unauthorized
6 corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are
7 parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered
8 by the corporation or another party because of enjoining the unauthorized act.

9 Name

10 293-A:4.01 Corporate Name.

11 (a) A corporate name:

12 (1) must contain the word "corporation," "incorporated," or "limited," or the
13 abbreviation "corp.," "inc.," or "Ltd.," or words or abbreviations of like import in another language; and

14 (2) may not contain language stating or implying that the corporation is organized
15 for a purpose other than that permitted by RSA 293-A:3.01 and its articles of incorporation.

16 (b) Except as authorized by subsections (c) and (d), a corporate name, based upon the
17 records of the secretary of state, shall be distinguishable from, and not the same as, or likely to be
18 confused with or mistaken for:

19 (1) the name of an entity incorporated, authorized, formed, or registered to transact
20 business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A,
21 RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349;

22 (2) a name reserved or registered under RSA 293-A, RSA 293-B, RSA 304-A,
23 RSA 304-B, or RSA 304-C;

24 (3) the fictitious name adopted by a foreign entity authorized to transact business in
25 this state because its real name is unavailable;

26 (4) The name of an agency or instrumentality of the United States or this state or a
27 subdivision thereof;

28 (5) The name of any political party recognized under RSA 652:11, unless written
29 consent is obtained from the authorized representative of the political organization; and

30 (6) The name "farmers' market" unless the entity meets the definition of "farmers'
31 market" established in RSA 21:34-a, V.

32 (c) A corporation may apply to the secretary of state for authorization to use a name that
33 is not distinguishable from, or is the same as, or not likely to be confused with or mistaken for one or
34 more of the names described in subsection (b) of this section, as determined from a review of the
35 records of the secretary of state.

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1 (1) the holder or holders of the name as described in subsection (b) gives written
2 consent to use the name that is not distinguishable from or likely to be confused with or mistaken for
3 the name of the applying corporation; or if the name is the same, one or more words are added to the
4 name to make the new name distinguishable from the other name;

5 (2) the other entity consents to the use in writing and submits an undertaking in
6 form satisfactory to the secretary of state to change its name to a name that is distinguishable upon
7 the records of the secretary of state from the name of the applying corporation; or

8 (3) the applicant delivers to the secretary of state a certified copy of the final
9 judgment of a court of competent jurisdiction establishing the applicant's right to use the name
10 applied for in this state.

11 (d) A corporation may use the name (including the fictitious name) of another domestic
12 or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or
13 registered to transact business in this state and the proposed user corporation:

14 (1) has merged with the other entity;

15 (2) has been formed by reorganization of the other entity; or

16 (3) has acquired all or substantially all of the assets, including the name, of the other
17 entity.

18 (e) This chapter does not control the use of fictitious names.

19 (f) Nothing in this section would prohibit the owner or owners of a trade name registered
20 under RSA 349 to form a domestic corporation under the same name as the trade name.

21 (g) The secretary of state and those acting on his or her behalf shall incur no liability,
22 either personally or on behalf of the state of New Hampshire, as a result of negligent acts or
23 omissions in the reservation or registration of any name under this chapter or any other name
24 registration or reservation statute, including but not limited to RSA 349, or the handling and
25 recording of documents pertaining to such reservation or registration.

26 293-A:4.02 Reserved Name.

27 (a) A person may reserve the exclusive use of a corporate name by delivering an
28 application to the secretary of state for filing. The application must set forth the name and address
29 of the applicant and the name proposed to be reserved. If the secretary of state finds that the
30 corporate name applied for is available, the secretary of state shall reserve the name for the
31 applicant's exclusive use for a nonrenewable 120-day period.

32 (b) The owner of a reserved corporate name may transfer the reservation to another
33 person by delivering to the secretary of state a signed notice of the transfer that states the name and
34 address of the transferee.

35 293-A:4.03 Registered Name.

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1 (a) A corporation may change its registered office or registered agent by delivering to the
2 secretary of state for filing a statement of change that sets forth:

- 3 (1) the name of the corporation;
- 4 (2) the street address of its current registered office;
- 5 (3) if the current registered office is to be changed, the street address of the new
6 registered office;
- 7 (4) the name of its current registered agent;
- 8 (5) if the current registered agent is to be changed, the name of the new registered
9 agent; and
- 10 (6) that after the change or changes are made, the street addresses of its registered
11 office and the business office of its registered agent will be identical.

12 (b) If the street address of a registered agent's business office changes, the agent may
13 change the street address of the registered office of any corporation for which the agent is the
14 registered agent by delivering a signed written notice of the change to the corporation and delivering
15 to the secretary of state for filing a signed statement that complies with the requirements of
16 subsection (a) and recites that the corporation has been notified of the change.

17 293-A:5.03 Resignation of Registered Agent.

18 (a) A registered agent may resign the agent's appointment by signing and delivering to
19 the secretary of state for filing the signed original and one exact or conformed copy of a statement of
20 resignation. The statement may include a statement that the registered office is also discontinued.

21 (b) After filing the statement the secretary of state shall mail the copy to the corporation
22 at its principal office.

23 (c) The agency appointment is terminated, and the registered office discontinued if so
24 provided, on the 31st day after the date on which the statement was filed.

25 293-A:5.04 Service on Corporation.

26 (a) A corporation's registered agent is the corporation's agent for service of process,
27 notice, or demand required or permitted by law to be served on the corporation.

28 (b) If a corporation has no registered agent, or the agent cannot with reasonable
29 diligence be served, the corporation may be served by registered or certified mail, return receipt
30 requested, addressed to the secretary of the corporation at its principal office. Service is perfected
31 under this subsection at the earliest of:

- 32 (1) the date the corporation receives the mail;
- 33 (2) the date shown on the return receipt, if signed on behalf of the corporation; or
- 34 (3) five days after its deposit in the U.S. Mail, as evidenced by the postmark, if
35 mailed postpaid and correctly addressed.

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1 (e) Any of the terms of shares may vary among holders of the same class or series so long
2 as such variations are expressly set forth in the articles of incorporation.

3 (f) The description of the preferences, rights and limitations of classes or series of shares
4 in RSA 293-A:6.01(c) is not exhaustive.

5 293-A:6.02 Terms of Class or Series Determined by Board of Directors.

6 (a) If the articles of incorporation so provide, the board of directors is authorized,
7 without shareholder approval, to:

8 (1) classify any authorized and unissued shares into one or more classes or into one
9 or more series within a class,

10 (2) reclassify any authorized and unissued shares of any class into one or more
11 classes or into one or more series within one or more classes, or

12 (3) reclassify any authorized and unissued shares of any series of any class into one
13 or more classes or into one or more series within a class.

14 (b) If the board of directors acts pursuant to subsection (a), it must determine the terms,
15 including the preferences, rights and limitations, to the same extent permitted under RSA 293-
16 A:6.01, of:

17 (1) any class of shares before the issuance of any shares of that class, or

18 (2) any series within a class before the issuance of any shares of that series.

19 (c) Before issuing any shares of a class or series created under this section, the
20 corporation must deliver to the secretary of state for filing articles of amendment setting forth the
21 terms determined under RSA 293-A:6.02(a).

22 293-A:6.03 Issued and Outstanding Shares.

23 (a) A corporation may issue the number of shares of each class or series authorized by
24 the articles of incorporation. Shares that are issued are outstanding shares until they are
25 reacquired, redeemed, converted, or cancelled.

26 (b) The reacquisition, redemption, or conversion of outstanding shares is subject to the
27 limitations of RSA 293-A:6.03(c) and RSA 293-A:6.40.

28 (c) At all times that shares of the corporation are outstanding, one or more shares that
29 together have unlimited voting rights and one or more shares that together are entitled to receive
30 the net assets of the corporation upon dissolution must be outstanding.

31 293-A:6.04 Fractional Shares.

32 (a) A corporation may:

33 (1) issue fractions of a share or pay in money the value of fractions of a share;

34 (2) arrange for disposition of fractional shares by the shareholders;

35 (3) issue scrip in registered or bearer form entitling the holder to receive a full share
36 upon surrendering enough scrip to equal a full share.

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1 (b) Each certificate representing scrip must be conspicuously labeled “scrip” and must
2 contain the information required by RSA 293-A:6.25(b).

3 (c) The holder of a fractional share is entitled to exercise the rights of a shareholder,
4 including the right to vote, to receive dividends, and to participate in the assets of the corporation
5 upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides
6 for them.

7 (d) The board of directors may authorize the issuance of scrip subject to any condition
8 considered desirable, including:

9 (1) that the scrip will become void if not exchanged for full shares before a specified
10 date; and

11 (2) that the shares for which the scrip is exchangeable may be sold and the proceeds
12 paid to the scripholders.

13 Part B

14 Issuance of Shares

15 293-A:6.20 Subscription for Shares Before Incorporation.

16 (a) A subscription for shares entered into before incorporation is irrevocable for 6 months
17 unless the subscription agreement provides a longer or shorter period or all the subscribers agree to
18 revocation.

19 (b) The board of directors may determine the payment terms of subscription for shares
20 that were entered into before incorporation, unless the subscription agreement specifies them. A call
21 for payment by the board of directors must be uniform so far as practicable as to all shares of the
22 same class or series, unless the subscription agreement specifies otherwise.

23 (c) Shares issued pursuant to subscriptions entered into before incorporation are fully
24 paid and nonassessable when the corporation receives the consideration specified in the subscription
25 agreement.

26 (d) If a subscriber defaults in payment of money or property under a subscription
27 agreement entered into before incorporation, the corporation may collect the amount owed as any
28 other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation
29 may rescind the agreement and may sell the shares if the debt remains unpaid for more than 20
30 days after the corporation sends a written demand for payment to the subscriber.

31 (e) A subscription agreement entered into after incorporation is a contract between the
32 subscriber and the corporation subject to RSA 293-A:6.21.

33 293-A:6.21 Issuance of Shares.

34 (a) The powers granted in this section to the board of directors may be reserved to the
35 shareholders, either exclusively or concurrently with the powers of the directors, by the articles of
36 incorporation.

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1 (b) The board of directors may authorize shares to be issued for consideration consisting
2 of any tangible or intangible property or benefit to the corporation, including cash, promissory notes,
3 services performed, contracts for services to be performed, or other securities of the corporation.

4 (c) Before the corporation issues shares, the board of directors must determine that the
5 consideration received or to be received for shares to be issued is adequate. That determination by
6 the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares
7 relates to whether the shares are validly issued, fully paid, and nonassessable.

8 (d) The articles of incorporation may limit the type or specify the minimum amount of
9 consideration for which the shares of any class or series may be issued. A reference in the articles of
10 incorporation to par value shall not, by itself, be deemed to be a specification of the minimum amount.

11 (e) Notwithstanding RSA 293-A:6.21(d), when the corporation receives the consideration
12 for which the board of directors authorized the issuance of shares, the shares issued therefore are
13 fully paid and nonassessable.

14 (f) The corporation may place in escrow shares issued for a contract for future services or
15 benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and
16 may credit distributions in respect of the shares against their purchase price, until the services are
17 performed, the note is paid, or the benefits received. If the services are not performed, the note is
18 not paid, or the benefits are not received, the shares escrowed or restricted and the distributions
19 credited may be cancelled in whole or part.

20 293-A:6.22 Liability of Shareholders.

21 (a) A purchaser from a corporation of its own shares is not liable to the corporation or its
22 creditors with respect to the shares except to pay the consideration for which the shares were
23 authorized to be issued (see RSA 293-A:6.21) or specified in the subscription agreement (see
24 RSA 293-A:6.20).

25 (b) Unless otherwise provided in the articles of incorporation, a shareholder of a
26 corporation is not personally liable for the acts or debts of the corporation except that he or she may
27 become personally liable by reason of his or her own acts or conduct.

28 293-A:6.23 Share Dividends.

29 (a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata
30 and without consideration to the corporation's shareholders or to the shareholders of one or more
31 classes or series. An issuance of shares under this subsection is a share dividend.

32 (b) Shares of one class or series may not be issued as a share dividend in respect of
33 shares of another class or series unless (1) the articles of incorporation so authorize, (2) a majority of
34 the votes entitled to be cast by the class or series to be issued approve the issue, or (3) there are no
35 outstanding shares of the class or series to be issued.

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1 (c) If the board of directors does not fix the record date for determining shareholders
2 entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

3 293-A:6.24 Share Options.

4 (a) A corporation may issue rights, options, or warrants for the purchase of shares or
5 other securities of the corporation. The board of directors shall determine (i) the terms upon which
6 the rights, options, or warrants are issued and (ii) the terms, including the consideration for which
7 the shares or other securities are to be issued. The authorization by the board of directors for the
8 corporation to issue such rights, options, or warrants constitutes authorization of the issuance of the
9 shares or other securities for which the rights, options or warrants are exercisable.

10 (b) The terms and conditions of such rights, options, or warrants, including those
11 outstanding on the effective date of this section, may include, without limitation, restrictions or
12 conditions that:

13 (1) preclude or limit the exercise, transfer, or receipt of such rights, options, or
14 warrants by any person or persons owning or offering to acquire a specified number or percentage of
15 the outstanding shares or other securities of the corporation or by any transferee or transferees of
16 any such person or persons, or that preclude or limit the exercise, transfer or receipt based on such
17 other factors, including the nature or identity of such person or persons, as the directors determine
18 to be reasonable and in the best interests of the corporation, or

19 (2) invalidate or void such rights, options, or warrants held by any such person or
20 persons or any such transferee or transferees.

21 (c) The board of directors may authorize one or more officers to (1) designate the
22 recipients of rights, options, warrants, or other equity compensation awards that involve the
23 issuance of shares and (2) determine, within an amount and subject to any other limitations
24 established by the board and, if applicable, the stockholders, the number of such rights, options,
25 warrants, or other equity compensation awards and the terms thereof to be received by the
26 recipients, provided that an officer may not use such authority to designate himself or herself or any
27 other persons the board of directors may specify as a recipient of such rights, options, warrants, or
28 other equity compensation awards.

29 293-A:6.25 Form and Content of Certificates.

30 (a) Shares may but need not be represented by certificates. Unless this chapter or
31 another statute expressly provides otherwise, the rights and obligations of shareholders are identical
32 whether or not their shares are represented by certificates.

33 (b) At a minimum each share certificate must state on its face:

34 (1) the name of the issuing corporation and that it is organized under the law of this
35 state;

36 (2) the name of the person to whom issued; and

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1 (3) the number and class of shares and the designation of the series, if any, the
2 certificate represents.

3 (c) If the issuing corporation is authorized to issue different classes of shares or different
4 series within a class, the designations, relative rights, preferences, and limitations applicable to each
5 class and the variations in rights, preferences, and limitations determined for each series (and the
6 authority of the board of directors to determine variations for future series) must be summarized on
7 the front or back of each certificate. Alternatively, each certificate may state conspicuously on its
8 front or back that the corporation will furnish the shareholder this information on request in writing
9 and without charge.

10 (d) Each share certificate (1) must be signed (either manually or in facsimile) by 2
11 officers designated in the bylaws or by the board of directors and (2) may bear the corporate seal or
12 its facsimile.

13 (e) If the person who signed (either manually or in facsimile) a share certificate no
14 longer holds office when the certificate is issued, the certificate is nevertheless valid.

15 293-A:6.26 Shares Without Certificates.

16 (a) Unless the articles of incorporation or bylaws provide otherwise, the board of
17 directors of a corporation may authorize the issue of some or all of the shares of any or all of its
18 classes or series without certificates. The authorization does not affect shares already represented
19 by certificates until they are surrendered to the corporation.

20 (b) Within a reasonable time after the issue or transfer of shares without certificates, the
21 corporation shall send the shareholder a written statement of the information required on
22 certificates by RSA 293-A:6.25(b) and (c), and, if applicable, RSA 293-A:6.27.

23 293-A:6.27 Restriction on Transfer of Shares and Other Securities.

24 (a) The articles of incorporation, bylaws, an agreement among shareholders, or an
25 agreement between shareholders and the corporation may impose restrictions on the transfer or
26 registration of transfer of shares of the corporation. A restriction does not affect shares issued before
27 the restriction was adopted unless the holders of the shares are parties to the restriction agreement
28 or voted in favor of the restriction.

29 (b) A restriction on the transfer or registration of transfer of shares is valid and
30 enforceable against the holder or a transferee of the holder if the restriction is authorized by this
31 section and its existence is noted conspicuously on the front or back of the certificate or is contained
32 in the information statement required by RSA 293-A:6.26(b). Unless so noted or contained, a
33 restriction is not enforceable against a person without knowledge of the restriction.

34 (c) A restriction on the transfer or registration of transfer of shares is authorized:

35 (1) to maintain the corporation's status when it is dependent on the number or
36 identity of its shareholders;

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1 (i) shares issued as compensation to directors, officers, agents, or employees of
2 the corporation, its subsidiaries or affiliates;

3 (ii) shares issued to satisfy conversion or option rights created to provide
4 compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or
5 affiliates;

6 (iii) shares authorized in articles of incorporation that are issued within 6
7 months from the effective date of incorporation;

8 (iv) shares sold otherwise than for money.

9 (4) Holders of shares of any class without general voting rights but with preferential
10 rights to distributions or assets have no preemptive rights with respect to shares of any class.

11 (5) Holders of shares of any class with general voting rights but without preferential
12 rights to distributions or assets have no preemptive rights with respect to shares of any class with
13 preferential rights to distributions or assets unless the shares with preferential rights are
14 convertible into or carry a right to subscribe for or acquire shares without preferential rights.

15 (6) Shares subject to preemptive rights that are not acquired by shareholders may be
16 issued to any person for a period of one year after being offered to shareholders at a consideration set
17 by the board of directors that is not lower than the consideration set for the exercise of preemptive
18 rights. An offer at a lower consideration or after the expiration of one year is subject to the
19 shareholders' preemptive rights.

20 (c) For purposes of this section, "shares" includes a security convertible into or carrying a
21 right to subscribe for or acquire shares.

22 293-A:6.31 Corporation's Acquisition of Its Own Shares.

23 (a) A corporation may acquire its own shares, and shares so acquired constitute
24 authorized but unissued shares.

25 (b) If the articles of incorporation prohibit the reissue of the acquired shares, the
26 number of authorized shares is reduced by the number of shares acquired.

27 Part D

28 Distributions

29 293-A:6.40 Distributions to Shareholders.

30 (a) A board of directors may authorize and the corporation may make distributions to its
31 shareholders subject to restriction by the articles of incorporation and the limitation in RSA 293-
32 A:6.40(c).

33 (b) If the board of directors does not fix the record date for determining shareholders
34 entitled to a distribution (other than one involving a purchase, redemption, or other acquisition of
35 the corporation's shares), it is the date the board of directors authorizes the distribution.

36 (c) No distribution may be made if, after giving it effect:

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1 (a) Unless directors are elected by written consent in lieu of an annual meeting as
2 permitted by RSA 293-A:7.04, a corporation shall hold a meeting of shareholders annually at a time
3 stated in or fixed in accordance with the bylaws; provided, however, that if a corporation's articles of
4 incorporation authorize shareholders to cumulate their votes when electing directors pursuant to
5 RSA 293-A:7.28, directors may not be elected by less than unanimous consent.

6 (b) Annual shareholders' meetings may be held in or out of this state at the place stated
7 in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the
8 bylaws, annual meetings shall be held at the corporation's principal office.

9 (c) The failure to hold an annual meeting at the time stated in or fixed in accordance
10 with a corporation's bylaws does not affect the validity of any corporate action.

11 293-A:7.02 Special Meeting.

12 (a) A corporation shall hold a special meeting of shareholders:

13 (1) on call of its board of directors or the person or persons authorized to do so by the
14 articles of incorporation or bylaws; or

15 (2) if the holders of at least 10 percent of all the votes entitled to be cast on an issue
16 proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation
17 one or more written demands for the meeting describing the purpose or purposes for which it is to be
18 held, provided that the articles of incorporation may fix a lower percentage or a higher percentage
19 not exceeding 25 percent of all the votes entitled to be cast on any issue proposed to be considered.
20 Unless otherwise provided in the articles of incorporation, a written demand for a special meeting
21 may be revoked by a writing to that effect received by the corporation prior to the receipt by the
22 corporation of demands sufficient in number to require the holding of a special meeting.

23 (b) If not otherwise fixed under RSA 293-A:7.03 or RSA 293-A:7.07 the record date for
24 determining shareholders entitled to demand a special meeting is the date the first shareholder
25 signs the demand.

26 (c) Special shareholders' meetings may be held in or out of this state at the place stated
27 in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the
28 bylaws, special meetings shall be held at the corporation's principal office.

29 (d) Only business within the purpose or purposes described in the meeting notice
30 required by RSA 293-A:7.05(c), may be conducted at a special shareholders' meeting.

31 293-A:7.03 Court-Ordered Meeting.

32 (a) The superior court of the county where a corporation's principal office (or, if none in
33 this state, its registered office) is located may summarily order a meeting to be held:

34 (1) on application of any shareholder of the corporation entitled to participate in an
35 annual meeting if an annual meeting was not held or action by written consent in lieu thereof did

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1 not become effective within the earlier of 6 months after the end of the corporation's fiscal year or 15
2 months after its last annual meeting; or

3 (2) on application of a shareholder who signed a demand for a special meeting valid
4 under RSA 293-A:7.02, if:

5 (i) notice of the special meeting was not given within 30 days after the date the
6 demand was delivered to the corporation's secretary; or

7 (ii) the special meeting was not held in accordance with the notice.

8 (b) The court may fix the time and place of the meeting, determine the shares entitled to
9 participate in the meeting, specify a record date or dates for determining shareholders entitled to
10 notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the
11 quorum required for specific matters to be considered at the meeting (or direct that the votes
12 represented at the meeting constitute a quorum for action on those matters), and enter other orders
13 necessary to accomplish the purpose or purposes of the meeting.

14 293-A:7.04 Action Without Meeting.

15 (a) Action required or permitted by this chapter to be taken at a shareholders' meeting
16 may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the
17 action. The action must be evidenced by one or more written consents bearing the date of signature
18 and describing the action taken, signed by all the shareholders entitled to vote on the action and
19 delivered to the corporation for inclusion in the minutes or filing with the corporate records.

20 (b) The articles of incorporation may provide that any action required or permitted by
21 this chapter to be taken at a shareholders' meeting may be taken without a meeting, and without
22 prior notice, if consents in writing setting forth the action so taken are signed by the holders of
23 outstanding shares having not less than the minimum number of votes that would be required to
24 authorize or take the action at a meeting at which all shares entitled to vote on the action were
25 present and voted. The written consent shall bear the date of signature of the shareholder who signs
26 the consent and be delivered to the corporation for inclusion in the minutes or filing with the
27 corporate records.

28 (c) If not otherwise fixed under RSA 293-A:7.07 and if prior board action is not required
29 respecting the action to be taken without a meeting, the record date for determining the
30 shareholders entitled to take action without a meeting shall be the first date on which a signed
31 written consent is delivered to the corporation. If not otherwise fixed under RSA 293-A:7.07 and if
32 prior board action is required respecting the action to be taken without a meeting, the record date
33 shall be the close of business on the day the resolution of the board taking such prior action is
34 adopted. No written consent shall be effective to take the corporate action referred to therein unless,
35 within 60 days of the earliest date on which a consent delivered to the corporation as required by this
36 section was signed, written consents signed by sufficient shareholders to take the action have been

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1 delivered to the corporation. A written consent may be revoked by a writing to that effect delivered
2 to the corporation before unrevoked written consents sufficient in number to take the corporate
3 action are delivered to the corporation.

4 (d) A consent signed pursuant to the provisions of this section has the effect of a vote
5 taken at a meeting and may be described as such in any document. Unless the articles of
6 incorporation, bylaws or a resolution of the board of directors provides for a reasonable delay to
7 permit tabulation of written consents, the action taken by written consent shall be effective when
8 written consents signed by sufficient shareholders to take the action are delivered to the corporation.

9 (e) If this chapter requires that notice of a proposed action be given to nonvoting
10 shareholders and the action is to be taken by written consent of the voting shareholders, the
11 corporation must give its nonvoting shareholders written notice of the action not more than 10 days
12 after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii)
13 such later date that tabulation of consents is completed pursuant to an authorization under
14 subsection (d). The notice must reasonably describe the action taken and contain or be accompanied
15 by the same material that, under any provision of this chapter, would have been required to be sent
16 to nonvoting shareholders in a notice of a meeting at which the proposed action would have been
17 submitted to the shareholders for action.

18 (f) If action is taken by less than unanimous written consent of the voting shareholders,
19 the corporation must give its nonconsenting voting shareholders written notice of the action
20 promptly after (i) written consents sufficient to take the action have been delivered to the
21 corporation, or (ii) such later date that tabulation of consents is completed pursuant to an
22 authorization under subsection (d). The notice must reasonably describe the action taken and
23 contain or be accompanied by the same material that, under any provision of this chapter, would
24 have been required to be sent to voting shareholders in a notice of a meeting at which the action
25 would have been submitted to the shareholders for action.

26 (g) The notice requirements in subsections (e) and (f) shall not delay the effectiveness of
27 actions taken by written consent, and a failure to comply with such notice requirements shall not
28 invalidate actions taken by written consent, provided that this subsection shall not be deemed to
29 limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected
30 by a failure to give such notice within the required time period.

31 293-A:7.05 Notice of Meeting.

32 (a) A corporation shall notify shareholders of the date, time, and place of each annual
33 and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting date.
34 The notice shall include the record date for determining the shareholders entitled to vote at the
35 meeting, if such date is different than the record date for determining shareholders entitled to notice
36 of the meeting. If the board of directors has authorized participation by means of remote

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1 communication pursuant to RSA 293-A:7.09 for any class or series of shareholders, the notice to such
2 class or series of shareholders shall describe the means of remote communication to be used. Unless
3 this chapter or the articles of incorporation require otherwise, the corporation is required to give
4 notice only to shareholders entitled to vote at the meeting as of the record date for determining the
5 shareholders entitled to notice of the meeting.

6 (b) Unless this chapter or the articles of incorporation require otherwise, notice of an annual
7 meeting need not include a description of the purpose or purposes for which the meeting is called.

8 (c) Notice of a special meeting must include a description of the purpose or purposes for
9 which the meeting is called.

10 (d) If not otherwise fixed under RSA 293-A:7.03 or RSA 293-A:7.07 the record date for
11 determining shareholders entitled to notice of and to vote at an annual or special shareholders'
12 meeting is the day before the first notice is delivered to shareholders.

13 (e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is
14 adjourned to a different date, time, or place, notice need not be given of the new date, time, or place
15 if the new date, time, or place is announced at the meeting before adjournment. If a new record date
16 for the adjourned meeting is or must be fixed under RSA 293-A:7.07 however, notice of the adjourned
17 meeting must be given under this section to shareholders entitled to vote at such adjourned meeting
18 as of the record date fixed for notice of such adjourned meeting.

19 293-A:7.06 Waiver of Notice.

20 (a) A shareholder may waive any notice required by this chapter, the articles of
21 incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be
22 in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for
23 inclusion in the minutes or filing with the corporate records.

24 (b) A shareholder's attendance at a meeting:

25 (1) waives objection to lack of notice or defective notice of the meeting, unless the
26 shareholder at the beginning of the meeting objects to holding the meeting or transacting business at
27 the meeting;

28 (2) waives objection to consideration of a particular matter at the meeting that is not
29 within the purpose or purposes described in the meeting notice, unless the shareholder objects to
30 considering the matter when it is presented.

31 293-A:7.07 Record Date.

32 (a) The bylaws may fix or provide the manner of fixing the record date or dates for one or
33 more voting groups in order to determine the shareholders entitled to notice of a shareholders'
34 meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or
35 provide for fixing a record date, the board of directors of the corporation may fix a future date as the
36 record date.

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1 (b) A record date fixed under this section may not be more than 70 days before the
2 meeting or action requiring a determination of shareholders.

3 (c) A determination of shareholders entitled to notice of or to vote at a shareholders'
4 meeting is effective for any adjournment of the meeting unless the board of directors fixes a new
5 record date or dates, which it must do if the meeting is adjourned to a date more than 120 days after
6 the date fixed for the original meeting.

7 (d) If a court orders a meeting adjourned to a date more than 120 days after the date
8 fixed for the original meeting, it may provide that the original record date or dates continue in effect
9 or it may fix a new record date or dates.

10 (e) The record date for a shareholders' meeting fixed by or in the manner provided in the
11 bylaws or by the board of directors shall be the record date for determining shareholders entitled
12 both to notice of and to vote at the shareholders' meeting, unless in the case of a record date fixed by
13 the board of directors and to the extent not prohibited by the bylaws, the board, at the time it fixes
14 the record date for shareholders entitled to notice of the meeting, fixes a later record date on or
15 before the date of the meeting to determine the shareholders entitled to vote at the meeting.

16 293-A:7.08 Conduct of the Meeting.

17 (a) At each meeting of shareholders, a chair shall preside. The chair shall be appointed
18 as provided in the bylaws or, in the absence of such provision, by the board.

19 (b) The chair, unless the articles of incorporation or bylaws provide otherwise, shall
20 determine the order of business and shall have the authority to establish rules for the conduct of the
21 meeting.

22 (c) Any rules adopted for, and the conduct of, the meeting shall be fair to shareholders.

23 (d) The chair of the meeting shall announce at the meeting when the polls close for each
24 matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the
25 final adjournment of the meeting. After the polls close, no ballots, proxies, or votes nor any
26 revocations or changes thereto may be accepted.

27 293-A:7.09 Remote Participation in Annual and Special Meetings.

28 (a) Shareholders of any class or series may participate in any meeting of shareholders by
29 means of remote communication to the extent the board of directors authorizes such participation for
30 such class or series. Participation by means of remote communication shall be subject to such
31 guidelines and procedures as the board of directors adopts, and shall be in conformity with
32 subsection (b).

33 (b) Shareholders participating in a shareholders' meeting by means of remote
34 communication shall be deemed present and may vote at such a meeting if the corporation has
35 implemented reasonable measures:

36 (1) to verify that each person participating remotely is a shareholder, and

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1 (2) to provide such shareholders a reasonable opportunity to participate in the
2 meeting and to vote on matters submitted to the shareholders, including an opportunity to
3 communicate, and to read or hear the proceedings of the meeting, substantially concurrently with
4 such proceedings.

5 Part B

6 Voting

7 293-A:7.20 Shareholders' List for Meeting.

8 (a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical
9 list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the
10 board of directors fixes a different record date under RSA 293-A:7.07(e) to determine the
11 shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of
12 the names of all its shareholders who are entitled to vote at the meeting. A list must be arranged by
13 voting group (and within each voting group by class or series of shares) and show the address of and
14 number of shares held by each shareholder.

15 (b) The shareholders' list for notice must be available for inspection by any shareholder,
16 beginning 2 business days after notice of the meeting is given for which the list was prepared and
17 continuing through the meeting, at the corporation's principal office or at a place identified in the
18 meeting notice in the city where the meeting will be held. A shareholders' list for voting must be
19 similarly available for inspection promptly after the record date for voting. A shareholder, or the
20 shareholder's agent or attorney, is entitled on written demand to inspect and, subject to the
21 requirements of RSA 293-A:16.02(d) to copy a list, during regular business hours and at the
22 shareholder's expense, during the period it is available for inspection.

23 (c) The corporation shall make the list of shareholders entitled to vote available at the
24 meeting, and any shareholder, or the shareholder's agent or attorney, is entitled to inspect the list at
25 any time during the meeting or any adjournment.

26 (d) If the corporation refuses to allow a shareholder, or the shareholder's agent or
27 attorney, to inspect a shareholders' list before or at the meeting (or copy a list as permitted by
28 subsection (b)), the superior court of the county where a corporation's principal office (or, if none in
29 this state, its registered office) is located, on application of the shareholder, may summarily order the
30 inspection or copying at the corporation's expense and may postpone the meeting for which the list
31 was prepared until the inspection or copying is complete.

32 (e) Refusal or failure to prepare or make available a shareholders' list does not affect the
33 validity of action taken at the meeting.

34 293-A:7.21 Voting Entitlement of Shares.

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1 (a) Except as provided in subsections (b) and (d) or unless the articles of incorporation
2 provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter
3 voted on at a shareholders' meeting. Only shares are entitled to vote.

4 (b) Absent special circumstances, the shares of a corporation are not entitled to vote if
5 they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first
6 corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the
7 second corporation.

8 (c) Subsection (b) does not limit the power of a corporation to vote any shares, including
9 its own shares, held by it in a fiduciary capacity.

10 (d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the
11 holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or
12 other financial institution under an irrevocable obligation to pay the holders the redemption price on
13 surrender of the shares.

14 293-A:7.22 Proxies.

15 (a) A shareholder may vote the shareholder's shares in person or by proxy.

16 (b) A shareholder, or the shareholder's agent or attorney-in-fact, may appoint a proxy to
17 vote or otherwise act for the shareholder by signing an appointment form, or by an electronic
18 transmission. An electronic transmission must contain or be accompanied by information from
19 which the recipient can determine the date of the transmission, and that the transmission was
20 authorized by the sender or the sender's agent or attorney-in-fact.

21 (c) An appointment of a proxy is effective when a signed appointment form or an
22 electronic transmission of the appointment is received by the inspector of election or the officer or
23 agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless
24 a longer period is expressly provided in the appointment form.

25 (d) An appointment of a proxy is revocable unless the appointment form or electronic
26 transmission states that it is irrevocable and the appointment is coupled with an interest.
27 Appointments coupled with an interest include the appointment of:

28 (1) a pledgee;

29 (2) a person who purchased or agreed to purchase the shares;

30 (3) a creditor of the corporation who extended it credit under terms requiring the
31 appointment;

32 (4) an employee of the corporation whose employment contract requires the
33 appointment; or

34 (5) a party to a voting agreement created under RSA 293-A:7.31.

35 (e) The death or incapacity of the shareholder appointing a proxy does not affect the
36 right of the corporation to accept the proxy's authority unless notice of the death or incapacity is

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1 received by the secretary or other officer or agent authorized to tabulate votes before the proxy
2 exercises authority under the appointment.

3 (f) An appointment made irrevocable under subsection (d) is revoked when the interest
4 with which it is coupled is extinguished.

5 (g) A transferee for value of shares subject to an irrevocable appointment may revoke the
6 appointment if the transferee did not know of its existence when acquiring the shares and the
7 existence of the irrevocable appointment was not noted conspicuously on the certificate representing
8 the shares or on the information statement for shares without certificates.

9 (h) Subject to RSA 293-A:7.24 and to any express limitation on the proxy's authority
10 stated in the appointment form or electronic transmission, a corporation is entitled to accept the
11 proxy's vote or other action as that of the shareholder making the appointment.

12 293-A:7.23 Shares Held by Nominees.

13 (a) A corporation may establish a procedure by which the beneficial owner of shares that
14 are registered in the name of a nominee is recognized by the corporation as the shareholder. The
15 extent of this recognition may be determined in the procedure.

16 (b) The procedure may set forth:

- 17 (1) the types of nominees to which it applies;
- 18 (2) the rights or privileges that the corporation recognizes in a beneficial owner;
- 19 (3) the manner in which the procedure is selected by the nominee;
- 20 (4) the information that must be provided when the procedure is selected;
- 21 (5) the period for which selection of the procedure is effective; and
- 22 (6) other aspects of the rights and duties created.

23 293-A:7.24 Corporation's Acceptance of Votes.

24 (a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to
25 the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote,
26 consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

27 (b) If the name signed on a vote, consent, waiver, or proxy appointment does not
28 correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless
29 entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the
30 shareholder if:

31 (1) the shareholder is an entity and the name signed purports to be that of an officer
32 or agent of the entity;

33 (2) the name signed purports to be that of an administrator, executor, guardian, or
34 conservator representing the shareholder and, if the corporation requests, evidence of fiduciary
35 status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or
36 proxy appointment;

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1 (3) the name signed purports to be that of a receiver or trustee in bankruptcy of the
2 shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has
3 been presented with respect to the vote, consent, waiver, or proxy appointment;

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

8 (5) two or more persons are the shareholder as co-tenants or fiduciaries and the
9 name signed purports to be the name of at least one of the co-owners and the person signing appears
10 to be acting on behalf of all the co-owners.

11 (c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if
12 the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has
13 reasonable basis for doubt about the validity of the signature on it or about the signatory's authority
14 to sign for the shareholder.

15 (d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or
16 proxy appointment in good faith and in accordance with the standards of this section or RSA 293-
17 A:7.22(b) are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

18 (e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or
19 proxy appointment under this section is valid unless a court of competent jurisdiction determines
20 otherwise.

21 293-A:7.25 Quorum and Voting Requirements for Voting Groups.

22 (a) Shares entitled to vote as a separate voting group may take action on a matter at a
23 meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of
24 incorporation provides otherwise, a majority of the votes entitled to be cast on the matter by the
25 voting group constitutes a quorum of that voting group for action on that matter.

26 (b) Once a share is represented for any purpose at a meeting, it is deemed present for
27 quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a
28 new record date is or must be set for that adjourned meeting.

29 (c) If a quorum exists, action on a matter (other than the election of directors) by a voting
30 group is approved if the votes cast within the voting group favoring the action exceed the votes cast
31 opposing the action, unless the articles of incorporation require a greater number of affirmative votes.

32 (d) An amendment of articles of incorporation adding, changing, or deleting a quorum or
33 voting requirement for a voting group greater than specified in subsection (a) or (c) is governed by
34 RSA 293-A:7.27.

35 (e) The election of directors is governed by RSA 293-A:7.28.

36 293-A:7.26 Action by Single and Multiple Voting Groups.

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1 293-A:7.30 Voting Trusts.

2 (a) One or more shareholders may create a voting trust, conferring on a trustee the right
3 to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust
4 (which may include anything consistent with its purpose) and transferring their shares to the
5 trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and
6 addresses of all owners of beneficial interests in the trust, together with the number and class of
7 shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's
8 principal office.

9 (b) A voting trust becomes effective on the date the first shares subject to the trust are
10 registered in the trustee's name. A voting trust is valid for not more than 10 years after its effective
11 date unless extended under subsection (c).

12 (c) All or some of the parties to a voting trust may extend it for additional terms of not
13 more than 10 years each by signing an extension agreement and obtaining the voting trustee's
14 written consent to the extension. An extension is valid for 10 years from the date the first
15 shareholder signs the extension agreement. The voting trustee must deliver copies of the extension
16 agreement and list of beneficial owners to the corporation's principal office. An extension agreement
17 binds only those parties signing it.

18 293-A:7.31 Voting Agreements.

19 (a) Two or more shareholders may provide for the manner in which they will vote their
20 shares by signing an agreement for that purpose. A voting agreement created under this section is
21 not subject to the provisions of RSA 293-A:7.30.

22 (b) A voting agreement created under this section is specifically enforceable.

23 293-A:7.32 Shareholder Agreements.

24 (a) An agreement among the shareholders of a corporation that complies with this
25 section is effective among the shareholders and the corporation even though it is inconsistent with
26 one or more other provisions of this chapter in that it:

27 (1) eliminates the board of directors or restricts the discretion or powers of the board
28 of directors;

29 (2) governs the authorization or making of distributions whether or not in proportion
30 to ownership of shares, subject to the limitations in RSA 293-A:6.40.

31 (3) establishes who shall be directors or officers of the corporation, or their terms of
32 office or manner of selection or removal;

33 (4) governs, in general or in regard to specific matters, the exercise or division of
34 voting power by or between the shareholders and directors or by or among any of them, including use
35 of weighted voting rights or director proxies;

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1 (5) establishes the terms and conditions of any agreement for the transfer or use of
2 property or the provision of services between the corporation and any shareholder, director, officer or
3 employee of the corporation or among any of them;

4 (6) transfers to one or more shareholders or other persons all or part of the authority
5 to exercise the corporate powers or to manage the business and affairs of the corporation, including
6 the resolution of any issue about which there exists a deadlock among directors or shareholders;

7 (7) requires dissolution of the corporation at the request of one or more of the
8 shareholders or upon the occurrence of a specified event or contingency; or

9 (8) otherwise governs the exercise of the corporate powers or the management of the
10 business and affairs of the corporation or the relationship among the shareholders, the directors, and
11 the corporation, or among any of them, and is not contrary to public policy.

12 (b) An agreement authorized by this section shall be:

13 (1) as set forth (A) in the articles of incorporation or bylaws and approved by all persons
14 who are shareholders at the time of the agreement or (B) in a written agreement that is signed by all
15 persons who are shareholders at the time of the agreement and is made known to the corporation;

16 (2) subject to amendment only by all persons who are shareholders at the time of the
17 amendment, unless the agreement provides otherwise; and

18 (3) valid for 10 years, unless the agreement provides otherwise.

19 (c) The existence of an agreement authorized by this section shall be noted conspicuously
20 on the front or back of each certificate for outstanding shares or on the information statement as
21 required by RSA 293-A:6.26(b). If at the time of the agreement the corporation has shares
22 outstanding represented by certificates, the corporation shall recall the outstanding certificates and
23 issue substitute certificates that comply with this subsection. The failure to note the existence of the
24 agreement on the certificate or information statement shall not affect the validity of the agreement
25 or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not
26 have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A
27 purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is
28 noted on the certificate or information statement for the shares in compliance with this subsection
29 and, if the shares are not represented by a certificate, the information statement is delivered to the
30 purchaser at or prior to the time of purchase of the shares. An action to enforce the right of
31 rescission authorized by this subsection must be commenced within the earlier of 90 days after
32 discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

33 (d) An agreement authorized by this section shall cease to be effective when the
34 corporation becomes a public corporation. If the agreement ceases to be effective for any reason, the
35 board of directors may, if the agreement is contained or referred to in the corporation's articles of

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1 incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without
2 shareholder action, to delete the agreement and any references to it.

3 (e) An agreement authorized by this section that limits the discretion or powers of the
4 board of directors shall relieve the directors of, and impose upon the person or persons in whom such
5 discretion or powers are vested, liability for acts or omissions imposed by law on directors to the
6 extent that the discretion or powers of the directors are limited by the agreement.

7 (f) The existence or performance of an agreement authorized by this section shall not be
8 a ground for imposing personal liability on any shareholder for the acts or debts of the corporation
9 even if the agreement or its performance treats the corporation as if it were a partnership or results
10 in failure to observe the corporate formalities otherwise applicable to the matters governed by the
11 agreement.

12 (g) Incorporators or subscribers for shares may act as shareholders with respect to an
13 agreement authorized by this section if no shares have been issued when the agreement is made.

14 Part D

15 Derivative Proceedings

16 293-A:7.40 Definitions. In this subdivision:

17 (1) “Derivative proceeding” means a civil suit in the right of a domestic corporation
18 or, to the extent provided in RSA 293-A:7.47 in the right of a foreign corporation.

19 (2) “Shareholder” includes a beneficial owner whose shares are held in a voting trust
20 or held by a nominee on the beneficial owner’s behalf.

21 293-A:7.41 Standing. A shareholder may not commence or maintain a derivative proceeding
22 unless the shareholder:

23 (1) was a shareholder of the corporation at the time of the act or omission
24 complained of or became a shareholder through transfer by operation of law from one who was a
25 shareholder at that time; and

26 (2) fairly and adequately represents the interests of the corporation in enforcing the
27 right of the corporation.

28 293-A:7.42 Demand. No shareholder may commence a derivative proceeding until:

29 (1) a written demand has been made upon the corporation to take suitable action;
30 and

31 (2) Ninety days have expired from the date delivery of the demand was made unless the
32 shareholder has earlier been notified that the demand has been rejected by the corporation or unless
33 irreparable injury to the corporation would result by waiting for the expiration of the 90 day period.

34 293-A:7.43 Stay of Proceedings. If the corporation commences an inquiry into the allegations
35 made in the demand or complaint, the court may stay any derivative proceeding for such period as
36 the court deems appropriate.

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1 293-A:7.44 Dismissal.

2 (a) A derivative proceeding shall be dismissed by the court on motion by the corporation
3 if one of the groups specified in RSA 293-A:7.44(b) or RSA 293-A:7.44(e) has determined in good
4 faith, after conducting a reasonable inquiry upon which its conclusions are based, that the
5 maintenance of the derivative proceeding is not in the best interests of the corporation.

6 (b) Unless a panel is appointed pursuant to RSA 293-A:7.44(e), the determination in
7 RSA 293-A:7.44(a) shall be made by:

8 (1) a majority vote of qualified directors present at a meeting of the board of
9 directors if the qualified directors constitute a quorum; or

10 (2) a majority vote of a committee consisting of 2 or more qualified directors
11 appointed by majority vote of qualified directors present at a meeting of the board of directors,
12 regardless of whether such qualified directors constitute a quorum.

13 (c) If a derivative proceeding is commenced after a determination has been made
14 rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing
15 either (1) that a majority of the board of directors did not consist of qualified directors at the time the
16 determination was made or (2) that the requirements of subsection (a) have not been met.

17 (d) If a majority of the board of directors consisted of qualified directors at the time the
18 determination was made, the plaintiff shall have the burden of proving that the requirements of
19 subsection (a) have not been met; if not, the corporation shall have the burden of proving that the
20 requirements of subsection (a) have been met.

21 (e) Upon motion by the corporation, the court may appoint a panel of one or more
22 individuals to make a determination whether the maintenance of the derivative proceeding is in the
23 best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the
24 requirements of subsection (a) have not been met.

25 293-A:7.45 Discontinuance or Settlement. A derivative proceeding may not be discontinued or
26 settled without the court's approval. If the court determines that a proposed discontinuance or
27 settlement will substantially affect the interests of the corporation's shareholders or a class of
28 shareholders, the court shall direct that notice be given to the shareholders affected.

29 293-A:7.46 Payment of Expenses. On termination of the derivative proceeding the court may:

30 (1) order the corporation to pay the plaintiff's expenses, including counsel fees, incurred
31 in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

32 (2) order the plaintiff to pay any defendant's expenses, including counsel fees,
33 incurred in defending the proceeding if it finds that the proceeding was commenced or maintained
34 without reasonable cause or for an improper purpose; or

35 (3) order a party to pay an opposing party's expenses, including counsel fees,
36 incurred because of the filing of a pleading, motion or other paper, if it finds that the pleading,

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1 motion or other paper was not well grounded in fact, after reasonable inquiry, or warranted by
2 existing law or a good faith argument for the extension, modification or reversal of existing law and
3 was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless
4 increase in the cost of litigation.

5 293-A:7.47 Applicability to Foreign Corporations. In any derivative proceeding in the right of a
6 foreign corporation, the matters covered by this subdivision shall be governed by the laws of the
7 jurisdiction of incorporation of the foreign corporation except for RSA 293-A:7.43, RSA 293-A:7.45,
8 and RSA 293-A:7.46.

9 293-A:7.48 Shareholder Action to Appoint Custodian or Receiver.

10 (a) The superior court of the county where a corporation's principal office (or, if none in
11 this state, its registered office) is located may appoint one or more persons to be custodians, or, if the
12 corporation is insolvent, to be receivers, of and for a corporation in a proceeding by a shareholder
13 where it is established that:

14 (1) the directors are deadlocked in the management of the corporate affairs, the
15 shareholders are unable to break the deadlock, and irreparable injury to the corporation is
16 threatened or being suffered; or

17 (2) the directors or those in control of the corporation are acting fraudulently and
18 irreparable injury to the corporation is threatened or being suffered.

19 (b) The court:

20 (1) may issue injunctions, appoint a temporary custodian or temporary receiver with
21 all the powers and duties the court directs, take other action to preserve the corporate assets
22 wherever located, and carry on the business of the corporation until a full hearing is held;

23 (2) shall hold a full hearing, after notifying all parties to the proceeding and any
24 interested persons designated by the court, before appointing a custodian or receiver; and

25 (3) has jurisdiction over the corporation and all of its property, wherever located.

26 (c) The court may appoint an individual or domestic or foreign corporation (authorized to
27 transact business in this state) as a custodian or receiver and may require the custodian or receiver
28 to post bond, with or without sureties, in an amount the court directs.

29 (d) The court shall describe the powers and duties of the custodian or receiver in its
30 appointing order, which may be amended from time to time. Among other powers:

31 (1) a custodian may exercise all of the powers of the corporation, through or in place
32 of its board of directors, to the extent necessary to manage the business and affairs of the
33 corporation; and

34 (2) a receiver (i) may dispose of all or any part of the assets of the corporation
35 wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend
36 in the receiver's own name as receiver in all courts of this state.

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1 following their election, except to the extent (i) provided in RSA 293-A:10.22 if a bylaw electing to be
2 governed by that section is in effect; or (ii) a shorter term is specified in the articles of incorporation
3 in the event of a director nominee failing to receive a specified vote for election.

4 (c) A decrease in the number of directors does not shorten an incumbent director's term.

5 (d) The term of a director elected to fill a vacancy expires at the next shareholders'
6 meeting at which directors are elected.

7 (e) Except to the extent otherwise provided in the articles of incorporation or under
8 RSA 293-A:10.22, if a bylaw electing to be governed by that section is in effect, despite the expiration
9 of a director's term, the director continues to serve until the director's successor is elected and
10 qualifies or there is a decrease in the number of directors.

11 293-A:8.06 Staggered Terms for Directors. The articles of incorporation may provide for
12 staggering the terms of directors by dividing the total number of directors into 2 or 3 groups, with
13 each group containing 1/2 or 1/3 of the total, as near as may be practicable. In that event, the terms
14 of directors in the first group expire at the first annual shareholders' meeting after their election, the
15 terms of the second group expire at the second annual shareholders' meeting after their election, and
16 the terms of the third group, if any, expire at the third annual shareholders' meeting after their
17 election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term
18 of 2 years or 3 years, as the case may be, to succeed those whose terms expire.

19 293-A:8.07 Resignation of Directors.

20 (a) A director may resign at any time by delivering a written resignation to the board of
21 directors, or its chair, or to the secretary of the corporation.

22 (b) A resignation is effective when the resignation is delivered unless the resignation
23 specifies a later effective date or an effective date determined upon the happening of an event or
24 events. A resignation that is conditioned upon failing to receive a specified vote for election as a
25 director may provide that it is irrevocable.

26 293-A:8.08 Removal of Directors by Shareholders.

27 (a) The shareholders may remove one or more directors with or without cause unless the
28 articles of incorporation provide that directors may be removed only for cause.

29 (b) If a director is elected by a voting group of shareholders, only the shareholders of that
30 voting group may participate in the vote to remove that director.

31 (c) If cumulative voting is authorized, a director may not be removed if the number of
32 votes sufficient to elect the director under cumulative voting is voted against removal. If cumulative
33 voting is not authorized, a director may be removed only if the number of votes cast to remove
34 exceeds the number of votes cast not to remove the director.

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1 (b) Unless the articles of incorporation or bylaws provide otherwise, the board of
2 directors may permit any or all directors to participate in a regular or special meeting by, or conduct
3 the meeting through the use of, any means of communication by which all directors participating
4 may simultaneously hear each other during the meeting. A director participating in a meeting by
5 this means is deemed to be present in person at the meeting.

6 293-A:8.21 Action Without Meeting.

7 (a) Unless the articles of incorporation or bylaws provide otherwise, action required or
8 permitted by this chapter to be taken at a board of directors' meeting may be taken without a
9 meeting if the action is taken by unanimous consent of all members of the board. The action must be
10 evidenced by one or more written consents describing the action taken, signed by each director, and
11 included in the minutes or filed with the corporate records reflecting the action taken.

12 (b) Action taken under this section is effective when the last director signs the consent,
13 unless the consent specifies a different effective date.

14 (c) A consent signed under this section has the effect of a meeting vote and may be
15 described as such in any document.

16 293-A:8.22 Notice of Meeting.

17 (a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of
18 the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

19 (b) Unless the articles of incorporation or bylaws provide for a longer or shorter period,
20 special meetings of the board of directors must be preceded by at least 2 days' notice of the date,
21 time, and place of the meeting. The notice need not describe the purpose of the special meeting
22 unless required by the articles of incorporation or bylaws.

23 293-A:8.23 Waiver of Notice.

24 (a) A director may waive any notice required by this chapter, the articles of
25 incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by
26 subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed
27 with the minutes or corporate records.

28 (b) A director's attendance at or participation in a meeting waives any required notice to
29 the director of the meeting unless the director at the beginning of the meeting (or promptly upon
30 arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter
31 vote for or assent to action taken at the meeting.

32 293-A:8.24 Quorum and Voting.

33 (a) Unless the articles of incorporation or bylaws require a greater number or unless
34 otherwise specifically provided in this chapter, a quorum of a board of directors consists of:

35 (1) a majority of the fixed number of directors if the corporation has a fixed board
36 size; or

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1 (2) a majority of the number of directors prescribed or, if no number is prescribed,
2 the number in office immediately before the meeting begins if the corporation has a variable-range
3 size board.

4 (b) The articles of incorporation or bylaws may authorize a quorum of a board of
5 directors to consist of no fewer than 1/3 of the fixed or prescribed number of directors determined
6 under subsection (a).

7 (c) If a quorum is present when a vote is taken, the affirmative vote of a majority of
8 directors present is the act of the board of directors unless the articles of incorporation or bylaws
9 require the vote of a greater number of directors.

10 (d) A director who is present at a meeting of the board of directors or a committee of the
11 board of directors when corporate action is taken is deemed to have assented to the action taken
12 unless: (1) the director objects at the beginning of the meeting (or promptly upon arrival) to holding
13 it or transacting business at the meeting; (2) the dissent or abstention from the action taken is
14 entered in the minutes of the meeting; or (3) the director delivers written notice of the director's
15 dissent or abstention to the presiding officer of the meeting before its adjournment or to the
16 corporation immediately after adjournment of the meeting. The right of dissent or abstention is not
17 available to a director who votes in favor of the action taken.

18 293-A:8.25 Committees.

19 (a) Unless this chapter, the articles of incorporation, or the bylaws provide otherwise, a
20 board of directors may create one or more committees and appoint one or more members of the board
21 of directors to serve on any such committee.

22 (b) Unless this chapter otherwise provides, the creation of a committee and appointment
23 of members to it must be approved by the greater of (1) a majority of all the directors in office when
24 the action is taken, or (2) the number of directors required by the articles of incorporation or bylaws
25 to take action under RSA 293-A:8.24.

26 (c) RSA 293-A:8.20 through RSA 293-A:8.24 apply both to committees of the board and to
27 their members.

28 (d) To the extent specified by the board of directors or in the articles of incorporation or
29 bylaws, each committee may exercise the powers of the board of directors under RSA 293-A:8.01.

30 (e) A committee may not, however:

31 (1) authorize or approve distributions, except according to a formula or method, or
32 within limits, prescribed by the board of directors;

33 (2) approve or propose to shareholders action that this chapter requires be approved
34 by shareholders;

35 (3) fill vacancies on the board of directors or, subject to subsection (g), on any of its
36 committees; or

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1 including financial statements and other financial data, prepared or presented by any of the persons
2 specified in subsection (f).

3 (f) A director is entitled to rely, in accordance with subsection (d) or (e), on:

4 (1) one or more officers or employees of the corporation whom the director reasonably
5 believes to be reliable and competent in the functions performed or the information, opinions,
6 reports, or statements provided;

7 (2) legal counsel, public accountants, or other persons retained by the corporation as to
8 matters involving skills or expertise the director reasonably believes are matters (i) within the particular
9 person's professional or expert competence or (ii) as to which the particular person merits confidence; or

10 (3) a committee of the board of directors of which the director is not a member if the
11 director reasonably believes the committee merits confidence.

12 293-A:8.31 [Reserved.]

13 293-A:8.32 [Reserved.]

14 293-A:8.33 Directors' Liability for Unlawful Distributions.

15 (a) A director who votes for or assents to a distribution in excess of what may be
16 authorized and made pursuant to RSA 293-A:6.40(a) or RSA 293-A:14.09(a) is personally liable to
17 the corporation for the amount of the distribution that exceeds what could have been distributed
18 without violating RSA 293-A:6.40(a) or RSA 293-A:14.09(a) if the party asserting liability establishes
19 that when taking the action the director did not comply with RSA 293-A:8.30.

20 (b) A director held liable under subsection (a) for an unlawful distribution is entitled to:

21 (1) contribution from every other director who could be held liable under subsection
22 (a) for the unlawful distribution; and

23 (2) recoupment from each shareholder of the pro-rata portion of the amount of the
24 unlawful distribution the shareholder accepted, knowing the distribution was made in violation of
25 RSA 293-A:6.40(a) or RSA 293-A:14.09(a).

26 (c) A proceeding to enforce:

27 (1) the liability of a director under subsection (a) is barred unless it is commenced
28 within 2 years after the date: (i) on which the effect of the distribution was measured under RSA
29 293-A:6.40(e) or (g); (ii) as of which the violation of RSA 293-A:6.40(a) occurred as the consequence of
30 disregard of a restriction in the articles of incorporation; or (iii) on which the distribution of assets to
31 shareholders under RSA 293-A:14.09(a) was made; or

32 (2) contribution or recoupment under subsection (b) is barred unless it is commenced
33 within one year after the liability of the claimant has been finally adjudicated under subsection (a).

34 Part D

35 Officers

36 293-A:8.40 Officers.

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1 (a) A corporation has the officers described in its bylaws or appointed by the board of
2 directors in accordance with the bylaws.

3 (b) The board of directors may elect individuals to fill one or more offices of the
4 corporation. An officer may appoint one or more officers or assistant officers if authorized by the
5 bylaws or the board of directors.

6 (c) The bylaws or the board of directors shall assign to one of the officers responsibility
7 for preparing the minutes of the directors' and shareholders' meetings and for maintaining and
8 authenticating the records of the corporation required to be kept under RSA 293-A:16.01(a) and
9 RSA 293-A:16.01(e).

10 (d) The same individual may simultaneously hold more than one office in a corporation.

11 293-A:8.41 Functions of Officers. Each officer has the authority and shall perform the functions
12 set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the
13 board of directors or by direction of an officer authorized by the board of directors to prescribe the
14 functions of other officers.

15 293-A:8.42 Standards of Conduct for Officers.

16 (a) An officer, when performing in such capacity, has the duty to act:

17 (1) in good faith;

18 (2) with the care that a person in a like position would reasonably exercise under
19 similar circumstances; and

20 (3) in a manner the officer reasonably believes to be in the best interests of the
21 corporation.

22 (b) The duty of an officer includes the obligation:

23 (1) to inform the superior officer to whom, or the board of directors or the committee
24 thereof to which, the officer reports of information about the affairs of the corporation known to the
25 officer, within the scope of the officer's functions, and known to the officer to be material to such
26 superior officer, board, or committee; and

27 (2) to inform his or her superior officer, or another appropriate person within the
28 corporation, or the board of directors, or a committee thereof, of any actual or probable material
29 violation of law involving the corporation or material breach of duty to the corporation by an officer,
30 employee, or agent of the corporation, that the officer believes has occurred or is likely to occur.

31 (c) In discharging his or her duties, an officer who does not have knowledge that makes
32 reliance unwarranted is entitled to rely on:

33 (1) the performance of properly delegated responsibilities by one or more employees
34 of the corporation whom the officer reasonably believes to be reliable and competent in performing
35 the responsibilities delegated; or

36 (2) information, opinions, reports, or statements, including financial statements and
37 other financial data, prepared or presented by one or more employees of the corporation whom the

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1 officer reasonably believes to be reliable and competent in the matters presented or by legal counsel,
2 public accountants, or other persons retained by the corporation as to matters involving skills or
3 expertise the officer reasonably believes are matters (i) within the particular person’s professional or
4 expert competence or (ii) as to which the particular person merits confidence.

5 (d) An officer shall not be liable to the corporation or its shareholders for any decision to
6 take or not to take action, or any failure to take any action, as an officer, if the duties of the office are
7 performed in compliance with this section. Whether an officer who does not comply with this section
8 shall have liability will depend in such instance on applicable law.

9 293-A:8.43 Resignation and Removal of Officers.

10 (a) An officer may resign at any time by delivering notice to the corporation. A
11 resignation is effective when the notice is delivered unless the notice specifies a later effective time.
12 If a resignation is made effective at a later time and the board or the appointing officer accepts the
13 future effective time, the board or the appointing officer may fill the pending vacancy before the
14 effective time if the board or the appointing officer provides that the successor does not take office
15 until the effective time.

16 (b) An officer may be removed at any time with or without cause by: (i) the board of
17 directors; (ii) the officer who appointed such officer, unless the bylaws or the board of directors
18 provide otherwise; or (iii) any other officer if authorized by the bylaws or the board of directors.

19 (c) In this section, “appointing officer” means the officer (including any successor to that
20 officer) who appointed the officer resigning or being removed.

21 293-A:8.44 Contract Rights of Officers.

22 (a) The appointment of an officer does not itself create contract rights.

23 (b) An officer’s removal does not affect the officer’s contract rights, if any, with the
24 corporation. An officer’s resignation does not affect the corporation’s contract rights, if any, with
25 the officer.

26 Part E

27 Indemnification and Advance for Expenses

28 293-A:8.50 Subdivision Definitions.

29 (a) In this subdivision:

30 (1) “Corporation” includes any domestic or foreign predecessor entity of a corporation
31 in a merger.

32 (2) “Director” or “officer” means an individual who is or was a director or officer,
33 respectively, of a corporation or who, while a director or officer of the corporation, is or was serving
34 at the corporation’s request as a director, officer, manager, partner, trustee, employee, or agent of
35 another entity or employee benefit plan. A director or officer is considered to be serving an employee
36 benefit plan at the corporation’s request if the individual’s duties to the corporation also impose
37 duties on, or otherwise involve services by, the individual to the plan or to participants in or

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1 beneficiaries of the plan. “Director” or “officer” includes, unless the context requires otherwise, the
2 estate or personal representative of a director or officer.

3 (3) “Liability” means the obligation to pay a judgment, settlement, penalty, fine
4 (including an excise tax assessed with respect to an employee benefit plan) or reasonable expenses
5 incurred with respect to a proceeding.

6 (4) “Official capacity” means: (i) when used with respect to a director, the office of
7 director in a corporation; and (ii) when used with respect to an officer, as contemplated in RSA 293-
8 A:8.56, the office in a corporation held by the officer. “Official capacity” does not include service for
9 any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit
10 plan, or other entity.

11 (5) “Party” means an individual who was, is, or is threatened to be made, a
12 defendant or respondent in a proceeding.

13 (6) “Proceeding” means any threatened, pending, or completed action, suit, or
14 proceeding, whether civil, criminal, administrative, arbitratve, or investigative, and whether formal
15 or informal.

16 293-A:8.51 Permissible Indemnification.

17 (a) Except as otherwise provided in this section, a corporation may indemnify an
18 individual who is a party to a proceeding because the individual is a director against liability
19 incurred in the proceeding if:

20 (1)(i) the director conducted himself or herself in good faith; and

21 (ii) reasonably believed:

22 (A) in the case of conduct in an official capacity, that his or her conduct was
23 in the best interests of the corporation; and

24 (B) in all other cases, that the director’s conduct was at least not opposed to
25 the best interests of the corporation; and

26 (C) in the case of any criminal proceeding, the director had no reasonable
27 cause to believe his or her conduct was unlawful; or

28 (b) the director engaged in conduct for which broader indemnification has been made
29 permissible or obligatory under a provision of the articles of incorporation (as authorized by
30 RSA 293-A:2.02(b)(5)).

31 (c) A director’s conduct with respect to an employee benefit plan for a purpose the
32 director reasonably believed to be in the interests of the participants in, and the beneficiaries of, the
33 plan is conduct that satisfies the requirement of RSA 293-A:8.51(a)(1)(ii)(B).

34 (d) The termination of a proceeding by judgment, order, settlement, or conviction, or
35 upon a plea of nolo contendere or its equivalent, is not, of itself, determinative that the director did
36 not meet the relevant standard of conduct described in this section.

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1 (e) Unless ordered by a court under RSA 293-A:8.54(a)(3), a corporation may not
2 indemnify a director:

3 (1) in connection with a proceeding by or in the right of the corporation, except for
4 expenses incurred in connection with the proceeding if it is determined that the director has met the
5 relevant standard of conduct under subsection (a); or

6 (2) in connection with any proceeding with respect to conduct for which the director
7 was adjudged liable on the basis of receiving a financial benefit to which he or she was not entitled,
8 whether or not involving action in the director's official capacity.

9 293-A:8.52 Mandatory Indemnification. A corporation shall indemnify a director who was
10 wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director
11 was a party because he or she was a director of the corporation against expenses incurred by the
12 director in connection with the proceeding.

13 293-A:8.53 Advance for Expenses.

14 (a) A corporation may, before final disposition of a proceeding, advance funds to pay for
15 or reimburse expenses incurred in connection with the proceeding by an individual who is a party to
16 the proceeding because that individual is a member of the board of directors if the director delivers to
17 the corporation:

18 (1) a signed written affirmation of the director's good faith belief that the relevant
19 standard of conduct described in RSA 293-A:8.51 has been met by the director or that the proceeding
20 involves conduct for which liability has been eliminated under a provision of the articles of
21 incorporation as authorized by RSA 293-A:2.02(b)(4); and

22 (2) a signed written undertaking of the director to repay any funds advanced if the
23 director is not entitled to mandatory indemnification under RSA 293-A:8.52 and it is ultimately
24 determined under RSA 293-A:8.54 or RSA 293-A:8.55 that the director has not met the relevant
25 standard of conduct described in RSA 293-A:8.51.

26 (b) The undertaking required by subsection (a)(2) must be an unlimited general
27 obligation of the director but need not be secured and may be accepted without reference to the
28 financial ability of the director to make repayment.

29 (c) Authorizations under this section shall be made:

30 (1) by the board of directors:

31 (i) if there are 2 or more qualified directors, by a majority vote of all the qualified
32 directors (a majority of whom shall for such purpose constitute a quorum) or by a majority of the
33 members of a committee of 2 or more qualified directors appointed by such a vote; or

34 (ii) if there are fewer than 2 qualified directors, by the vote necessary for action
35 by the board in accordance with RSA 293-A:8.24(c), in which authorization directors who are not
36 qualified directors may participate; or

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1 (2) by the shareholders, but shares owned by or voted under the control of a director
2 who at the time is not a qualified director may not be voted on the authorization.

3 293-A:8.54 Court-Ordered Indemnification and Advance for Expenses.

4 (a) A director who is a party to a proceeding because he or she is a director may apply for
5 indemnification or an advance for expenses to the court conducting the proceeding or to another
6 court of competent jurisdiction. After receipt of an application and after giving any notice it
7 considers necessary, the court shall:

8 (1) order indemnification if the court determines that the director is entitled to
9 mandatory indemnification under RSA 293-A:8.52;

10 (2) order indemnification or advance for expenses if the court determines that the
11 director is entitled to indemnification or advance for expenses pursuant to a provision authorized by
12 RSA 293-A:8.58(a); or

13 (3) order indemnification or advance for expenses if the court determines, in view of
14 all the relevant circumstances, that it is fair and reasonable:

15 (i) to indemnify the director; or

16 (ii) to advance expenses to the director, even if he or she has not met the relevant
17 standard of conduct set forth in RSA 293-A:8.51(a), failed to comply with RSA 293-A:8.53, or was
18 adjudged liable in a proceeding referred to in RSA 293-A:8.51(e)(1) or (e)(2), but if the director was
19 adjudged so liable indemnification shall be limited to expenses incurred in connection with the
20 proceeding.

21 (b) If the court determines that the director is entitled to indemnification under
22 subsection (a)(1) or to indemnification or advance for expenses under subsection (a)(2), it shall also
23 order the corporation to pay the director's expenses incurred in connection with obtaining court-
24 ordered indemnification or advance for expenses. If the court determines that the director is entitled
25 to indemnification or advance for expenses under subsection (a)(3), it may also order the corporation
26 to pay the director's expenses to obtain court-ordered indemnification or advance for expenses.

27 293-A:8.55 Determination and Authorization of Indemnification.

28 (a) A corporation may not indemnify a director under RSA 293-A:8.51 unless authorized
29 for a specific proceeding after a determination has been made that indemnification is permissible
30 because the director has met the relevant standard of conduct set forth in RSA 293-A:8.51.

31 (b) The determination shall be made:

32 (1) if there are 2 or more qualified directors, by the board of directors by a majority vote
33 of all the qualified directors (a majority of whom shall for such purpose constitute a quorum) or by a
34 majority of the members of a committee of 2 or more qualified directors appointed by such a vote;

35 (2) by special legal counsel:

36 (i) selected in the manner prescribed in subdivision (1); or

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1 (ii) if there are fewer than 2 qualified directors, selected by the board of
2 directors, (in which selection directors who are not qualified directors may participate); or

3 (3) by the shareholders, but shares owned by or voted under the control of a director
4 who at the time is not a qualified director may not be voted on the determination.

5 (c) Authorization of indemnification shall be made in the same manner as the
6 determination that indemnification is permissible except that if there are fewer than 2 qualified
7 directors, or if the determination is made by special legal counsel, authorization of indemnification
8 shall be made by those entitled to select special legal counsel under subsection (b)(2)(ii).

9 293-A:8.56 Indemnification of Officers.

10 (a) A corporation may indemnify and advance expenses under this subdivision to an officer of
11 the corporation who is a party to a proceeding because he or she is an officer of the corporation:

12 (1) to the same extent as a director; and

13 (2) if he or she is an officer but not a director, to such further extent as may be
14 provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or
15 contract except for:

16 (i) liability in connection with a proceeding by or in the right of the corporation
17 other than for expenses incurred in connection with the proceeding; or

18 (ii) liability arising out of conduct that constitutes:

19 (A) receipt by the officer of a financial benefit to which he or she is not
20 entitled;

21 (B) an intentional infliction of harm on the corporation or the shareholders;

22 or

23 (C) an intentional violation of criminal law.

24 (b) The provisions of subsection (a)(2) shall apply to an officer who is also a director if
25 the basis on which he or she is made a party to the proceeding is an act or omission solely as an
26 officer.

27 (c) An officer of a corporation who is not a director is entitled to mandatory
28 indemnification under RSA 293-A:8.52, and may apply to a court under RSA 293-A:8.54 for
29 indemnification or an advance for expenses, in each case to the same extent to which a director may
30 be entitled to indemnification or advance for expenses under those provisions.

31 293-A:8.57 Insurance. A corporation may purchase and maintain insurance on behalf of an
32 individual who is a director or officer of the corporation, or who, while a director or officer of the
33 corporation, serves at the corporation's request as a director, officer, manager, partner, trustee,
34 employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust,
35 employee benefit plan, or other entity, against liability asserted against or incurred by the individual
36 in that capacity or arising from his or her status as a director or officer, whether or not the

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1 corporation would have power to indemnify or advance expenses to the individual against the same
2 liability under this subdivision.

3 293-A:8.58 Variation by Corporate Action; Application of Subdivision.

4 (a) A corporation may, by a provision in its articles of incorporation or bylaws or in a
5 resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in
6 advance of the act or omission giving rise to a proceeding to provide indemnification in accordance
7 with RSA 293-A:8.51 or advance funds to pay for or reimburse expenses in accordance with RSA 293-
8 A:8.53. Any such obligatory provision shall be deemed to satisfy the requirements for authorization
9 referred to in RSA 293-A:8.53(c) and in RSA 293-A:8.55(c). Any such provision that obligates the
10 corporation to provide indemnification to the fullest extent permitted by law shall be deemed to
11 obligate the corporation to advance funds to pay for or reimburse expenses in accordance with
12 RSA 293-A:8.53 to the fullest extent permitted by law, unless the provision specifically provides
13 otherwise.

14 (b) Any provision pursuant to subsection (a) shall not obligate the corporation to
15 indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct
16 with respect to the predecessor, unless otherwise specifically provided. Any provision for
17 indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the
18 board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to
19 which the predecessor is a party, existing at the time the merger takes effect, shall be governed by
20 RSA 293-A:11.07(a) (4).

21 (c) A corporation may, by a provision in its articles of incorporation, limit any of the
22 rights to indemnification or advance for expenses created by or pursuant to this subdivision.

23 (d) This subdivision does not limit a corporation's power to pay or reimburse expenses
24 incurred by a director or an officer in connection with appearing as a witness in a proceeding at a
25 time when he or she is not a party.

26 (e) This subdivision does not limit a corporation's power to indemnify, advance expenses
27 to or provide or maintain insurance on behalf of an employee or agent.

28 293-A:8.59 Exclusivity of Subdivision. A corporation may provide indemnification or advance
29 expenses to a director or an officer only as permitted by this subdivision.

30 293-A:8.60 Subdivision Definitions.

31 (a) In this subdivision:

32 (1) "Director's conflicting interest transaction" means a transaction effected or
33 proposed to be effected by the corporation, or by an entity controlled by the corporation:

34 (i) to which, at the relevant time, the director is a party; or

35 (ii) respecting which, at the relevant time, the director had knowledge and a
36 material financial interest known to the director; or

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1 (iii) respecting which, at the relevant time, the director knew that a related
2 person was a party or had a material financial interest.

3 (2) “Control,” including the term “controlled by,” means (i) having the power, directly
4 or indirectly, to elect or remove a majority of the members of the board of directors or other
5 governing body of an entity, whether through the ownership of voting shares or interests, by
6 contract, or otherwise, or (ii) being subject to a majority of the risk of loss from the entity’s activities
7 or entitled to receive a majority of the entity’s residual returns.

8 (3) “Relevant time” means (i) the time at which directors’ action respecting the
9 transaction is taken in compliance with RSA 293-A:8.62, or (ii) if the transaction is not brought
10 before the board of directors of the corporation (or its committee) for action under RSA 293-A:8.62, at
11 the time the corporation (or an entity controlled by the corporation) becomes legally obligated to
12 consummate the transaction.

13 (4) “Material financial interest” means a financial interest in a transaction that
14 would reasonably be expected to impair the objectivity of the director’s judgment when participating
15 in action on the authorization of the transaction.

16 (5) “Related person” means:

17 (i) the director’s spouse;

18 (ii) a child, stepchild, grandchild, parent, step parent, grandparent, sibling, step
19 sibling, half sibling, aunt, uncle, niece, or nephew (or spouse of any thereof) of the director or of the
20 director’s spouse;

21 (iii) an individual living in the same home as the director;

22 (iv) an entity (other than the corporation or an entity controlled by the
23 corporation) controlled by the director or any person specified above in this subdivision (5);

24 (v) a domestic or foreign (A) business (other than the corporation or an entity
25 controlled by the corporation) of which the director is a director, (B) unincorporated entity of which
26 the director is a general partner or a member of the governing body, or (C) individual, trust or estate
27 for whom or of which the director is a trustee, guardian, personal representative, or like fiduciary; or

28 (vi) a person that is, or an entity that is controlled by, an employer of the
29 director.

30 (6) “Fair to the corporation” means, for purposes of RSA 293-A:8.61(b)(3), that the
31 transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was (i)
32 fair in terms of the director’s dealings with the corporation, and (ii) comparable to what might have been
33 obtainable in an arm’s length transaction, given the consideration paid or received by the corporation.

34 (7) “Required disclosure” means disclosure of (i) the existence and nature of the
35 director’s conflicting interest, and (ii) all facts known to the director respecting the subject matter of

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1 the transaction that a director free of such conflicting interest would reasonably believe to be
2 material in deciding whether to proceed with the transaction.

3 293-A:8.61 Judicial Action.

4 (a) A transaction effected or proposed to be effected by the corporation (or by an entity
5 controlled by the corporation) may not be the subject of equitable relief, or give rise to an award of
6 damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or
7 by or in the right of the corporation, on the ground that the director has an interest respecting the
8 transaction, if it is not a director's conflicting interest transaction.

9 (b) A director's conflicting interest transaction may not be the subject of equitable relief,
10 or give rise to an award of damages or other sanctions against a director of the corporation, in a
11 proceeding by a shareholder or by or in the right of the corporation, on the ground that the director
12 has an interest respecting the transaction, if:

13 (1) directors' action respecting the transaction was taken in compliance with
14 RSA 293-A:8.62 at any time; or

15 (2) shareholders' action respecting the transaction was taken in compliance with
16 RSA 293-A:8.63 at any time; or

17 (3) the transaction, judged according to the circumstances at the relevant time, is
18 established to have been fair to the corporation.

19 293-A:8.62 Directors' Action.

20 (a) Directors' action respecting a director's conflicting interest transaction is effective for
21 purposes of RSA 293-A:8.61(b)(1) if the transaction has been authorized by the affirmative vote of a
22 majority (but no fewer than 2) of the qualified directors who voted on the transaction, after required
23 disclosure by the conflicted director of information not already known by such qualified directors, or
24 after modified disclosure in compliance with subsection (b), provided that:

25 (1) the qualified directors have deliberated and voted outside the presence of and
26 without the participation by any other director; and

27 (2) where the action has been taken by a committee, all members of the committee
28 were qualified directors, and either (i) the committee was composed of all the qualified directors on
29 the board of directors or (ii) the members of the committee were appointed by the affirmative vote of
30 a majority of the qualified directors on the board.

31 (b) Notwithstanding subsection (a), when a transaction is a director's conflicting interest
32 transaction only because a related person described in clause (v) or clause (vi) of RSA 293-
33 A:8.60(a)(5) is a party to or has a material financial interest in the transaction, the conflicted
34 director is not obligated to make required disclosure to the extent that the director reasonably
35 believes that doing so would violate a duty imposed under law, a legally enforceable obligation of

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1 confidentiality, or a professional ethics rule, provided that the conflicted director discloses to the
2 qualified directors voting on the transaction:

- 3 (1) all information required to be disclosed that is not so violative,
4 (2) the existence and nature of the director’s conflicting interest, and
5 (3) the nature of the conflicted director’s duty not to disclose the confidential
6 information.

7 (c) A majority (but no fewer than 2) of all the qualified directors on the board of directors, or
8 on the committee, constitutes a quorum for purposes of action that complies with this section.

9 (d) Where directors’ action under this section does not satisfy a quorum or voting
10 requirement applicable to the authorization of the transaction by reason of the articles of
11 incorporation, the bylaws or a provision of law, independent action to satisfy those authorization
12 requirements must be taken by the board of directors or a committee, in which action directors who
13 are not qualified directors may participate.

14 293-A:8.63 Shareholders’ Action.

15 (a) Shareholders’ action respecting a director’s conflicting interest transaction is effective
16 for purposes of RSA 293-A:8.61(b)(2) if a majority of the votes cast by the holders of all qualified
17 shares are in favor of the transaction after (1) notice to shareholders describing the action to be
18 taken respecting the transaction; (2) provision to the corporation of the information referred to in
19 subsection (b); and (3) communication to the shareholders entitled to vote on the transaction of the
20 information that is the subject of required disclosure, to the extent the information is not known by
21 them. In the case of shareholders’ action at a meeting, the shareholders entitled to vote shall be
22 determined as of the record date for notice of the meeting.

23 (b) A director who has a conflicting interest respecting the transaction shall, before the
24 shareholders’ vote, inform the secretary or other officer or agent of the corporation authorized to
25 tabulate votes, in writing, of the number of shares that the director knows are not qualified shares
26 under subsection (c), and the identity of the holders of those shares.

27 (c) For purposes of this section: (1) “holder” means and “held by” refers to shares held by
28 both a record shareholder (as defined in RSA 293-A:13.01(a)(11)) and a beneficial shareholder (as
29 defined in RSA 293-A:13.01(a)(2)); and (2) “qualified shares” means all shares entitled to be voted
30 with respect to the transaction except for shares that the secretary or other officer or agent of the
31 corporation authorized to tabulate votes either knows, or under subsection (b) is notified, are held by
32 (A) a director who has a conflicting interest respecting the transaction or (B) a related person of the
33 director (excluding a person described in clause (vi) of RSA 293-A:8.60(a)(5)).

34 (d) A majority of the votes entitled to be cast by the holders of all qualified shares
35 constitutes a quorum for purposes of compliance with this section. Subject to the provisions of
36 subsection (e), shareholders’ action that otherwise complies with this section is not affected by the
37 presence of holders, or by the voting, of shares that are not qualified shares.

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1 (e) If a shareholders' vote does not comply with subsection (a) solely because of a
2 director's failure to comply with subsection (b), and if the director establishes that the failure was
3 not intended to influence and did not in fact determine the outcome of the vote, the court may take
4 such action respecting the transaction and the director, and may give such effect, if any, to the
5 shareholders' vote, as the court considers appropriate in the circumstances.

6 (f) Where shareholders' action under this section does not satisfy a quorum or voting
7 requirement applicable to the authorization of the transaction by reason of the articles of
8 incorporation, the bylaws, or a provision of law, independent action to satisfy those authorization
9 requirements must be taken by the shareholders, in which action shares that are not qualified
10 shares may participate.

11 Part G

12 Business Opportunities

13 293-A:8.70 Business Opportunities.

14 (a) A director's taking advantage, directly or indirectly, of a business opportunity may
15 not be the subject of equitable relief, or give rise to an award of damages or other sanctions against
16 the director, in a proceeding by or in the right of the corporation on the ground that such opportunity
17 should have first been offered to the corporation, if before becoming legally obligated respecting the
18 opportunity the director brings it to the attention of the corporation and:

19 (1) action by qualified directors disclaiming the corporation's interest in the
20 opportunity is taken in compliance with the procedures set forth in RSA 293-A:8.62, as if the decision
21 being made concerned a director's conflicting interest transaction; or

22 (2) shareholders' action disclaiming the corporation's interest in the opportunity is
23 taken in compliance with the procedures set forth in RSA 293-A:8.63, as if the decision being made
24 concerned a director's conflicting interest transaction; except that, rather than making "required
25 disclosure" as defined in RSA 293-A:8.60, in each case the director shall have made prior disclosure
26 to those acting on behalf of the corporation of all material facts concerning the business opportunity
27 that are then known to the director.

28 (b) In any proceeding seeking equitable relief or other remedies based upon an alleged
29 improper taking advantage of a business opportunity by a director, the fact that the director did not
30 employ the procedure described in subsection (a) before taking advantage of the opportunity shall
31 not create an inference that the opportunity should have been first presented to the corporation or
32 alter the burden of proof otherwise applicable to establish that the director breached a duty to the
33 corporation in the circumstances.

34 Domestication and Conversion

35 Part A

36 Preliminary Provisions

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1 293-A:9.01 Excluded Transactions. This chapter may not be used to effect a transaction in
2 which the conversion from one entity to another type of entity is governed by other statutes of this
3 state with specific provisions that address how that conversion is to be accomplished.

4 293-A:9.02 Required Approvals.

5 (a) If a domestic or foreign business corporation or eligible entity may not be a party to a
6 merger without the approval of a governmental authority, department, agency, or official of this
7 state, the corporation or eligible entity shall not be a party to a transaction under this chapter
8 without the prior approval of that authority, department, agency, or official.

9 (b) Property held in trust or for charitable purposes under the laws of this state by a
10 domestic or foreign eligible entity shall not, by any transaction under this chapter, be diverted from
11 the objects for which it was donated, granted, or devised, unless and until the eligible entity obtains
12 any approval or order of any court or any other governing authority in this state specifying the
13 disposition of the property to the extent required by and pursuant to applicable state law.

14 Part B

15 Domestication

16 293-A:9.20 Domestication.

17 (a) A foreign business corporation may become a domestic business corporation only if
18 the domestication is permitted by the organic law of the foreign corporation. The laws of
19 New Hampshire shall govern the effect of domesticating in New Hampshire pursuant to RSA 293-
20 A:9.20 through RSA 293-A:9.25.

21 (b) A domestic business corporation may become a foreign business corporation if the
22 domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of
23 the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be
24 approved by the adoption by the corporation of a plan of domestication in the manner provided in
25 this subdivision. The laws of the foreign jurisdiction shall govern the effect of domesticating in that
26 jurisdiction.

27 (c) The plan of domestication adopted by a domestic business corporation shall include:

28 (1) a statement of the jurisdiction in which the corporation is to be domesticated;

29 (2) the terms and conditions of the domestication;

30 (3) the manner and basis of reclassifying the shares of the corporation following its
31 domestication into shares or other securities, obligations, rights to acquire shares or other securities,
32 cash, other property, or any combination of the foregoing; and

33 (4) any desired amendments to the articles of incorporation of the corporation
34 following its domestication.

35 The plan of domestication may include any other provision relating to the domestication that may be
36 desired.

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1 (d) The plan of domestication may include a provision that the plan may be amended
2 prior to filing the document required by the laws of this state or the other jurisdiction to consummate
3 the domestication, except that subsequent to approval of the plan by the shareholders the plan may
4 not be amended to change:

5 (1) the amount or kind of shares or other securities, obligations, rights to acquire
6 shares or other securities, cash, or other property to be received by the shareholders under the plan;

7 (2) the articles of incorporation as they will be in effect immediately following the
8 domestication, except for changes permitted by RSA 293-A:10.05 or by comparable provisions of the
9 laws of the other jurisdiction; or

10 (3) any of the other terms or conditions of the plan if the change would adversely
11 affect any of the shareholders in any material respect.

12 (e) Terms of a plan of domestication may be made dependent upon facts objectively
13 ascertainable outside the plan in accordance with RSA 293-A:1.20(j).

14 (f) If any debt security, note or similar evidence of indebtedness for money borrowed,
15 whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic
16 business corporation before January 1, 2014 contains a provision applying to a merger of the
17 corporation and the document does not refer to a domestication of the corporation, the provision shall
18 be deemed to apply to a domestication of the corporation until such time as the provision is amended
19 subsequent to that date.

20 293-A:9.21 Action on a Plan of Domestication.

21 (a) In the case of a domestication of a domestic business corporation in a foreign
22 jurisdiction:

23 (1) The plan of domestication must be adopted by the board of directors.

24 (2) After adopting the plan of domestication, the board of directors must submit the
25 plan to the shareholders for their approval. The board of directors must also transmit to the
26 shareholders a recommendation that the shareholders approve the plan, unless (i) the board of
27 directors makes a determination that because of conflicts of interest or other special circumstances it
28 should not make such a recommendation or (ii) RSA 293-A:8.26 applies. If (i) or (ii) applies, the
29 board of directors shall transmit to the shareholders the basis for that determination.

30 (3) The board of directors may condition its submission of the plan of domestication
31 to the shareholders on any basis.

32 (4) If the approval of the shareholders is to be given at a meeting, the corporation
33 must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at
34 which the plan of domestication is to be submitted for approval. The notice must state that the
35 purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be

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1 accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy
2 of the articles of incorporation as they will be in effect immediately after the domestication.

3 (5) Unless the articles of incorporation, or the board of directors acting pursuant to
4 RSA 293-A:9.21(a)(3), requires a greater vote or a greater number of votes to be present, approval of
5 the plan of domestication requires the approval of each voting group entitled to vote separately on
6 the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

7 (6) Separate voting by voting groups is required by each class or series of shares
8 that:

9 (i) are to be reclassified under the plan of domestication into other securities,
10 obligations, rights to acquire shares or other securities, cash, other property, or any combination of
11 the foregoing;

12 (ii) would be entitled to vote as a separate group on a provision of the plan that,
13 if contained in a proposed amendment to articles of incorporation, would require action by separate
14 voting groups under RSA 293-A:10.04; or

15 (iii) is entitled under the articles of incorporation to vote as a voting group to
16 approve an amendment of the articles.

17 (7) If any provision of the articles of incorporation, bylaws, or an agreement to which
18 any of the directors or shareholders are parties, adopted or entered into before January 1, 2014,
19 applies to a merger of the corporation and that document does not refer to a domestication of the
20 corporation, the provision shall be deemed to apply to a domestication of the corporation until such
21 time as the provision is amended subsequent to that date.

22 (8) A plan of domestication may be approved for a participating corporation by
23 written consent of shareholders entitled to vote, as provided in RSA 293-A:7.04. If the plan of
24 domestication is approved by written consent of all shareholders, whether or not entitled to vote, a
25 resolution of the board of directors of the participating corporation approving, proposing, submitting,
26 recommending, or otherwise respecting the plan of domestication is not necessary and shareholders
27 of the participating corporation are not entitled to receive notice of or to dissent from the plan of
28 domestication.

29 293-A:9.22 Articles of Domestication.

30 (a) After the domestication of a foreign business corporation has been authorized as
31 required by the laws of the foreign jurisdiction, articles of domestication shall be signed by any
32 officer or other duly authorized representative. The articles shall set forth:

33 (1) the name of the corporation immediately before the filing of the articles of
34 domestication and, if that name is unavailable for use in this state or the corporation desires to
35 change its name in connection with the domestication, a name that satisfies the requirements of
36 RSA 293-A:4.01;

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1 (2) the jurisdiction of incorporation of the corporation immediately before the filing
2 of the articles of domestication and the date the corporation was incorporated in that jurisdiction;
3 and

4 (3) a statement that the domestication of the corporation in this state was duly
5 authorized as required by the laws of the jurisdiction in which the corporation was incorporated
6 immediately before its domestication in this state.

7 (b) The articles of domestication shall have attached articles of incorporation.

8 (c) The articles of domestication with articles of incorporation and the certificate
9 required by RSA 421-B:11, II(a) shall be delivered to the secretary of state for filing, and shall take
10 effect at the effective time provided in RSA 293-A:1.23.

11 (d) If the foreign corporation is authorized to transact business in this state under
12 RSA 293-A:15.01 through RSA 293-A:15.32, its certificate of authority shall be cancelled
13 automatically on the effective date of its domestication.

14 293-A:9.23 Surrender of Charter Upon Domestication.

15 (a) Whenever a domestic business corporation has adopted and approved, in the manner
16 required by this subdivision, a plan of domestication providing for the corporation to be domesticated
17 in a foreign jurisdiction, articles of charter surrender shall be signed on behalf of the corporation by
18 any officer or other duly authorized representative. The articles of charter surrender shall set forth:

19 (1) the name of the corporation;

20 (2) a statement that the articles of charter surrender are being filed in connection
21 with the domestication of the corporation in a foreign jurisdiction;

22 (3) a statement that the domestication was duly approved by the shareholders and, if
23 voting by any separate voting group was required, by each such separate voting group, in the
24 manner required by this chapter and the articles of incorporation; and

25 (4) the corporation's new jurisdiction of incorporation.

26 (b) The articles of charter surrender shall be delivered by the corporation to the
27 secretary of state for filing. The articles of charter surrender shall take effect on the effective time
28 provided in RSA 293-A:1.23.

29 293-A:9.24 Effect of Domestication.

30 (a) When a domestication of a foreign business corporation in New Hampshire becomes
31 effective:

32 (1) the title to all real and personal property, both tangible and intangible, of the
33 corporation remains in the corporation without reversion or impairment;

34 (2) the liabilities of the corporation remain the liabilities of the corporation;

35 (3) an action or proceeding pending against the corporation continues against the
36 corporation as if the domestication had not occurred;

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1 (4) the articles of domestication, or the articles of incorporation attached to the
2 articles of domestication, constitute the articles of incorporation of a foreign corporation
3 domesticating in this state;

4 (5) the shares of the corporation are reclassified into other shares, other securities,
5 obligations, rights to acquire shares or other securities of the corporation, or into cash or other
6 property in accordance with the terms of the domestication as approved under the laws of the foreign
7 jurisdiction, and the shareholders are entitled only to the rights provided by those terms and under
8 those laws; and

9 (6) the corporation is deemed to:

10 (i) be incorporated under and subject to the organic law of this state for all
11 purposes;

12 (ii) be the same corporation without interruption as the corporation that existed
13 under the laws of the foreign jurisdiction; and

14 (iii) have been incorporated on the date it was originally incorporated in the
15 foreign jurisdiction.

16 (b) When a domestication of a domestic business corporation in a foreign jurisdiction
17 becomes effective, the foreign business corporation is deemed to:

18 (1) appoint the secretary of state as its agent for service of process in a proceeding to
19 enforce the rights of shareholders who exercise appraisal rights in connection with the
20 domestication; and

21 (2) agree that it will promptly pay the amount, if any, to which such shareholders
22 are entitled under RSA 293-A:13.01 through RSA 293-A:13.40.

23 (c) The owner liability of a shareholder in a foreign corporation that is domesticated in
24 this state shall be as follows:

25 (1) The domestication does not discharge any owner liability under the laws of the
26 foreign jurisdiction to the extent any such owner liability arose before the effective time of the
27 articles of domestication.

28 (2) The shareholder shall not have owner liability under the laws of the foreign
29 jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time
30 of the articles of domestication.

31 (3) The provisions of the laws of the foreign jurisdiction shall continue to apply to the
32 collection or discharge of any owner liability preserved by subparagraph (1), as if the domestication
33 had not occurred.

34 (4) The shareholder shall have whatever rights of contribution from other
35 shareholders are provided by the laws of the foreign jurisdiction with respect to any owner liability
36 preserved by subparagraph (1), as if the domestication had not occurred.

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1 and RSA 293-A:9.52(a)(7). For purposes of applying RSA 293-A:9.50 through RSA 293-A:9.56 and
2 RSA 293-A:13.01 through RSA 293-A:13.40:

3 (1) the unincorporated entity, its interest holders, interests and organic documents
4 taken together, shall be deemed to be a domestic business corporation, shareholders, shares, and
5 articles of incorporation, respectively and vice versa, as the context may require; and

6 (2) if a group of persons manages the business and affairs of the unincorporated
7 entity, whether identical or not identical to the interest holders, that group shall be deemed to be
8 the board of directors.

9 (d) A foreign unincorporated entity may become a domestic business corporation if the
10 organic law of the foreign unincorporated entity authorizes it to become a corporation in another
11 jurisdiction. The laws of the state of New Hampshire govern the effect of conversion to a domestic
12 business corporation pursuant to RSA 293-A:9.50 through RSA 293-A:9.56.

13 (e) If any debt security, note, or similar evidence of indebtedness for money borrowed,
14 whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic
15 business corporation before the effective date of RSA 293-A:9.50 through RSA 293-A:9.56, applies to
16 a merger of the corporation and the document does not refer to an entity conversion of the
17 corporation, the provision shall be deemed to apply to an entity conversion of the corporation until
18 such time as the provision is amended subsequent to that date.

19 (f) As used in this subdivision:

20 (1) “Converting entity” means the domestic business corporation or domestic
21 unincorporated entity that adopts a plan of entity conversion or the foreign unincorporated entity
22 converting to a domestic business corporation.

23 (2) “Surviving entity” means the corporation or unincorporated entity that is in
24 existence immediately after consummation of an entity conversion pursuant to this subdivision.

25 293-A:9.51 Plan of Entity Conversion.

26 (a) A plan of entity conversion must include:

27 (1) a statement of the type of entity the surviving entity will be and, if it will be a
28 foreign other entity, its jurisdiction of organization;

29 (2) the terms and conditions of the conversion;

30 (3) if the surviving entity will be an unincorporated entity the manner and basis of
31 converting the shares of the domestic business corporation following its conversion into interests or
32 other securities, obligations, rights to acquire interests or other securities, cash, other property, or
33 any combination of the foregoing;

34 (4) if the surviving entity will be a domestic business corporation, the manner and
35 the basis of converting the interest in the unincorporated entity into shares of the domestic business
36 corporation or other securities, obligations, rights to acquire interests or other securities, cash, other
37 property, or any combination of the foregoing; and

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1 (5) the full text, as they will be in effect immediately after consummation of the
2 conversion, of the organic documents of the surviving entity.

3 The plan of entity conversion may include any other provisions relating to the conversion that may
4 be desired.

5 (b) The plan of entity conversion may also include a provision that the plan may be
6 amended prior to filing articles of entity conversion, except that subsequent to approval of the plan
7 by the shareholders or by the holders of voting interest in an unincorporated entity the plan may not
8 be amended to change:

9 (1) the amount or kind of shares or other securities, interests, obligations, rights to
10 acquire shares, other securities or interests, cash, or other property to be received under the plan by
11 the shareholders or interest holders;

12 (2) the organic documents that will be in effect immediately following the conversion,
13 except for changes permitted by a provision of the organic law of the surviving entity comparable to
14 RSA 293-A:10.05; or

15 (3) any of the other terms or conditions of the plan if the change would adversely
16 affect any of the shareholders or the interest holders in any material respect.

17 (c) Terms of a plan of entity conversion may be made dependent upon facts objectively
18 ascertainable outside the plan in accordance with RSA 293-A:1.20(j).

19 293-A:9.52 Action on a Plan of Entity Conversion.

20 (a) In the case of an entity conversion of a domestic business corporation to a domestic or
21 foreign unincorporated entity:

22 (1) The plan of entity conversion must be adopted by the board of directors.

23 (2) After adopting the plan of entity conversion, the board of directors must submit
24 the plan to the shareholders for their approval. The board of directors must also transmit to the
25 shareholders a recommendation that the shareholders approve the plan, unless (i) the board of
26 directors makes a determination that because of conflicts of interest or other special circumstances it
27 should not make such a recommendation or (ii) RSA 293-A:8.26 applies. If (i) or (ii) applies, the
28 board of directors shall transmit to the shareholders the basis for that determination.

29 (3) The board of directors may condition its submission of the plan of entity
30 conversion to the shareholders on any basis.

31 (4) If the approval of the shareholders is to be given at a meeting, the corporation
32 must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at
33 which the plan of entity conversion is to be submitted for approval. The notice must state that the
34 purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be
35 accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy
36 of the organic documents as they will be in effect immediately after the entity conversion.

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1 (5) Unless the articles of incorporation, or the board of directors acting pursuant to
2 RSA 293-A:9.52(a)(3), requires a greater vote or a greater number of votes to be present, approval of
3 the plan of entity conversion requires the approval of each voting group entitled to vote separately on
4 the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

5 (6) If any provision of the articles of incorporation, bylaws, or an agreement to which
6 any of the directors or shareholders are parties, adopted or entered into before the effective date of
7 RSA 293-A:9.50 through RSA 293-A:9.56, applies to a merger of the corporation and the document
8 does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an
9 entity conversion of the corporation until such time as the provision is subsequently amended.

10 (7) If as a result of the conversion one or more shareholders of the corporation would
11 become subject to owner liability for the debts, obligations, or liabilities of any other person or entity,
12 approval of the plan of conversion shall require the signing, by each such shareholder who does not
13 assert appraisal rights, of a separate written consent to become subject to such owner liability.

14 (8) A plan of entity conversion may be approved for a participating corporation by
15 written consent of shareholders entitled to vote, as provided in RSA 293-A:7.04. If the plan of entity
16 conversion is approved by written consent of all shareholders, whether or not entitled to vote, a
17 resolution of the board of directors of the participating corporation approving, proposing, submitting,
18 recommending, or otherwise respecting the plan of entity conversion is not necessary and
19 shareholders of the participating corporation are not entitled to receive notice of or to dissent from
20 the plan of entity conversion.

21 293-A:9.53 Articles of Entity Conversion.

22 (a) After the conversion of a domestic business corporation to a domestic unincorporated
23 entity has been adopted and approved as required by this chapter, articles of entity conversion shall
24 be signed on behalf of the corporation by any officer or other duly authorized representative. The
25 articles shall:

26 (1) set forth the name of the corporation immediately before the filing of the articles
27 of entity conversion and the name to which the name of the corporation is to be changed, which shall
28 be a name that satisfies the organic law of the surviving entity;

29 (2) state the type of unincorporated entity that the surviving entity will be;

30 (3) set forth a statement that the plan of entity conversion was duly approved by the
31 shareholders in the manner required by this chapter and the articles of incorporation; and

32 (4) if the surviving entity is a filing entity, either contain all of the provisions
33 required to be set forth in its public organic document and any other desired provisions that are
34 permitted, or have attached a public organic document; except that, in either case, provisions that
35 would not be required to be included in a restated public organic document may be omitted.

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1 (b) After the conversion of a domestic unincorporated entity to a domestic business
2 corporation has been adopted and approved as required by the organic law of the unincorporated
3 entity, articles of entity conversion shall be signed on behalf of the unincorporated entity by any
4 officer or other duly authorized representative. The articles shall:

5 (1) set forth the name of the unincorporated entity immediately before the filing of
6 the articles of entity conversion and the name to which the name of the unincorporated entity is to be
7 changed, which shall be a name that satisfies the requirements of RSA 293-A:4.01;

8 (2) set forth a statement that the plan of entity conversion was duly approved in
9 accordance with the organic law of the unincorporated entity; and

10 (3) either contain all of the provisions that RSA 293-A:2.02(a) requires to be set forth
11 in articles of incorporation and any other desired provisions that RSA 293-A:2.02(b) permits to be
12 included in articles of incorporation, or have attached articles of incorporation; except that, in either
13 case, provisions that would not be required to be included in restated articles of incorporation of a
14 domestic business corporation may be omitted.

15 (c) After the conversion of a foreign unincorporated entity to a domestic business
16 corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity
17 conversion shall be signed on behalf of the foreign unincorporated entity by any officer or other duly
18 authorized representative. The articles shall:

19 (1) set forth the name of the unincorporated entity immediately before the filing of
20 the articles of entity conversion and the name to which the name of the unincorporated entity is to be
21 changed, which shall be a name that satisfies the requirements of RSA 293-A:4.01;

22 (2) set forth the jurisdiction under the laws of which the unincorporated entity was
23 organized immediately before the filing of the articles of entity conversion and the date on which the
24 unincorporated entity was organized in that jurisdiction;

25 (3) set forth a statement that the conversion of the unincorporated entity was duly
26 approved in the manner required by its organic law; and

27 (4) either contain all of the provisions that RSA 293-A:2.02(a) requires to be set forth
28 in articles of incorporation and any other desired provisions that RSA 293-A:2.02(b) permits to be
29 included in articles of incorporation, or have attached articles of incorporation; except that, in either
30 case, provisions that would not be required to be included in restated articles of incorporation of a
31 domestic business corporation may be omitted.

32 (d) The articles of entity conversion shall be delivered to the secretary of state for filing,
33 and shall take effect at the effective time provided in RSA 293-A:1.23. Articles of entity conversion
34 under RSA 293-A:9.53(a) or (b) may be combined with any required conversion filing under the
35 organic law of the domestic unincorporated entity if the combined filing satisfies the requirements of
36 both this section and the other organic law.

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1 (e) If the converting entity is a foreign unincorporated entity that is authorized to
2 transact business in this state under a provision of law similar to RSA 293-A:15.01 through
3 RSA 293-A:15.32, its certificate of authority or other type of foreign qualification shall be cancelled
4 automatically on the effective date of its conversion.

5 293-A:9.54 Surrender of Charter Upon Conversion.

6 (a) Whenever a domestic business corporation has adopted and approved, in the manner
7 required by this subdivision, a plan of entity conversion providing for the corporation to be converted
8 to a foreign unincorporated entity, articles of charter surrender shall be signed on behalf of the
9 corporation by any officer or other duly authorized representative. The articles of charter surrender
10 shall set forth:

11 (1) the name of the corporation;

12 (2) a statement that the articles of charter surrender are being filed in connection
13 with the conversion of the corporation to a foreign unincorporated entity;

14 (3) a statement that the conversion was duly approved by the shareholders in the
15 manner required by this chapter and the articles of incorporation;

16 (4) the jurisdiction under the laws of which the surviving entity will be organized;
17 and

18 (5) if the surviving entity will be a nonfiling entity, the address of its executive office
19 immediately after the conversion.

20 (b) The articles of charter surrender shall be delivered by the corporation to the
21 secretary of state for filing. The articles of charter surrender shall take effect on the effective time
22 provided in RSA 293-A:1.23.

23 293-A:9.55 Effect of Entity Conversion.

24 (a) When a conversion under this subdivision in which the surviving entity is a domestic
25 business corporation or domestic unincorporated entity becomes effective:

26 (1) the title to all real and personal property, both tangible and intangible, of the
27 converting entity remains in the surviving entity without reversion or impairment;

28 (2) the liabilities of the converting entity remain the liabilities of the surviving
29 entity;

30 (3) an action or proceeding pending against the converting entity continues against
31 the surviving entity as if the conversion had not occurred;

32 (4) in the case of a surviving entity that is a filing entity, the articles of conversion,
33 or the articles of incorporation or public organic document attached to the articles of conversion,
34 constitute the articles of incorporation or public organic document of the surviving entity;

35 (5) in the case of a surviving entity that is a nonfiling entity, its private organic
36 document provided for in the plan of conversion constitutes the private organic document of the
37 surviving entity;

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1 (6) the shares or interests of the converting entity are reclassified into shares,
2 interests, other securities, obligations, rights to acquire shares, interests or other securities of the
3 surviving entity, or into cash or other property in accordance with the plan of conversion; and the
4 shareholders or interest holders of the converting entity are entitled only to the rights provided in
5 the plan of conversion and to any other rights they may have under the organic law of the
6 converting entity; and

7 (7) the surviving entity is deemed to:

8 (i) be a domestic business corporation or unincorporated entity for all purposes;

9 (ii) be the same corporation or unincorporated entity without interruption as the
10 converting entity; and

11 (iii) have been incorporated or otherwise organized on the date that the
12 converting entity was originally incorporated or organized.

13 (b) When a conversion of a domestic business corporation to a foreign unincorporated
14 entity becomes effective, the surviving entity is deemed to:

15 (1) appoint the secretary of state as its agent for service of process in a proceeding to
16 enforce the rights of shareholders who exercise appraisal rights in connection with the conversion;
17 and

18 (2) agree that it will promptly pay the amount, if any, to which such shareholders
19 are entitled under RSA 293-A:13.01 through RSA 293-A:13.40.

20 (c) A shareholder who becomes subject to owner liability for some or all of the debts,
21 obligations, or liabilities of the surviving entity shall be personally liable only for those debts,
22 obligations, or liabilities of the surviving entity that arise after the effective time of the articles of
23 entity conversion.

24 (d) The owner liability of an interest holder in an unincorporated entity that converts to
25 a domestic business corporation shall be as follows:

26 (1) The conversion does not discharge any owner liability under the organic law of
27 the unincorporated entity to the extent any such owner liability arose before the effective time of the
28 articles of entity conversion.

29 (2) The interest holder shall not have owner liability under the organic law of the
30 unincorporated entity for any debt, obligation, or liability of the corporation that arises after the
31 effective time of the articles of entity conversion.

32 (3) The provisions of the organic law of the unincorporated entity shall continue to
33 apply to the collection or discharge of any owner liability preserved by RSA 293-A:9.55(d)(1), as if the
34 conversion had not occurred.

35 (4) The interest holder shall have whatever rights of contribution from other interest
36 holders are provided by the organic law of the unincorporated entity with respect to any owner
37 liability preserved by RSA 293-A:9.55(d)(1), as if the conversion had not occurred.

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1 (c) The board of directors may condition its recommendation of the amendment to the
2 shareholders on any basis.

3 (d) If the amendment is required to be approved by the shareholders, and the approval is
4 to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to
5 vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The
6 notice must state that the purpose, or one of the purposes, of the meeting is to consider the
7 amendment and must contain or be accompanied by a copy of the proposed amendment.

8 (e) Unless the articles of incorporation, or the board of directors acting pursuant to
9 subsection (c), require a greater vote or a greater number of shares to be present, approval of the
10 amendment shall require the approval of the shareholders at a meeting at which a quorum
11 consisting of at least a majority of the votes entitled to be cast on the amendment exists, and, if any
12 class or series of shares is entitled to vote as a separate group on the amendment, except as provided
13 in RSA 291-A:10.04(c), the approval of each such separate voting group at a meeting at which a
14 quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the
15 amendment by that voting group exists.

16 293-A:10.04 Voting on Amendments by Voting Groups.

17 (a) If a corporation has more than one class of shares outstanding, the holders of the
18 outstanding shares of a class are entitled to vote as a separate voting group (if shareholder voting is
19 otherwise required by this chapter) on a proposed amendment to the articles of incorporation if the
20 amendment would:

21 (1) increase or decrease the aggregate number of authorized shares of the class;

22 (2) effect an exchange or reclassification of all or part of the shares of the class into
23 shares of another class;

24 (3) effect an exchange or reclassification, or create the right of exchange, of all or
25 part of the shares of another class into shares of the class;

26 (4) change the rights, preferences, or limitations of all or part of the shares of the
27 class;

28 (5) change the shares of all or part of the class into a different number of shares of
29 the same class;

30 (6) create a new class of shares having rights or preferences with respect to
31 distributions that are prior or superior to the shares of the class;

32 (7) increase the rights, preferences, or number of authorized shares of any class that,
33 after giving effect to the amendment, have rights or preferences with respect to distributions that
34 are prior or superior to the shares of the class;

35 (8) limit or deny an existing preemptive right of all or part of the shares of the class; or

36 (9) cancel or otherwise affect rights to distributions that have accumulated but not

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1 yet been authorized on all or part of the shares of the class.

2 (b) If a proposed amendment would affect a series of a class of shares in one or more of
3 the ways described in subsection (a), the holders of shares of that series are entitled to vote as a
4 separate voting group on the proposed amendment.

5 (c) If a proposed amendment that entitles the holders of 2 or more classes or series of
6 shares to vote as separate voting groups under this section would affect those 2 or more classes or
7 series in the same or a substantially similar way, the holders of shares of all the classes or series so
8 affected must vote together as a single voting group on the proposed amendment, unless otherwise
9 provided in the articles of incorporation or required by the board of directors.

10 (d) A class or series of shares is entitled to the voting rights granted by this section
11 although the articles of incorporation provide that the shares are nonvoting shares.

12 293-A:10.05 Amendment by Board of Directors.

13 (a) Unless the articles of incorporation provide otherwise, a corporation's board of directors
14 may adopt amendments to the corporation's articles of incorporation without shareholder approval:

15 (1) to extend the duration of the corporation if it was incorporated at a time when
16 limited duration was required by law;

17 (2) to delete the names and addresses of the initial directors;

18 (3) to delete the name and address of the initial registered agent or registered office,
19 if a statement of change is on file with the secretary of state;

20 (4) if the corporation has only one class of shares outstanding:

21 (i) to change each issued and unissued authorized share of the class into a
22 greater number of whole shares of that class; or

23 (ii) to increase the number of authorized shares of the class to the extent
24 necessary to permit the issuance of shares as a share dividend;

25 (5) to change the corporate name by substituting the word "corporation,"
26 "incorporated," "limited," or the abbreviation "corp.," "inc.," or "ltd.," for a similar word or
27 abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the
28 name;

29 (6) to reflect a reduction in authorized shares, as a result of the operation of
30 RSA 293-A:6.31(b), when the corporation has acquired its own shares and the articles of
31 incorporation prohibit the reissue of the acquired shares;

32 (7) to delete a class of shares from the articles of incorporation, as a result of the
33 operation of RSA 293-A:6.31(b), when there are no remaining outstanding shares of the class because
34 the corporation has acquired all shares of the class and the articles of incorporation prohibit the
35 reissue of the acquired shares; or

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1 (8) to make any change expressly permitted by RSA 293-A:6.02(a) or (b) to be made
2 without shareholder approval.

3 293-A:10.06 Articles of Amendment.

4 (a) After an amendment to the articles of incorporation has been adopted and approved
5 in the manner required by this chapter and by the articles of incorporation, the corporation shall
6 deliver to the secretary of state, for filing, articles of amendment, which shall set forth:

7 (1) the name of the corporation;

8 (2) the text of each amendment adopted, or the information required by RSA 293-
9 A:1.20(j)(5);

10 (3) if an amendment provides for an exchange, reclassification, or cancellation of
11 issued shares, provisions for implementing the amendment if not contained in the amendment itself,
12 which may be made dependent upon facts objectively ascertainable outside the articles of
13 amendment in accordance with RSA 293-A:1.20(j)(5);

14 (4) the date of each amendment's adoption; and

15 (5) if an amendment:

16 (i) was adopted by the incorporators or board of directors without shareholder
17 approval, a statement that the amendment was duly approved by the incorporators or by the board
18 of directors, as the case may be, and that shareholder approval was not required;

19 (ii) required approval by the shareholders, a statement that the amendment was
20 duly approved by the shareholders in the manner required by this chapter and by the articles of
21 incorporation; or

22 (iii) is being filed pursuant to RSA 293-A:1.20(j)(5), a statement to that effect.

23 293-A:10.07 Restated Articles of Incorporation.

24 (a) A corporation's board of directors may restate its articles of incorporation at any
25 time, with or without shareholder approval, to consolidate all properly approved amendments into a
26 single document.

27 (b) If the restated articles include one or more new amendments that require shareholder
28 approval, the amendments must be adopted and approved as provided in RSA 293-A:10.03.

29 (c) A corporation that restates its articles of incorporation shall deliver to the secretary
30 of state for filing articles of restatement setting forth the name of the corporation and the text of the
31 restated articles of incorporation together with a certificate which states that the restated articles
32 consolidate all amendments into a single document and, if a new amendment is included in the
33 restated articles, which also includes the statements required under RSA 293-A:10.06.

34 (d) Duly adopted restated articles of incorporation supersede the original articles of
35 incorporation and all amendments thereto.

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1 (e) The secretary of state may certify restated articles of incorporation as the articles of
2 incorporation currently in effect, without including the certificate information required by subsection (c).

3 293-A:10.08 Amendment Pursuant to Reorganization.

4 (a) A corporation's articles of incorporation may be amended without action by the board
5 of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of
6 competent jurisdiction under the authority of a law of the United States.

7 (b) The individual or individuals designated by the court shall deliver to the secretary of
8 state for filing articles of amendment setting forth:

9 (1) the name of the corporation;

10 (2) the text of each amendment approved by the court;

11 (3) the date of the court's order or decree approving the articles of amendment;

12 (4) the title of the reorganization proceeding in which the order or decree was
13 entered; and

14 (5) a statement that the court had jurisdiction of the proceeding under federal
15 statute.

16 (c) This section does not apply after entry of a final decree in the reorganization
17 proceeding even though the court retains jurisdiction of the proceeding for limited purposes
18 unrelated to consummation of the reorganization plan.

19 293-A:10.09 Effect of Amendment. An amendment to the articles of incorporation does not affect
20 a cause of action existing against or in favor of the corporation, a proceeding to which the corporation
21 is a party, or the existing rights of persons other than shareholders of the corporation. An
22 amendment changing a corporation's name does not abate a proceeding brought by or against the
23 corporation in its former name.

24 **Part B**

25 **Amendment of Bylaws**

26 293-A:10.20 Amendment By Board Of Directors Or Shareholders.

27 (a) A corporation's shareholders may amend or repeal the corporation's bylaws.

28 (b) A corporation's board of directors may amend or repeal the corporation's bylaws,
29 unless:

30 (1) the articles of incorporation, RSA 293-A:10.21 or, if applicable, RSA 293-A:10.22
31 reserve that power exclusively to the shareholders in whole or part; or

32 (2) except as provided in RSA 293-A:2.06(d), the shareholders in amending,
33 repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal,
34 or reinstate that bylaw.

35 293-A:10.21 Bylaw Increasing Quorum or Voting Requirement for Directors.

36 (a) A bylaw that increases a quorum or voting requirement for the board of directors
37 may be amended or repealed:

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1 (1) if originally adopted by the shareholders, only by the shareholders, unless the
2 bylaw otherwise provides;

3 (2) if adopted by the board of directors, either by the shareholders or by the board of
4 directors.

5 (b) A bylaw adopted or amended by the shareholders that increases a quorum or voting
6 requirement for the board of directors may provide that it can be amended or repealed only by a
7 specified vote of either the shareholders or the board of directors.

8 (c) Action by the board of directors under subsection (a) to amend or repeal a bylaw that
9 changes the quorum or voting requirement for the board of directors must meet the same quorum
10 requirement and be adopted by the same vote required to take action under the quorum and voting
11 requirement then in effect or proposed to be adopted, whichever is greater.

12 293-A:10.22 Bylaw Provisions Relating to the Election of Directors.

13 (a) Unless the articles of incorporation (i) specifically prohibit the adoption of a bylaw
14 pursuant to this section, (ii) alter the vote specified in RSA 293-A:7.28(a), or (iii) provide for
15 cumulative voting, a public corporation may elect in its bylaws to be governed in the election of
16 directors as follows:

17 (1) each vote entitled to be cast may be voted for or against up to that number of
18 candidates that is equal to the number of directors to be elected, or a shareholder may indicate an
19 abstention, but without cumulating the votes;

20 (2) to be elected, a nominee must have received a plurality of the votes cast by
21 holders of shares entitled to vote in the election at a meeting at which a quorum is present, provided
22 that a nominee who is elected but receives more votes against than for election shall serve as a
23 director for a term that shall terminate on the date on which an individual is selected by the board of
24 directors to fill the office held by such director, which selection shall be deemed to constitute the
25 filling of a vacancy by the board to which RSA 293-A:8.10 applies; and

26 (3) the board of directors may select any qualified individual to fill the office held by
27 a director who received more votes against than for election.

28 (b) Subsection (a) does not apply to an election of directors by a voting group if (i) at the
29 expiration of the time fixed under a provision requiring advance notification of director candidates,
30 or (ii) absent such a provision, at a time fixed by the board of directors which is not more than 14
31 days before notice is given of the meeting at which the election is to occur, there are more candidates
32 for election by the voting group than the number of directors to be elected, one or more of whom are
33 properly proposed by shareholders. An individual shall not be considered a candidate for purposes of
34 this subsection if the board of directors determines before the notice of meeting is given that such
35 individual's candidacy does not create a bona fide election contest.

36 (c) A bylaw electing to be governed by this section may be repealed:

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1 (1) if originally adopted by the shareholders, only by the shareholders, unless the
2 bylaw otherwise provides; or

3 (2) if adopted by the board of directors, by the board of directors or the shareholders.

4 **Merger and Share Exchange**

5 293-A:11.01 Definitions. As used in this subdivision:

6 (a) “Merger” means a business combination pursuant to RSA 293-A:11.02.

7 (b) “Party to a merger” or “party to a share exchange” means any domestic or foreign
8 corporation or eligible entity that will:

9 (1) merge under a plan of merger;

10 (2) acquire shares or eligible interests of another corporation or an eligible entity in
11 a share exchange; or

12 (3) have all of its shares or eligible interests or all of one or more classes or series of
13 its shares or eligible interests acquired in a share exchange.

14 (c) “Share exchange” means a business combination pursuant to RSA 293-A:11.03.

15 (d) “Survivor” in a merger means the corporation or eligible entity into which one or
16 more other corporations or eligible entities are merged. A survivor of a merger may preexist the
17 merger or be created by the merger.

18 293-A:11.02 Merger.

19 (a) One or more domestic business corporations may merge with one or more domestic or
20 foreign business corporations or eligible entities pursuant to a plan of merger, or 2 or more foreign
21 business corporations or domestic or foreign eligible entities may merge into a new domestic
22 business corporation to be created in the merger in the manner provided in this subdivision.

23 (b) A foreign business corporation, or a foreign eligible entity, may be a party to a
24 merger with a domestic business corporation, or may be created by the terms of the plan of merger,
25 only if the merger is permitted by the foreign business corporation or eligible entity.

26 (c) If the organic law of a domestic eligible entity does not provide procedures for the
27 approval of a merger, a plan of merger may be adopted and approved, the merger effectuated, and
28 appraisal rights exercised in accordance with the procedures in this subdivision and RSA 293-
29 A:13.01 through RSA 293-A:13.40. For the purposes of applying this subdivision and RSA 293-
30 A:13.01 through RSA 293-A:13.40:

31 (1) the eligible entity, its members or interest holders, eligible interests, and organic
32 documents taken together shall be deemed to be a domestic business corporation, shareholders,
33 shares, and articles of incorporation, respectively and vice versa as the context may require; and

34 (2) if the business and affairs of the eligible entity are managed by a group of
35 persons that is not identical to the members or interest holders, that group shall be deemed to be the
36 board of directors.

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1 (d) The plan of merger must include:

2 (1) the name of each domestic or foreign business corporation or eligible entity that
3 will merge and the name of the domestic or foreign business corporation or eligible entity that will be
4 the survivor of the merger;

5 (2) the terms and conditions of the merger;

6 (3) the manner and basis of converting the shares of each merging domestic or
7 foreign business corporation and eligible interests of each merging domestic or foreign eligible entity
8 into shares or other securities, eligible interests, obligations, rights to acquire shares, other
9 securities or eligible interests, cash, other property, or any combination of the foregoing;

10 (4) the articles of incorporation of any domestic or foreign business, or the organic
11 documents of any domestic or foreign unincorporated entity, to be created by the merger, or if a new
12 domestic or foreign business or unincorporated entity is not to be created by the merger, any
13 amendments to the survivor's articles of incorporation or organic documents; and

14 (5) any other provisions required by the laws under which any party to the merger is
15 organized or by which it is governed, or by the articles of incorporation or organic document of any
16 such party.

17 (e) Terms of a plan of merger may be made dependent on facts objectively ascertainable
18 outside the plan in accordance with RSA 293-A:1.20(j).

19 (f) The plan of merger may also include a provision that the plan may be amended prior
20 to filing articles of merger, but if the shareholders of a domestic corporation that is a party to the
21 merger are required or permitted to vote on the plan, the plan must provide that subsequent to
22 approval of the plan by such shareholders the plan may not be amended to change:

23 (1) the amount or kind of shares or other securities, eligible interests, obligations,
24 rights to acquire shares, other securities or eligible interests, cash, or other property to be received
25 under the plan by the shareholders of or owners of eligible interests in any party to the merger;

26 (2) the articles of incorporation of any corporation, or the organic documents of any
27 unincorporated entity, that will survive or be created as a result of the merger, except for changes
28 permitted by RSA 293-A:10.05 or by comparable provisions of the organic laws of any such foreign
29 corporation or domestic or foreign unincorporated entity; or

30 (3) any of the other terms or conditions of the plan if the change would adversely
31 affect such shareholders in any material respect.

32 293-A:11.03 Share Exchange.

33 (a) Through a share exchange:

34 (1) a domestic corporation may acquire all of the shares of one or more classes or
35 series of shares of another domestic or foreign corporation, or all of the interests of one or more
36 classes or series of interests of a domestic or foreign eligible entity, in exchange for shares or other

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1 securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or
2 any combination of the foregoing, pursuant to a plan of share exchange, or

3 (2) all of the shares of one or more classes or series of shares of a domestic
4 corporation may be acquired by another domestic or foreign corporation or eligible entity, in
5 exchange for shares or other securities, interests, obligations, rights to acquire shares or other
6 securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share
7 exchange.

8 (b) A foreign corporation or eligible entity may be a party to a share exchange only if the
9 share exchange is permitted by the law under which the corporation or eligible entity is organized or
10 by which it is governed.

11 (c) If the organic law of a domestic eligible entity does not provide procedures for the
12 approval of a share exchange, a plan of share exchange may be adopted and approved, and the share
13 exchange effectuated, in accordance with the procedures, if any, for a merger. If the organic law of a
14 domestic eligible entity does not provide procedures for the approval of either a share exchange or a
15 merger, a plan of share exchange may be adopted and approved, the share exchange effectuated, and
16 appraisal rights exercised, in accordance with the procedures in this subdivision and RSA 293-
17 A:13.01 through RSA 293-A:13.40. For the purposes of applying this subdivision and RSA 293-
18 A:13.01 through RSA 293-A:13.40:

19 (1) the eligible entity, its interest holders, interests and organic documents taken
20 together shall be deemed to be a domestic business corporation, shareholders, shares, and articles of
21 incorporation, respectively and vice versa as the context may require; and

22 (2) if the business and affairs of the eligible entity are managed by a group of
23 persons that is not identical to the interest holders, that group shall be deemed to be the board of
24 directors.

25 (d) The plan of share exchange must include:

26 (1) the name of each corporation or eligible entity whose shares or interests will be
27 acquired and the name of the corporation or eligible entity that will acquire those shares or interests;

28 (2) the terms and conditions of the share exchange;

29 (3) the manner and basis of exchanging shares of a corporation or interests in an
30 eligible entity whose shares or interests will be acquired under the share exchange into shares or
31 other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash,
32 other property, or any combination of the foregoing; and

33 (4) any other provisions required by the laws under which any party to the share
34 exchange is organized or by the articles of incorporation or organic document of any such party.

35 (e) Terms of a plan of share exchange may be made dependent on facts objectively
36 ascertainable outside the plan in accordance with RSA 293-A:1.20(j).

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1 (f) The plan of share exchange may also include a provision that the plan may be
2 amended prior to filing articles of share exchange, but if the shareholders of a domestic corporation
3 that is a party to the share exchange are required or permitted to vote on the plan, the plan must
4 provide that subsequent to approval of the plan by such shareholders the plan may not be amended
5 to change:

6 (1) the amount or kind of shares or other securities, interests, obligations, rights to
7 acquire shares, other securities or interests, cash, or other property to be issued by the corporation or
8 to be received under the plan by the shareholders of or owners of interests in any party to the share
9 exchange; or

10 (2) any of the other terms or conditions of the plan if the change would adversely
11 affect such shareholders in any material respect.

12 (g) RSA 293-A:11.03 does not limit the power of a domestic corporation to acquire shares
13 of another corporation or interests in another eligible entity in a transaction other than a share
14 exchange.

15 293-A:11.04 Action on a Plan of Merger or Share Exchange. In the case of a domestic
16 corporation that is a party to a merger or share exchange:

17 (a) The plan of merger or share exchange must be adopted by the board of directors.

18 (b) Except as provided in subsection (g) and in RSA 293-A:11.05, after adopting the plan
19 of merger or share exchange the board of directors must submit the plan to the shareholders for their
20 approval. The board of directors must also transmit to the shareholders a recommendation that the
21 shareholders approve the plan, unless: (i) the board of directors makes a determination that because
22 of conflicts of interest or other special circumstances it should not make such a recommendation; or
23 (ii) RSA 293-A:8.26 applies. If either (i) or (ii) applies, the board of directors must transmit to the
24 shareholders the basis for that determination.

25 (c) The board of directors may condition its submission of the plan of merger or share
26 exchange to the shareholders on any basis.

27 (d) If the plan of merger or share exchange is required to be approved by the
28 shareholders, and if the approval is to be given at a meeting, the corporation must notify each
29 shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be
30 submitted for approval. The notice must state that the purpose, or one of the purposes, of the
31 meeting is to consider the plan and must contain or be accompanied by a copy or summary of the
32 plan. If the corporation is to be merged into an existing corporation or eligible entity, the notice shall
33 also include or be accompanied by a copy or summary of the articles of incorporation or
34 organizational documents of that corporation or eligible entity. If the corporation is to be merged
35 into a corporation or eligible entity that is to be created pursuant to the merger, the notice shall

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1 include or be accompanied by a copy or a summary of the articles of incorporation or organizational
2 documents of the new corporation or eligible entity.

3 (e) Unless the articles of incorporation, or the board of directors acting pursuant to
4 subsection (c), requires a greater vote or a greater number of votes to be present, approval of the plan
5 of merger or share exchange requires the approval of the shareholders at a meeting at which a
6 quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and, if any
7 class or series of shares is entitled to vote as a separate group on the plan of merger or share
8 exchange, the approval of each such separate voting group at a meeting at which a quorum of the
9 voting group consisting of at least a majority of the votes entitled to be cast on the merger or share
10 exchange by that voting group is present.

11 (f) Subject to subsection (g), separate voting by voting groups is required:

12 (1) on a plan of merger, by each class or series of shares that:

13 (i) are to be converted under the plan of merger into other securities, interests,
14 obligations, rights to acquire shares, other securities or interests, cash, other property, or any
15 combination of the foregoing; or

16 (ii) are entitled to vote as a separate group on a provision in the plan that
17 constitutes a proposed amendment to articles of incorporation, of a surviving corporation, that
18 requires require action by separate voting groups under RSA 293-A:10.04;

19 (2) on a plan of share exchange, by each class or series of shares included in the
20 exchange, with each class or series constituting a separate voting group; and

21 (3) on a plan of merger or share exchange, if the voting group is entitled under the
22 articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

23 (g) The articles of incorporation may expressly limit or eliminate the separate voting
24 rights provided in subsections (f)(1)(i) and (f)(2) as to any class or series of shares, except for a
25 transaction that (A) includes what is or would be, if the corporation were the surviving corporation,
26 an amendment subject to subsection (f)(1)(ii), and (B) will effect no significant change in the assets of
27 the resulting entity, including all parents and subsidiaries on a consolidated basis.

28 (h) Unless the articles of incorporation otherwise provide, approval by the corporation's
29 shareholders of a plan of merger or share exchange is not required if:

30 (1) the corporation will survive the merger or is the acquiring corporation in a share
31 exchange;

32 (2) except for amendments permitted by RSA 293-A:10.05, its articles of
33 incorporation will not be changed; and

34 (3) each shareholder of the corporation whose shares were outstanding immediately
35 before the effective date of the merger or share exchange will hold the same number of shares, with
36 identical preferences, limitations, and relative rights, immediately after the effective date of change.

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1 (i) If as a result of a merger or share exchange one or more shareholders of a domestic
2 corporation would become subject to owner liability for the debts, obligations, or liabilities of any
3 other person or entity, approval of the plan of merger or share exchange shall require the execution,
4 by each such shareholder, of a separate written consent to become subject to such owner liability.

5 293-A:11.05 Merger Between Parent and Subsidiary or Between Subsidiaries.

6 (a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary
7 corporation that carry at least 90 percent of the voting power of each class and series of the
8 outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or
9 into another such subsidiary, or merge itself into the subsidiary, without the approval of the board of
10 directors or shareholders of the subsidiary, unless the articles of incorporation of any of the
11 corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the
12 subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is
13 organized.

14 (b) If under subsection (a) approval of a merger by the subsidiary's shareholders is not
15 required, the parent corporation shall, within 10 days after the effective date of the merger, notify
16 each of the subsidiary's shareholders that the merger has become effective.

17 (c) Except as provided in subsections (a) and (b), a merger between a parent and a
18 subsidiary shall be governed by the provisions of RSA 293-A:11.01 through RSA 293-A:11.08
19 applicable to mergers generally.

20 293-A:11.06 Articles of Merger or Share Exchange.

21 (a) After a plan of merger or share exchange has been adopted and approved as required
22 by this chapter, articles of merger or share exchange shall be signed on behalf of each party to the
23 merger or share exchange in accordance with RSA 293-A:1.20(f). The articles shall set forth:

24 (1) either:

25 (i) the plan of merger or share exchange, or

26 (ii) a statement that the plan of merger or share exchange will be made available
27 to any shareholder entitled to vote on the merger or share exchange upon the request of such
28 shareholder to the president or secretary of the corporation;

29 (2) the names of the parties to the merger or share exchange;

30 (3) if the articles of incorporation of the survivor of a merger are amended, the
31 amendments to the survivor's articles of incorporation, or if a new corporation is created as a result
32 of a merger, the articles of incorporation of the new corporation and the certificate required by
33 RSA 421-B:11, II(a);

34 (4) if the plan of merger or share exchange required approval by the shareholders of a
35 domestic corporation that was a party to the merger or share exchange, a statement that the plan was

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1 duly approved by the shareholders and, if voting by any separate voting group was required, by each such
2 separate voting group, in the manner required by this chapter and the articles of incorporation;

3 (5) if the plan of merger or share exchange did not require approval by the
4 shareholders of a domestic corporation that was a party to the merger or share exchange, a
5 statement to that effect; and

6 (6) as to each foreign corporation or eligible entity that was a party to the merger or
7 share exchange, a statement that the participation of the foreign corporation or eligible entity was
8 duly authorized as required by the organic law of the corporation or eligible entity.

9 293-A:11.07 Effect of Merger or Share Exchange.

10 (a) When a merger becomes effective:

11 (1) the corporation or eligible entity that is designated in the plan of merger as the
12 survivor continues or comes into existence, as the case may be;

13 (2) the separate existence of every corporation or eligible entity that is merged into
14 the survivor ceases;

15 (3) all title to real estate and other property owned by, and every contract right
16 possessed by, each corporation or eligible entity that merges into the survivor is vested in the
17 survivor without reversion or impairment;

18 (4) all liabilities of each corporation or eligible entity that is merged into the survivor
19 are vested in the survivor;

20 (5) the name of the survivor may, but need not be, substituted in any pending
21 proceeding for the name of any party to the merger whose separate existence ceased in the merger;

22 (6) the articles of incorporation or organic documents of the survivor are amended to
23 the extent provided in the plan of merger;

24 (7) the articles of incorporation or organic documents of a survivor that is created by
25 the merger become effective; and

26 (8) the shares of each corporation that is a party to the merger, and the interests in
27 an eligible entity that is a party to a merger, that are to be converted under the plan of merger into
28 shares, eligible interests, obligations, rights to acquire securities, other securities, or eligible
29 interests, cash, other property, or any combination of the foregoing, are converted, and the former
30 holders of such shares or eligible interests are entitled only to the rights provided to them in the plan
31 of merger or to any rights they may have under RSA 293-A:13.01 through RSA 293-A:13.40 or the
32 organic law of the eligible entity.

33 (b) When a share exchange becomes effective, the shares of each domestic corporation
34 that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares
35 or other securities, cash, other property, or any combination of the foregoing, are entitled only to the

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1 rights provided to them in the plan of share exchange or to any rights they may have under
2 RSA 293-A:13.01 through RSA 293-A:13.40.

3 (c) A person who becomes subject to owner liability for some or all of the debts, obligations,
4 or liabilities of any entity as a result of a merger or share exchange shall have owner liability only to the
5 extent provided in the organic law of the entity and only for those debts, obligations, and liabilities that
6 arise after the effective time of the articles of merger or share exchange.

7 (d) Upon a merger becoming effective, a foreign corporation, or a foreign eligible entity,
8 that is the survivor of the merger is deemed to:

9 (1) appoint the secretary of state as its agent for service of process in a proceeding to
10 enforce the rights of shareholders of each domestic corporation that is a party to the merger who
11 exercise appraisal rights, and

12 (2) agree that it will promptly pay the amount, if any, to which such shareholders
13 are entitled under RSA 293-A:13.01 through RSA 293-A:13.40.

14 (e) The effect of a merger or share exchange on the owner liability of a person who had
15 owner liability for some or all of the debts, obligations, or liabilities of a party to the merger or share
16 exchange shall be as follows:

17 (1) The merger or share exchange does not discharge any owner liability under the
18 organic law of the entity in which the person was a shareholder or interest holder to the extent any
19 such owner liability arose before the effective time of the articles of merger or share exchange.

20 (2) The person shall not have owner liability under the organic law of the entity in
21 which the person was a shareholder or interest holder prior to the merger or share exchange for any
22 debt, obligation, or liability that arises after the effective time of the articles of merger or share
23 exchange.

24 (3) The provisions of the organic law of any entity for which the person had owner
25 liability before the merger or share exchange shall continue to apply to the collection or discharge of
26 any owner liability preserved by subparagraph (1), as if the merger or share exchange had not
27 occurred.

28 (4) The person shall have whatever rights of contribution from other persons are
29 provided by the organic law of the entity for which the person had owner liability with respect to any
30 owner liability preserved by subparagraph (1), as if the merger or share exchange had not occurred.

31 293-A:11.08 Abandonment of a Merger or Share Exchange.

32 (a) Unless otherwise provided in a plan of merger or share exchange or in the laws under
33 which a foreign business corporation or a domestic or foreign eligible entity that is a party to a merger
34 or a share exchange is organized or by which it is governed, after the plan has been adopted and
35 approved as required by this chapter, and at any time before the merger or share exchange has become
36 effective, it may be abandoned by a domestic business corporation that is a party thereto without

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1 action by its shareholders in accordance with any procedures set forth in the plan of merger or share
2 exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of
3 directors, subject to any contractual rights of other parties to the merger or share exchange.

4 (b) If a merger or share exchange is abandoned under subsection (a) after articles of
5 merger or share exchange have been filed with the secretary of state but before the merger or share
6 exchange has become effective, a statement that the merger or share exchange has been abandoned
7 in accordance with this section, signed on behalf of a party to the merger or share exchange by an
8 officer or other duly authorized representative, shall be delivered to the secretary of state for filing
9 prior to the effective date of the merger or share exchange. Upon filing, the statement shall take
10 effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

11 Sale of Assets

12 293-A:12.01 Disposition of Assets Not Requiring Shareholder Approval.

13 (a) No approval of the shareholders of a corporation is required, unless the articles of
14 incorporation otherwise provide, for a corporation, upon the terms and conditions and for the
15 consideration determined by the board of directors:

16 (1) to sell, lease, exchange, or otherwise dispose of any or all of the corporation's
17 assets in the usual and regular course of business;

18 (2) to mortgage, pledge, dedicate to the repayment of indebtedness (whether with or
19 without recourse), or otherwise encumber any or all of the corporation's assets, whether or not in the
20 usual and regular course of business;

21 (3) to transfer any or all of the corporation's assets to one or more corporations or
22 other entities all of the shares or interests of which are owned by the corporation; or

23 (4) to distribute assets pro rata to the holders of one or more classes or series of the
24 corporation's shares.

25 293-A:12.02 Shareholder Approval of Certain Dispositions.

26 (a) A sale, lease, exchange, or other disposition of assets, other than a disposition
27 described in RSA 293-A:12.01, requires approval of the corporation's shareholders if the disposition
28 would leave the corporation without a significant continuing business activity. If a corporation
29 retains a business activity that represented at least 25 percent of total assets at the end of the most
30 recently completed fiscal year, and 25 percent of either income from continuing operations before
31 taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and
32 its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained
33 a significant continuing business activity.

34 (b) A disposition that requires approval of the shareholders under subsection (a) shall be
35 initiated by a resolution by the board of directors authorizing the disposition. After adoption of such
36 a resolution, the board of directors shall submit the proposed disposition to the shareholders for their

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1 approval. The board of directors shall also transmit to the shareholders a recommendation that the
2 shareholders approve the proposed disposition, unless (i) the board of directors makes a
3 determination that because of conflicts of interest or other special circumstances it should not make
4 such a recommendation, or (ii) RSA 293-A:8.26 applies. If either (i) or (ii) applies, the board must
5 transmit to the shareholders the basis for so proceeding.

6 (c) The board of directors may condition its submission of a disposition to the
7 shareholders under subsection (b) on any basis.

8 (d) If a disposition is required to be approved by the shareholders under subsection (a),
9 and if the approval is to be given at a meeting, the corporation shall notify each shareholder,
10 whether or not entitled to vote, of the meeting of shareholders at which the disposition is to be
11 submitted for approval. The notice shall state that the purpose, or one of the purposes, of the
12 meeting is to consider the disposition and shall contain a description of the disposition, including the
13 terms and conditions thereof and the consideration to be received by the corporation.

14 (e) Unless the articles of incorporation or the board of directors acting pursuant to
15 subsection (c) requires a greater vote, or a greater number of votes to be present, the approval of a
16 disposition by the shareholders shall require the approval of the shareholders at a meeting at which
17 a quorum consisting of at least a majority of the votes entitled to be cast on the disposition exists.

18 (f) After a disposition has been approved by the shareholders under subsection (b), and
19 at any time before the disposition has been consummated, it may be abandoned by the corporation
20 without action by the shareholders, subject to any contractual rights of other parties to the
21 disposition.

22 (g) A disposition of assets in the course of dissolution under RSA 293-A:14.01 through
23 RSA 293-A:14.34 is not governed by this subdivision.

24 (h) The assets of a direct or indirect consolidated subsidiary shall be deemed the assets
25 of the parent corporation for the purposes of this section.

Dissenters' Rights

Part A

Right to Appraisal and Payment for Shares

29 293-A:13.01 Definitions.

30 (a) In this subdivision:

31 (1) "Affiliate" means a person that directly or indirectly through one or more
32 intermediaries controls, is controlled by, or is under common control with another person or is a
33 senior executive thereof. For purposes of RSA 293-A:13.02(b)(4), a person is deemed to be an affiliate
34 of its senior executives.

35 (2) "Beneficial shareholder" means a person who is the beneficial owner of shares
36 held in a voting trust or by a nominee on the beneficial owner's behalf.

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1 (3) “Corporation” means the issuer of the shares held by a shareholder demanding
2 appraisal and, for matters covered in RSA 293-A:13.22 through RSA 293-A:13.31, includes the
3 surviving entity in a merger.

4 (4) “Fair value” means the value of the corporation’s shares determined:

5 (i) immediately before the effectuation of the corporate action to which the
6 shareholder objects;

7 (ii) using customary and current valuation concepts and techniques generally
8 employed for similar businesses in the context of the transaction requiring appraisal; and

9 (iii) without discounting for lack of marketability or minority status except, if
10 appropriate, for amendments to the articles pursuant to RSA 293-A:13.02(a)(5).

11 (5) “Interest” means interest from the effective date of the corporate action until the
12 date of payment, at the rate of interest on judgments in this state on the effective date of the
13 corporate action.

14 (6) “Interested transaction” means a corporate action described in RSA 293-A:13.02(a),
15 other than a merger pursuant to RSA 293-A:11.05, involving an interested person in which any of the
16 shares or assets of the corporation are being acquired or converted.

17 (7) “Interested person” means a person, or an affiliate of a person, who at any time during
18 the one-year period immediately preceding approval by the board of directors of the corporate action:

19 (i) was the beneficial owner of 20 percent or more of the voting power of the
20 corporation, other than as owner of excluded shares;

21 (ii) had the power, contractually or otherwise, other than as owner of excluded
22 shares, to cause the appointment or election of 25 percent or more of the directors to the board of
23 directors of the corporation; or

24 (iii) was a senior executive or director of the corporation or a senior executive of
25 any affiliate thereof, and that senior executive or director will receive, as a result of the corporate
26 action, a financial benefit not generally available to other shareholders as such, other than:

27 (A) employment, consulting, retirement, or similar benefits established
28 separately and not as part of or in contemplation of the corporate action; or

29 (B) employment, consulting, retirement, or similar benefits established in
30 contemplation of, or as part of, the corporate action that are not more favorable than those existing
31 before the corporate action or, if more favorable, that have been approved on behalf of the
32 corporation in the same manner as is provided in RSA 293-A:8.62; or

33 (C) in the case of a director of the corporation who will, in the corporate
34 action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights
35 and benefits as a director that are provided on the same basis as those afforded by the acquiring
36 entity generally to other directors of such entity or such affiliate.

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1 (8) “Beneficial owner” means any person who, directly or indirectly, through any
2 contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to
3 vote, or to direct the voting of, shares; except that a member of a national securities exchange is not
4 deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person
5 solely because the member is the record holder of the securities if the member is precluded by the rules
6 of the exchange from voting without instruction on contested matters or matters that may affect
7 substantially the rights or privileges of the holders of the securities to be voted. When 2 or more
8 persons agree to act together for the purpose of voting their shares of the corporation, each member of
9 the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the
10 agreement, of all voting shares of the corporation beneficially owned by any member of the group.

11 (9) “Excluded shares” means shares acquired pursuant to an offer for all shares
12 having voting power if the offer was made within one year prior to the corporate action for
13 consideration of the same kind and of a value equal to or less than that paid in connection with the
14 corporate action.

15 (10) “Preferred shares” means a class or series of shares whose holders have
16 preference over any other class or series with respect to distributions.

17 (11) “Record shareholder” means the person in whose name shares are registered in
18 the records of the corporation or the beneficial owner of shares to the extent of the rights granted by
19 a nominee certificate on file with the corporation.

20 (12) “Senior executive” means the chief executive officer, chief operating officer, chief
21 financial officer, and anyone in charge of a principal business unit or function.

22 (13) “Shareholder” means both a record shareholder and a beneficial shareholder.

23 293-A:13.02 Right to Appraisal.

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

26 (1) consummation of a merger to which the corporation is a party (i) if shareholder
27 approval is required for the merger by RSA 293-A:11.04, except that appraisal rights shall not be
28 available to any shareholder of the corporation with respect to shares of any class or series that
29 remain outstanding after consummation of the merger, or (ii) if the corporation is a subsidiary and
30 the merger is governed by RSA 293-A:11.05;

31 (2) consummation of a share exchange to which the corporation is a party as the
32 corporation whose shares will be acquired, except that appraisal rights shall not be available to any
33 shareholder of the corporation with respect to any class or series of shares of the corporation that is
34 not exchanged;

35 (3) consummation of a disposition of assets pursuant to RSA 293-A:12.02, except that
36 appraisal rights shall not be available to any shareholder of the corporation with respect to shares of
37 any class or series if (i) under the terms of the corporate action approved by the shareholders there is to

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1 be distributed to shareholders in cash its net assets, in excess of a reasonable amount reserved to meet
2 claims of the type described in RSA 293-A:14.06 and RSA 293-A:14.07, (A) within one year after the
3 shareholders' approval of the action and (B) in accordance with their respective interests determined at
4 the time of distribution, and (ii) the disposition of assets is not an interested transaction;

5 (4) an amendment of the articles of incorporation with respect to a class or series of
6 shares that reduces the number of shares of a class or series owned by the shareholder to a fraction
7 of a share if the corporation has the obligation or right to repurchase the fractional share so created;

8 (5) any other amendment to the articles of incorporation, or any other merger, share
9 exchange or disposition of assets, to the extent provided by the articles of incorporation, bylaws, or a
10 resolution of the board of directors;

11 (6) consummation of a domestication if the shareholder does not receive shares in
12 the foreign corporation resulting from the domestication that have terms as favorable to the
13 shareholder in all material respects, and represent at least the same percentage interest of the total
14 voting rights of the outstanding shares of the corporation, as the shares held by the shareholder
15 before the domestication; or

16 (7) consummation of a conversion of the corporation to an unincorporated entity
17 pursuant to RSA 293-A:9.50 through RSA 293-A:9.56.

18 (b) Notwithstanding RSA 293-A:13.02(a), the availability of appraisal rights under
19 RSA 293-A:13.02(a)(1), (2), (3), (4), (6), and (7) shall be limited in accordance with the following
20 provisions:

21 (1) Appraisal rights shall not be available for the holders of shares of any class or
22 series of shares which is:

23 (i) a covered security under section 18(b)(1)(A) or (B) of the Securities Act of
24 1933, as amended; or

25 (ii) traded in an organized market and has at least 1,000 shareholders and a
26 market value of at least \$20 million (exclusive of the value of such shares held by the corporation's
27 subsidiaries, senior executives, directors and beneficial shareholders owning more than 10 percent of
28 such shares); or

29 (iii) issued by an open end management investment company registered with the
30 Securities and Exchange Commission under the Investment Company Act of 1940 and may be
31 redeemed at the option of the holder at net asset value.

32 (2) The applicability of RSA 293-A:13.02(b)(1) shall be determined as of:

33 (i) the record date fixed to determine the shareholders entitled to receive notice
34 of the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

35 (ii) the day before the effective date of such corporate action if there is no
36 meeting of shareholders.

37 (3) RSA 293-A:13.02(b)(1) shall not be applicable and appraisal rights shall be
38 available pursuant to RSA 293-A:13.02(a) for the holders of any class or series of shares (i) who are

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1 required by the terms of the corporate action requiring appraisal rights to accept for such shares
2 anything other than cash or shares of any class or any series of shares of any corporation, or any
3 other proprietary interest of any other entity, that satisfies the standards set forth in RSA 293-
4 A:13.02(b)(1) at the time the corporate action becomes effective, or (ii) in the case of the
5 consummation of a disposition of assets pursuant to RSA 293-A:12.02, unless such cash, shares or
6 proprietary interests are, under the terms of the corporate action approved by the shareholders, to be
7 distributed to the shareholders, as part of a distribution to shareholders of the net assets of the
8 corporation in excess of a reasonable amount to meet claims of the type described in RSA 293-
9 A:14.06 and RSA 293-A:14.07, (A) within one year after the shareholders' approval of the action, and
10 (B) in accordance with their respective interests determined at the time of the distribution.

11 (4) RSA 293-A:13.02(b)(1) shall not be applicable and appraisal rights shall be
12 available pursuant to RSA 293-A:13.02(a) for the holders of any class or series of shares where the
13 corporate action is an interested transaction.

14 (c) Notwithstanding any other provision of RSA 293-A:13.02, the articles of incorporation
15 as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or
16 series of preferred shares, except that (i) no such limitation or elimination shall be effective if the
17 class or series does not have the right to vote separately as a voting group (alone or as part of a
18 group) on the action or if the action is a conversion to an unincorporated entity under RSA 293-
19 A:9.50 through RSA 293-A:9.56, or a merger having a similar effect, and (ii) any such limitation or
20 elimination contained in an amendment to the articles of incorporation that limits or eliminates
21 appraisal rights for any of such shares that are outstanding immediately prior to the effective date of
22 such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to
23 any conversion, exchange or other right existing immediately before the effective date of such
24 amendment shall not apply to any corporate action that becomes effective within one year of that
25 date if such action would otherwise afford appraisal rights.

26 293-A:13.03 Assertion of Rights by Nominees and Beneficial Owners.

27 (a) A record shareholder may assert appraisal rights as to fewer than all the shares
28 registered in the record shareholder's name but owned by a beneficial shareholder only if the record
29 shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder
30 and notifies the corporation in writing of the name and address of each beneficial shareholder on whose
31 behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal
32 rights for only part of the shares held of record in the record shareholder's name under this subsection
33 shall be determined as if the shares as to which the record shareholder objects and the record
34 shareholder's other shares were registered in the names of different record shareholders.

35 (b) A beneficial shareholder may assert appraisal rights as to shares of any class or
36 series held on behalf of the shareholder only if such shareholder:

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1 (e) The right to receive the information described in RSA 293-A:13.20(d) may be waived
2 in writing by a shareholder before or after the corporate action.

3 293-A:13.21 Notice of Intent to Demand Payment and Consequences of Voting or Consenting.

4 (a) If a corporate action specified in RSA 293-A:13.02(a) is submitted to a vote at a
5 shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class
6 or series of shares:

7 (1) must deliver to the corporation, before the vote is taken, written notice of the
8 shareholder's intent to demand payment if the proposed action is effectuated; and

9 (2) must not vote, or cause or permit to be voted, any shares of such class or series in
10 favor of the proposed action.

11 (b) If a corporate action specified in RSA 293-A:13.02(a) is to be approved by less than
12 unanimous written consent, a shareholder who wishes to assert appraisal rights with respect to any
13 class or series of shares must not sign a consent in favor of the proposed action with respect to that
14 class or series of shares.

15 (c) A shareholder who fails to satisfy the requirements of RSA 293-A:13.21(a) or (b) is
16 not entitled to payment under this subdivision.

17 293-A:13.22 Appraisal Notice and Form.

18 (a) If a corporate action requiring appraisal rights under RSA 293-A:13.02(a) becomes
19 effective, the corporation must send a written appraisal notice and the form required by RSA 293-
20 A:13.02(b)(1) to all shareholders who satisfy the requirements of RSA 293-A:13.21(a) or RSA 293-
21 A:13.21(b). In the case of a merger under RSA 293-A:11.05, the parent must deliver an appraisal
22 notice and form to all record shareholders who may be entitled to assert appraisal rights.

23 (b) The appraisal notice must be delivered no earlier than the date the corporate action
24 specified in RSA 293-A:13.02(a) became effective, and no later than 10 days after such date, and
25 must:

26 (1) supply a form that (i) specifies the first date of any announcement to
27 shareholders made prior to the date the corporate action became effective of the principal terms of
28 the proposed corporate action, and (ii) if such announcement was made, requires the shareholder
29 asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal
30 rights are asserted was acquired before that date, and (iii) requires the shareholder asserting
31 appraisal rights to certify that such shareholder did not vote for or consent to the transaction;

32 (2) state:

33 (i) where the form must be sent and where certificates for certificated shares
34 must be deposited and the date by which those certificates must be deposited, which date may not be
35 earlier than the date for receiving the required form under RSA 293-A:13.22(b)(2)(ii);

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1 (ii) a date by which the corporation must receive the form, which date may not be
2 fewer than 40 nor more than 60 days after the date the RSA 293-A:13.22(a) appraisal notice is sent,
3 and state that the shareholder shall have waived the right to demand appraisal with respect to the
4 shares unless the form is received by the corporation by such specified date;

5 (iii) the corporation's estimate of the fair value of the shares;

6 (iv) that, if requested in writing, the corporation will provide, to the shareholder
7 so requesting, within 10 days after the date specified in RSA 293-A:13.22(b)(2)(ii) the number of
8 shareholders who return the forms by the specified date and the total number of shares owned by
9 them; and

10 (v) the date by which the notice to withdraw under RSA 293-A:13.23 must be
11 received, which date must be within 20 days after the date specified in RSA 293-A:13.22(b)(2)(ii); and

12 (3) be accompanied by a copy of this subdivision.

13 293-A:13.23 Perfection of Rights; Right to Withdraw.

14 (a) A shareholder who receives notice pursuant to RSA 293-A:13.22 and who wishes to
15 exercise appraisal rights must sign and return the form sent by the corporation and, in the case of
16 certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice
17 by the date referred to in the notice pursuant to RSA 293-A:13.22(b)(2)(ii). In addition, if applicable,
18 the shareholder must certify on the form whether the beneficial owner of such shares acquired
19 beneficial ownership of the shares before the date required to be set forth in the notice pursuant to
20 RSA 293-A:13.22(b)(1). If a shareholder fails to make this certification, the corporation may elect to
21 treat the shareholder's shares as after-acquired shares under RSA 293-A:13.25. Once a shareholder
22 deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed
23 forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant
24 to RSA 293-A:13.23(b).

25 (b) A shareholder who has complied with RSA 293-A:13.23(a) may nevertheless decline
26 to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation
27 in writing by the date set forth in the appraisal notice pursuant to RSA 293-A:13.22(b)(2)(v). A
28 shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw
29 without the corporation's written consent.

30 (c) A shareholder who does not sign and return the form and, in the case of certificated
31 shares, deposit that shareholder's share certificates where required, each by the date set forth in the
32 notice described in RSA 293-A:13.22(b), shall not be entitled to payment under this subdivision.

33 293-A:13.24 Payment.

34 (a) Except as provided in RSA 293-A:13.25, within 30 days after the form required by
35 RSA 293-A:13.22(b)(2)(ii) is due, the corporation shall pay in cash to those shareholders who

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1 complied with RSA 293-A:13.23(a) the amount the corporation estimates to be the fair value of their
2 shares, plus interest.

3 (b) The payment to each shareholder pursuant to RSA 293-A:13.24(a) must be
4 accompanied by:

5 (1)(i) the annual financial statements specified in RSA 293-A:16.20(a) of the
6 corporation that issued the shares to be appraised, which shall be of a date ending not more than 16
7 months before the date of payment and shall comply with RSA 293-A:16.20(b); provided that, if such
8 annual financial statements are not reasonably available, the corporation shall provide reasonably
9 equivalent financial information, and (ii) the latest available quarterly financial statements of such
10 corporation, if any;

11 (2) a statement of the corporation's estimate of the fair value of the shares, which
12 estimate must equal or exceed the corporation's estimate given pursuant to RSA 293-
13 A:13.22(b)(2)(iii);

14 (3) a statement that shareholders described in RSA 293-A:13.24(a) have the right to
15 demand further payment under RSA 293-A:13.26 and that if any such shareholder does not do so
16 within the time period specified therein, such shareholder shall be deemed to have accepted such
17 payment in full satisfaction of the corporation's obligations under this subdivision.

18 293-A:13.25 After-Acquired Shares.

19 (a) A corporation may elect to withhold payment required by RSA 293-A:13.24 from any
20 shareholder who was required to, but did not certify that beneficial ownership of all of the
21 shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in
22 the appraisal notice sent pursuant to RSA 293-A:13.22(b)(1).

23 (b) If the corporation elected to withhold payment under RSA 293-A:13.25(a), it must,
24 within 30 days after the form required by RSA 293-A:13.22(b)(2)(ii) is due, notify all shareholders
25 who are described in RSA 293-A:13.25(a):

26 (1) of the information required by RSA 293-A:13.24(b)(1);

27 (2) of the corporation's estimate of fair value pursuant to RSA 293-A:13.24(b)(2);

28 (3) that they may accept the corporation's estimate of fair value, plus interest, in full
29 satisfaction of their demands or demand appraisal under RSA 293-A:13.26;

30 (4) that those shareholders who wish to accept such offer must so notify the
31 corporation of their acceptance of the corporation's offer within 30 days after receiving the offer; and

32 (5) that those shareholders who do not satisfy the requirements for demanding
33 appraisal under RSA 293-A:13.26 shall be deemed to have accepted the corporation's offer.

34 (c) Within 10 days after receiving the shareholder's acceptance pursuant to RSA 293-
35 A:13.25(b), the corporation must pay in cash the amount it offered under RSA 293-A:13.25(b)(2) to

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1 each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's
2 demand.

3 (d) Within 40 days after sending the notice described in RSA 293-A:13.25(b), the
4 corporation must pay in cash the amount it offered to pay under RSA 293-A:13.25(b)(2) to each
5 shareholder described in RSA 293-A:13.25(b)(5).

6 293-A:13.26 Procedure if Shareholder Dissatisfied with Payment or Offer.

7 (a) A shareholder paid pursuant to RSA 293-A:13.24 who is dissatisfied with the amount
8 of the payment must notify the corporation in writing of that shareholder's estimate of the fair value
9 of the shares and demand payment of that estimate plus interest (less any payment under RSA 293-
10 A:13.24). A shareholder offered payment under RSA 293-A:13.25 who is dissatisfied with that offer
11 must reject the offer and demand payment of the shareholder's stated estimate of the fair value of
12 the shares plus interest.

13 (b) A shareholder who fails to notify the corporation in writing of that shareholder's
14 demand to be paid the shareholder's stated estimate of the fair value plus interest under RSA 293-
15 A:13.26(a) within 30 days after receiving the corporation's payment or offer of payment under
16 RSA 293-A:13.24 or RSA 293-A:13.25, respectively, waives the right to demand payment under this
17 section and shall be entitled only to the payment made or offered pursuant to those respective sections.

18 Part C

19 Judicial Appraisal of Shares

20 293-A:13.30 Court Action.

21 (a) If a shareholder makes demand for payment under RSA 293-A:13.26 which remains
22 unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment
23 demand and petition the court to determine the fair value of the shares and accrued interest. If the
24 corporation does not commence the proceeding within the 60-day period, it shall pay in cash to each
25 shareholder the amount the shareholder demanded pursuant to RSA 293-A:13.26 plus interest.

26 (b) The corporation shall commence the proceeding in the appropriate court of the county
27 where the corporation's principal office (or, if none, its registered office) in this state is located. If the
28 corporation is a foreign corporation without a registered office in this state, it shall commence the
29 proceeding in the county in this state where the principal office or registered office of the domestic
30 corporation merged with the foreign corporation was located at the time of the transaction.

31 (c) The corporation shall make all shareholders (whether or not residents of this state)
32 whose demands remain unsettled parties to the proceeding as in an action against their shares, and
33 all parties must be served with a copy of the petition. Nonresidents may be served by registered or
34 certified mail or by publication as provided by law.

35 (d) The jurisdiction of the court in which the proceeding is commenced under RSA 293-
36 A:13.30(b) is plenary and exclusive. The court may appoint one or more persons as appraisers to

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1 receive evidence and recommend a decision on the question of fair value. The appraisers shall have
2 the powers described in the order appointing them, or in any amendment to it. The shareholders
3 demanding appraisal rights are entitled to the same discovery rights as parties in other civil
4 proceedings. There shall be no right to a jury trial.

5 (e) Each shareholder made a party to the proceeding is entitled to judgment (i) for the
6 amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest,
7 exceeds the amount paid by the corporation to the shareholder for such shares or (ii) for the fair
8 value, plus interest, of the shareholder's shares for which the corporation elected to withhold
9 payment under RSA 293-A:13.25.

10 293-A:13.31 Court Costs and Expenses.

11 (a) The court in an appraisal proceeding commenced under RSA 293-A:13.30 shall
12 determine all court costs of the proceeding, including the reasonable compensation and expenses of
13 appraisers appointed by the court. The court shall assess the court costs against the corporation,
14 except that the court may assess court costs against all or some of the shareholders demanding
15 appraisal, in amounts which the court finds equitable, to the extent the court finds such
16 shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by
17 this subdivision.

18 (b) The court in an appraisal proceeding may also assess the expenses of the respective
19 parties in amounts the court finds equitable:

20 (1) against the corporation and in favor of any or all shareholders demanding
21 appraisal if the court finds the corporation did not substantially comply with the requirements of
22 RSA 293-A:13.20, RSA 293-A:13.22, RSA 293-A:13.24, or RSA 293-A:13.25; or

23 (2) against either the corporation or a shareholder demanding appraisal, in favor of
24 any other party, if the court finds the party against whom expenses are assessed acted arbitrarily,
25 vexatiously, or not in good faith with respect to the rights provided by this subdivision.

26 (c) If the court in an appraisal proceeding finds that the expenses incurred by any
27 shareholder were of substantial benefit to other shareholders similarly situated and that such
28 expenses should not be assessed against the corporation, the court may direct that such expenses be
29 paid out of the amounts awarded the shareholders who were benefited.

30 (d) To the extent the corporation fails to make a required payment pursuant to RSA 293-
31 A:13.24, RSA 293-A:13.25, or RSA 293-A:13.26, the shareholder may sue directly for the amount
32 owed, and to the extent successful, shall be entitled to recover from the corporation all expenses of
33 the suit.

34 Part D

35 Miscellaneous

36 293-A:13.40 Other Remedies Limited.

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1 (5) that the net assets of the corporation remaining after winding up have been
2 distributed to the shareholders, if shares were issued; and

3 (6) that a majority of the incorporators or initial directors authorized the dissolution.

4 293-A:14.02 Dissolution by Board of Directors and Shareholders.

5 (a) A corporation's board of directors may propose dissolution for submission to the
6 shareholders.

7 (b) For a proposal to dissolve to be adopted:

8 (1) The board of directors must recommend dissolution to the shareholders unless (i)
9 the board of directors determines that because of conflict of interest or other special circumstances it
10 should make no recommendation or (ii) RSA 293-A:8.26 applies. If (i) or (ii) applies, it must
11 communicate to the shareholders the basis for so proceeding; and

12 (2) The shareholders entitled to vote must approve the proposal to dissolve as
13 provided in RSA 293-A:14.02(b)(5).

14 (3) The board of directors may condition its submission of the proposal for
15 dissolution on any basis.

16 (4) The corporation shall notify each shareholder, whether or not entitled to vote, of
17 the proposed shareholders' meeting. The notice must also state that the purpose, or one of the
18 purposes, of the meeting is to consider dissolving the corporation.

19 (5) Unless the articles of incorporation or the board of directors acting pursuant to
20 RSA 293-A:14.02(b)(3) require a greater vote, a greater number of shares to be present, or a vote by
21 voting groups, adoption of the proposal to dissolve shall require the approval of the shareholders at a
22 meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

23 293-A:14.03 Articles of Dissolution.

24 (a) At any time after dissolution is authorized, the corporation may dissolve by
25 delivering to the secretary of state for filing articles of dissolution setting forth:

26 (1) the name of the corporation;

27 (2) the date dissolution was authorized;

28 (3) if dissolution was approved by the shareholders, a statement that the proposal to
29 dissolve was duly approved by the shareholders in the manner required by this chapter and by the
30 articles of incorporation; and

31 (4) a certificate of mailing of a copy of the articles of dissolution to the department of
32 revenue.

33 (b) A corporation is dissolved upon the effective date of its articles of dissolution, as
34 specified therein.

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1 (c) For purposes of this subdivision, “dissolved corporation” means a corporation whose
2 articles of dissolution have become effective and includes a successor entity to which the remaining
3 assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

4 293-A:14.04 Revocation of Dissolution.

5 (a) A corporation may revoke its dissolution within 120 days of its effective date.

6 (b) Revocation of dissolution must be authorized in the same manner as the dissolution
7 was authorized unless that authorization permitted revocation by action of the board of directors
8 alone, in which event the board of directors may revoke the dissolution without shareholder action.

9 (c) After the revocation of dissolution is authorized, the corporation may revoke the
10 dissolution by delivering to the secretary of state for filing articles of revocation of dissolution,
11 together with a copy of its articles of dissolution, that set forth:

12 (1) the name of the corporation;

13 (2) the effective date of the dissolution that was revoked;

14 (3) the date that the revocation of dissolution was authorized;

15 (4) if the corporation’s board of directors (or incorporators) revoked the dissolution, a
16 statement to that effect;

17 (5) if the corporation’s board of directors revoked a dissolution authorized by the
18 shareholders, a statement that revocation was permitted by action by the board of directors alone
19 pursuant to that authorization; and

20 (6) if shareholder action was required to revoke the dissolution, the information
21 required by RSA 293-A:14.03(a)(3).

22 (d) Revocation of dissolution is effective upon the effective date of the articles of
23 revocation of dissolution.

24 (e) When the revocation of dissolution is effective, it relates back to and takes effect as of
25 the effective date of the dissolution and the corporation resumes carrying on its business as if
26 dissolution had never occurred.

27 293-A:14.05 Effect of Dissolution.

28 (a) A dissolved corporation continues its corporate existence but may not carry on any
29 business except that appropriate to wind up and liquidate its business and affairs, including:

30 (1) collecting its assets;

31 (2) disposing of its properties that will not be distributed in kind to its shareholders;

32 (3) discharging or making provision for discharging its liabilities;

33 (4) distributing its remaining property among its shareholders according to their
34 interests; and

35 (5) doing every other act necessary to wind up and liquidate its business and affairs.

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1 (b) Prior to making any distributions of its remaining property among its shareholders
2 according to their interests, the corporation shall first obtain a certificate of dissolution from the
3 department of revenue administration in accordance with RSA 77-A:18 and RSA 77-E:12.

4 (c) Dissolution of a corporation does not:

5 (1) transfer title to the corporation's property;

6 (2) prevent transfer of its shares or securities, although the authorization to dissolve
7 may provide for closing the corporation's share transfer records;

8 (3) subject its directors or officers to standards of conduct different from those
9 prescribed in RSA 293-A:8.01 through RSA 293-A:8.70;

10 (4) change quorum or voting requirements for its board of directors or shareholders;
11 change provisions for selection, resignation, or removal of its directors or officers or both; or change
12 provisions for amending its bylaws;

13 (5) prevent commencement of a proceeding by or against the corporation in its
14 corporate name;

15 (6) abate or suspend a proceeding pending by or against the corporation on the
16 effective date of dissolution; or

17 (7) terminate the authority of the registered agent of the corporation.

18 293-A:14.06 Known Claims Against Dissolved Corporation.

19 (a) A dissolved corporation may dispose of the known claims against it by notifying its
20 known claimants in writing of the dissolution at any time after its effective date.

21 (b) The written notice must:

22 (1) describe information that must be included in a claim;

23 (2) provide a mailing address where a claim may be sent;

24 (3) state the deadline, which may not be fewer than 120 days from the effective date
25 of the written notice, by which the dissolved corporation must receive the claim; and

26 (4) state that the claim will be barred if not received by the deadline.

27 (c) A claim against the dissolved corporation is barred:

28 (1) if a claimant who was given written notice under RSA 293-A:14.06(b) does not
29 deliver the claim to the dissolved corporation by the deadline; or

30 (2) if a claimant whose claim was rejected by the dissolved corporation does not
31 commence a proceeding to enforce the claim within 90 days from the effective date of the rejection
32 notice.

33 (d) For purposes of this section, "claim" does not include a contingent liability or a claim
34 based on an event occurring after the effective date of dissolution.

35 293-A:14.07 Other Claims Against Dissolved Corporation.

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1 (a) A dissolved corporation may also publish notice of its dissolution and request that
2 persons with claims against the dissolved corporation present them in accordance with the notice.

3 (b) The notice must:

4 (1) be published one time in a newspaper of general circulation in the county where
5 the dissolved corporation's principal office (or, if none in this state, its registered office) is or was last
6 located;

7 (2) describe the information that must be included in a claim and provide a mailing
8 address where the claim may be sent; and

9 (3) state that a claim against the dissolved corporation will be barred unless a
10 proceeding to enforce the claim is commenced within 3 years after the publication of the notice.

11 (c) If the dissolved corporation publishes a newspaper notice in accordance with
12 RSA 293-A:14.07(b), the claim of each of the following claimants is barred unless the claimant
13 commences a proceeding to enforce the claim against the dissolved corporation within 3 years after
14 the publication date of the newspaper notice:

15 (1) a claimant who was not given written notice under RSA 293-A:14.06;

16 (2) a claimant whose claim was timely sent to the dissolved corporation but not acted
17 on;

18 (3) a claimant whose claim is contingent or based on an event occurring after the
19 effective date of dissolution.

20 (d) A claim that is not barred by RSA 293-A:14.06(b) or RSA 293-A:14.07(c) may be
21 enforced:

22 (1) against the dissolved corporation, to the extent of its undistributed assets; or

23 (2) except as provided in RSA 293-A:14.08(d), if the assets have been distributed in
24 liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro
25 rata share of the claim or the corporate assets distributed to the shareholder in liquidation,
26 whichever is less, but a shareholder's total liability for all claims under this section may not exceed
27 the total amount of assets distributed to the shareholder.

28 293-A:14.08 Court Proceedings.

29 (a) A dissolved corporation that has published a notice under RSA 293-A:14.07 may file
30 an application with the superior court of the county where the dissolved corporation's principal office
31 (or, if none in this state, its registered office) is located for a determination of the amount and form of
32 security to be provided for payment of claims that are contingent or have not been made known to
33 the dissolved corporation or that are based on an event occurring after the effective date of
34 dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated
35 to arise after the effective date of dissolution. Provision need not be made for any claim that is or is
36 reasonably anticipated to be barred under RSA 293-A:14.07(c).

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1 (6) the corporation or any individual acting on its behalf files any document with the
2 secretary of state that, either alone or in conjunction with any other document, constitutes a
3 knowing violation of applicable statutes.

4 293-A:14.21 Procedure for and Effect of Administrative Dissolution.

5 (a) If the secretary of state determines that one or more grounds exist under RSA 293-
6 A:14.20 for dissolving a corporation, the secretary of state shall notify the corporation in writing of
7 such determination and shall mail such notice to the corporation at its principal address as listed in
8 the records of the secretary of state.

9 (b) If the corporation does not correct each ground for dissolution or demonstrate to the
10 reasonable satisfaction of the secretary of state that each ground determined by the secretary of
11 state does not exist within 60 days after notification, the secretary of state shall administratively
12 dissolve the corporation by mailing a notice of dissolution to the corporation at its principal address
13 as listed in the records of the secretary of state, together with an application for reinstatement. Such
14 notice shall recite the grounds for dissolution and the effective date thereof.

15 (c) A corporation administratively dissolved continues its corporate existence but may
16 not carry on any business except that necessary to wind up and liquidate its business and affairs
17 under RSA 293-A:14.05 and notify claimants under RSA 293-A:14.06 and RSA 293-A:14.07.

18 (d) The administrative dissolution of a corporation does not terminate the authority of
19 its registered agent.

20 (e) The secretary of state shall not permit any other individual, corporation, or other
21 business entity to assume the same name or a similar name, of a corporation administratively
22 dissolved under this section, or any trade name registered by such corporation pursuant to RSA 349,
23 for a period of 120 days following the notice of administrative dissolution without the written consent
24 of such corporation.

25 (f) In connection with the issuance of a notice of dissolution by the secretary of state
26 under RSA 293-A:14.21(a) on grounds set forth in RSA 293-A:14.20(a)(6), a hearing shall be set for
27 10 business days after the issuance of the notice of dissolution. All hearings shall be conducted in
28 accordance with RSA 421-B:26-a. If the person whom the notice is issued fails to appear for the
29 hearing, then such person shall be deemed in default, and the dissolution shall become final.

30 (g) Unless an order is final pursuant to RSA 293-A:14.21(f), any administrative
31 dissolution by the secretary of state on grounds set forth in RSA 293-A:14.20(a)(6) may be appealed
32 to the superior court of the county where the corporation's principal office, or, if none in this state, its
33 registered office, is located or the business and commercial dispute docket of the superior court,
34 which court shall be deemed to have jurisdiction to hear such matter and to which the corporation
35 and the secretary of state shall be deemed to have consented. Any appeal under this section shall

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1 not affect any rights of the corporation under RSA 293-A:14.22, RSA 293-A:14.22-a, or RSA 293-
2 A:14.23.

3 293-A:14.22 Reinstatement Following Administrative Dissolution.

4 (a) A corporation administratively dissolved under RSA 293-A:14.21 may apply to the
5 secretary of state for reinstatement within 3 years after the effective date of dissolution. The
6 application must:

7 (1) recite the name of the corporation and the effective date of its administrative
8 dissolution;

9 (2) state that the ground or grounds for dissolution either did not exist or have been
10 eliminated;

11 (3) state that the corporation's name satisfies the requirements of RSA 293-A:4.01;
12 and

13 (4) contain a certificate from the department of revenue administration in
14 accordance with RSA 77-A:18, III, and RSA 77-E:12, III, if such application is received by the
15 secretary of state more than 120 days after the notice of administrative dissolution is mailed.

16 (b) If the secretary of state determines that the application contains the information
17 required by RSA 293-A:14.22(a) and that the information is correct, that the corporation name is
18 available for registration and that it is accompanied by the fee required by RSA 291-A:1.22(a)(7), the
19 secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement
20 that recites such determination and the effective date of reinstatement, file the original of the
21 certificate, and serve a copy on the corporation under RSA 293-A:5.04. If the application for
22 reinstatement included a change of name of the corporation, such certificate of reinstatement shall
23 set forth the change of name of the corporation, and such certificate shall constitute an amendment
24 to the articles of incorporation.

25 (c) When the reinstatement is effective, it relates back to and takes effect as of the
26 effective date of the administrative dissolution and the corporation resumes carrying on its business
27 as if the administrative dissolution had never occurred.

28 293-A:14.22-a Late Reinstatement.

29 (a) A corporation administratively dissolved under RSA 293-A:14.21 may apply to the
30 secretary of state for late reinstatement if more than 3 years have expired since the effective date of
31 dissolution upon a showing by the corporation's acting or former directors or officers that such late
32 reinstatement will materially benefit one or more of the corporation's legal constituents and will not
33 operate as a fraud upon the public. The application shall:

34 (1) Recite the name of the corporation and the effective date of its administrative
35 dissolution;

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1 (2) State that the ground or grounds for dissolution either did not exist or have been
2 eliminated;

3 (3) State that the corporation's name or proposed name satisfies the requirements of
4 RSA 293-A:4.01;

5 (4) Contain a certificate from the New Hampshire department of revenue
6 administration in accordance with RSA 77-A:18, III, and RSA 77-E:12, III;

7 (5) Contain a statement asserting that no lawsuits are pending against the
8 corporation;

9 (6) Contain a statement explaining the reason that reinstatement is being requested;

10 (7) Include all of the annual report fees, if any, for each year since the date of
11 dissolution; and

12 (8) Contain a statement from the commissioner of the department of employment
13 security showing that to the best of the commissioner's knowledge, as of the date of the statement,
14 such corporation has paid all of its contributions or that it was not liable for any contributions, or
15 that it has made adequate provisions, with such surety as shall be satisfactory to the future payment
16 of any contributions.

17 (b) If the secretary of state determines that the application contains the information
18 required by subsection (a), and that the corporation name is available for registration, and that it is
19 accompanied by the fee required in RSA 293-A:1.22(a)(13), the secretary of state shall schedule a
20 public hearing on the application. The public hearing shall be held before the secretary of state, or
21 designee and the attorney general, or designee. Any interested party shall have the right to testify
22 at a late reinstatement hearing. Late reinstatement hearings shall be conducted twice a year, on
23 April 1 and September 1. If any such date falls upon a Saturday, Sunday, or legal holiday, the
24 hearing shall be held on the first business day after each date. An application for late reinstatement
25 must be received at least one month prior to a hearing date in order to be scheduled for that date.

26 (c) Notice of the late reinstatement hearing shall be published one time in a newspaper
27 of general circulation in the county where the dissolved corporation's principal office, or, if none in
28 this state, its registered office, is or was last located. The notice shall:

29 (1) Clearly state the reason for the hearing.

30 (2) State the date, time, and location of the hearing.

31 (3) Indicate that all interested parties are encouraged to attend or submit written
32 comments within one week of the hearing.

33 (4) Include the mailing address of the secretary of state.

34 (d) If, after the public hearing, the secretary of state, in conjunction with the attorney
35 general, determines that the information submitted in the application for late reinstatement is
36 correct, that the corporation has made the showing required under RSA 293-A:14.22-a(a), and that

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1 the corporation should be reinstated, the secretary of state shall cancel the notice of dissolution and
2 prepare a notice of reinstatement that recites the determination and the effective date of
3 reinstatement and mail said notice to the corporation.

4 (e) If the application for reinstatement included a change of name of the corporation, the
5 notice shall set forth the change of name of the corporation and the fee required pursuant to
6 RSA 293-A:1.22(a)(2), and the notice shall constitute an amendment to the articles of incorporation.
7 If the application for reinstatement included a change of the registered agent, the notice shall set
8 forth the name of the new registered agent and the fee required pursuant to RSA 293-A:1.22(b)(5).

9 (f) When the reinstatement is effective, it relates back to and takes effect as of the
10 effective date of the administrative dissolution and the corporation resumes carrying on its business
11 as if the administrative dissolution had never occurred.

12 (g) Except for provisions and requirements set forth in this section, late reinstatement
13 hearings shall be subject to RSA 421-B:26-a.

14 293-A:14.23 Appeal From Denial of Reinstatement.

15 (a) If the secretary of state denies a corporation's application for reinstatement following
16 administrative dissolution, the secretary of state shall notify the corporation in writing of such
17 denial. Such notice shall set forth the reason or reasons for denial and shall be mailed to the
18 corporation at its principal address as listed in the records of the secretary of state.

19 (b) The corporation may appeal the denial of reinstatement to the superior court of the
20 county in which its principal office (or, if none in this state, its registered office) is located within 30
21 days after notification of denial. The corporation shall appeal by petitioning the court to set aside
22 the dissolution and attaching to the petition copies of the secretary of state's certificate of
23 dissolution, the corporation's application for reinstatement, and the secretary of state's notice of
24 denial.

25 (c) The court may summarily order the secretary of state to reinstate the dissolved
26 corporation or may take other action the court considers appropriate.

27 (d) The court's final decision may be appealed as in other civil proceedings.

28 Part C

29 Judicial Dissolution

30 293-A:14.30 Grounds for Judicial Dissolution.

31 (a) The superior court for the county in which its principal office (or, if none in this state,
32 its registered office) is located may dissolve a corporation:

33 (1) in a proceeding by the attorney general if it is established that:

34 (i) the corporation obtained its articles of incorporation through fraud; or

35 (ii) the corporation has continued to exceed or abuse the authority conferred

36 upon it by law;

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1 (2) in a proceeding by a shareholder if it is established that:

2 (i) the directors are deadlocked in the management of the corporate affairs, the
3 shareholders are unable to break the deadlock, and irreparable injury to the corporation is
4 threatened or being suffered, or the business and affairs of the corporation can no longer be
5 conducted to the advantage of the shareholders generally, because of the deadlock;

6 (ii) the directors or those in control of the corporation have acted, are acting, or
7 will act in a manner that is illegal or fraudulent;

8 (iii) the shareholders are deadlocked in voting power and have failed, for a period
9 that includes at least 2 consecutive annual meeting dates, to elect successors to directors whose
10 terms have expired;

11 (iv) the corporate assets are being misapplied or wasted; or

12 (v) an agreement under the provisions of RSA 293-A:7.32(a)(7) binding on all of
13 the shareholders so provides.

14 (3) in a proceeding by a creditor if it is established that:

15 (i) the creditor's claim has been reduced to judgment, the execution on the
16 judgment returned unsatisfied, and the corporation is insolvent; or

17 (ii) the corporation has admitted in writing that the creditor's claim is due and
18 owing and the corporation is insolvent; or

19 (4) in a proceeding by the corporation to have its voluntary dissolution continued
20 under court supervision.

21 (5) in a proceeding by a shareholder if the corporation has abandoned its business
22 and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

23 (b) RSA 293-A:14.30(a)(2) shall not apply in the case of a corporation that, on the date of
24 the filing of the proceeding, has shares which are:

25 (1) listed on the New York Stock Exchange, the American Stock Exchange, or on any
26 exchange owned or operated by the NASDAQ Stock Market LLC, or listed or quoted on a system
27 owned or operated by the National Association of Securities Dealers, Inc.; or

28 (2) not so listed or quoted, but are held by at least 300 shareholders and the shares
29 outstanding have a market value of at least \$20 million (exclusive of the value of such shares held by
30 the corporation's subsidiaries, senior executives, directors and beneficial shareholders owning more
31 than 10 percent of such shares).

32 (c) In this section, "beneficial shareholder" has the meaning specified in RSA 293-
33 A:13.01(2).

34 293-A:14.31 Procedure for Judicial Dissolution.

35 (a) Venue for a proceeding by the attorney general to dissolve a corporation lies in
36 Merrimack county. Venue for a proceeding brought by any other party named in RSA 293-A:14.30(a)

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1 lies in the county where a corporation’s principal office (or, if none in this state, its registered office)
2 is or was last located.

3 (b) It is not necessary to make shareholders parties to a proceeding to dissolve a
4 corporation unless relief is sought against them individually.

5 (c) A court in a proceeding brought to dissolve a corporation may issue injunctions,
6 appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other
7 action required to preserve the corporate assets wherever located, and carry on the business of the
8 corporation until a full hearing can be held.

9 (d) Within 10 days of the commencement of a proceeding to dissolve a corporation under
10 RSA 293-A:14.30(a)(2), the corporation must send to all shareholders, other than the petitioner, a
11 notice stating that the shareholders are entitled to avoid the dissolution of the corporation by
12 electing to purchase the petitioner’s shares under RSA 293-A:14.34 and accompanied by a copy of
13 RSA 293-A:14.34.

14 293-A:14.32 Receivership or Custodianship.

15 (a) Unless an election to purchase has been filed under RSA 293-A:14.34, a court in a
16 judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up
17 and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The
18 court shall hold a hearing, after notifying all parties to the proceeding and any interested persons
19 designated by the court, before appointing a receiver or custodian. The court appointing a receiver or
20 custodian has jurisdiction over the corporation and all of its property wherever located.

21 (b) The court may appoint an individual or a domestic or foreign corporation (authorized
22 to transact business in this state) as a receiver or custodian. The court may require the receiver or
23 custodian to post bond, with or without sureties, in an amount the court directs.

24 (c) The court shall describe the powers and duties of the receiver or custodian in its
25 appointing order, which may be amended from time to time. Among other powers:

26 (1) the receiver (i) may dispose of all or any part of the assets of the corporation
27 wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend
28 in his or her own name as receiver of the corporation in all courts of this state;

29 (2) the custodian may exercise all of the powers of the corporation, through or in
30 place of its board of directors, to the extent necessary to manage the affairs of the corporation in the
31 best interests of its shareholders and creditors.

32 (d) The court during a receivership may redesignate the receiver a custodian, and during
33 a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the
34 corporation, its shareholders, and creditors.

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1 (e) The court from time to time during the receivership or custodianship may order
2 compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of
3 the corporation or proceeds from the sale of the assets.

4 293-A:14.33 Decree of Dissolution.

5 (a) If after a hearing the court determines that one or more grounds for judicial
6 dissolution described in RSA 293-A:14.30 exist, it may enter a decree dissolving the corporation and
7 specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy
8 of the decree to the secretary of state, who shall file it and at the same time shall mail notice of such
9 decree to the department of revenue administration.

10 (b) After entering the decree of dissolution, the court shall direct the winding up and
11 liquidation of the corporation's business and affairs in accordance with RSA 293-A:14.05 and the
12 notification of claimants in accordance with RSA 293-A:14.06 and RSA 293-A:14.07.

13 293-A:14.34 Election to Purchase in Lieu of Dissolution.

14 (a) In a proceeding under RSA 293-A:14.30(a)(2) to dissolve a corporation, the
15 corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares
16 owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this
17 section shall be irrevocable unless the court determines that it is equitable to set aside or modify the
18 election.

19 (b) An election to purchase pursuant to this section may be filed with the court at any
20 time within 90 days after the filing of the petition under RSA 293-A:14.30(a)(2) or at such later time
21 as the court in its discretion may allow. If the election to purchase is filed by one or more
22 shareholders, the corporation shall, within 10 days thereafter, give written notice to all shareholders,
23 other than the petitioner. The notice must state the name and number of shares owned by the
24 petitioner and the name and number of shares owned by each electing shareholder and must advise
25 the recipients of their right to join in the election to purchase shares in accordance with this section.
26 Shareholders who wish to participate must file notice of their intention to join in the purchase no
27 later than 30 days after the effective date of the notice to them. All shareholders who have filed an
28 election or notice of their intention to participate in the election to purchase thereby become parties
29 to the proceeding and shall participate in the purchase in proportion to their ownership of shares as
30 of the date the first election was filed, unless they otherwise agree or the court otherwise directs.
31 After an election has been filed by the corporation or one or more shareholders, the proceeding under
32 RSA 293-A:14.30(a)(2) may not be discontinued or settled, nor may the petitioning shareholder sell
33 or otherwise dispose of his or her shares, unless the court determines that it would be equitable to
34 the corporation and the shareholders, other than the petitioner, to permit such discontinuance,
35 settlement, sale, or other disposition.

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1 (c) If, within 60 days of the filing of the first election, the parties reach agreement as to
2 the fair value and terms of purchase of the petitioner’s shares, the court shall enter an order
3 directing the purchase of petitioner’s shares upon the terms and conditions agreed to by the parties.

4 (d) If the parties are unable to reach an agreement as provided for in RSA 293-
5 A:14.34(c), the court, upon application of any party, shall stay the RSA 293-A:14.30(a)(2) proceedings
6 and determine the fair value of the petitioner’s shares as of the day before the date on which the
7 petition under RSA 293-A:14.30(a)(2) was filed or as of such other date as the court deems
8 appropriate under the circumstances.

9 (e) Upon determining the fair value of the shares, the court shall enter an order
10 directing the purchase upon such terms and conditions as the court deems appropriate, which may
11 include payment of the purchase price in installments, where necessary in the interests of equity,
12 provision for security to assure payment of the purchase price and any additional costs, fees and
13 expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the
14 allocation of shares among them. In allocating petitioner’s shares among holders of different classes
15 of shares, the court should attempt to preserve the existing distribution of voting rights among
16 holders of different classes insofar as practicable and may direct that holders of a specific class or
17 classes shall not participate in the purchase. Interest may be allowed at the rate and from the date
18 determined by the court to be equitable, but if the court finds that the refusal of the petitioning
19 shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest
20 shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief
21 under subparagraphs (ii) or (iv) of RSA 293-A:14.30(a)(2), it may award costs, fees and expenses to
22 the petitioning shareholder.

23 (f) Upon entry of an order under RSA 293-A:14.34(c) or (e), the court shall dismiss the
24 petition to dissolve the corporation under RSA 293-A:14.30(a)(2), and the petitioning shareholder
25 shall no longer have any rights or status as a shareholder of the corporation, except the right to
26 receive the amounts awarded by the order of the court which shall be enforceable in the same
27 manner as any other judgment.

28 (g) The purchase ordered pursuant to RSA 293-A:14.34(e) shall be made within 10 days
29 after the date the order becomes final unless before that time the corporation files with the court a
30 notice of its intention to adopt articles of dissolution pursuant to RSA 293-A:14.02 and RSA 293-
31 A:14.03, which articles must then be adopted and filed within 50 days thereafter. Upon filing of such
32 articles of dissolution, the corporation shall be dissolved in accordance with the provisions of
33 RSA 293-A:14.05 through RSA 293-A:14.07, and the order entered pursuant to RSA 293-A:14.34(e)
34 shall no longer be of any force or effect, except that the court may award the petitioning shareholder
35 costs, fees and expenses in accordance with the provisions of the last sentence of RSA 293-A:14.34(e)

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1 and the petitioner may continue to pursue any claims previously asserted on behalf of the
2 corporation.

3 (h) Any payment by the corporation pursuant to an order under RSA 293-A:14.34(c) or
4 (e), other than an award of costs, fees and expenses pursuant to RSA 293-A:14.34(e), is subject to the
5 provisions of RSA 293-A:6.40.

6 Foreign Corporations

7 Part A

8 Certificate of Authority

9 293-A:15.01 Authority to Transact Business Required.

10 (a) A foreign corporation may not transact business in this state until it obtains a
11 certificate of authority from the secretary of state.

12 (b) The following activities, among others, do not constitute transacting business within
13 the meaning of RSA 293-A:15.01(a):

14 (1) maintaining, defending, or settling any proceeding;

15 (2) holding meetings of the board of directors or shareholders or carrying on other
16 activities concerning internal corporate affairs;

17 (3) maintaining bank accounts;

18 (4) maintaining offices or agencies for the transfer, exchange, and registration of the
19 corporation's own securities or maintaining trustees or depositaries with respect to those securities;

20 (5) selling through independent contractors;

21 (6) soliciting or obtaining orders, whether by mail or through employees or agents or
22 otherwise, if the orders require acceptance outside this state before they become contracts;

23 (7) creating or acquiring indebtedness, mortgages, and security interests in real or
24 personal property;

25 (8) securing or collecting debts or enforcing mortgages and security interests in
26 property securing the debts;

27 (9) owning, without more, real or personal property;

28 (10) conducting an isolated transaction that is completed within 30 days and that is
29 not one in the course of repeated transactions of a like nature; or

30 (11) transacting business in interstate commerce.

31 (c) The list of activities in RSA 293-A:15.01(b) is not exhaustive.

32 (d) Nothing in this section shall be construed so as to preclude a determination that a
33 foreign corporation is carrying on business activity within this state within the meaning of RSA 77-
34 A:1, XII.

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1 (e) Any so-called Massachusetts trust or business trust established by law of any other
2 state, desiring to do business in this state, shall be deemed to be a foreign corporation and shall be
3 required to register under and comply with the provisions of this subdivision.

4 293-A:15.02 Consequences of Transacting Business Without Authority.

5 (a) A foreign corporation transacting business in this state without a certificate of
6 authority may not maintain a proceeding in any court in this state until it obtains a certificate of
7 authority.

8 (b) The successor to a foreign corporation that transacted business in this state without
9 a certificate of authority and the assignee of a cause of action arising out of that business may not
10 maintain a proceeding based on that cause of action in any court in this state until the foreign
11 corporation or its successor obtains a certificate of authority.

12 (c) A court may stay a proceeding commenced by a foreign corporation, its successor, or
13 assignee until it determines whether the foreign corporation or its successor requires a certificate of
14 authority. If it so determines, the court may further stay the proceeding until the foreign
15 corporation or its successor obtains the certificate.

16 (d) A foreign corporation which transacts business in this state without a certificate of
17 authority shall be liable to this state, for the years or parts of any years during which it transacted
18 business in this state without a certificate of authority, in an amount equal to all fees which would
19 have been imposed by this subdivision upon the corporation had it duly applied for and received a
20 certificate of authority to transact business in this state as required by this subdivision and
21 thereafter filed all required reports. The corporation shall also be liable for any penalties imposed by
22 this subdivision for failure to pay such fees. The attorney general shall bring proceedings to recover
23 all amounts due under the provisions of this section.

24 (e) Notwithstanding RSA 293-A:15.02(a) and (b), the failure of a foreign corporation to
25 obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from
26 defending any proceeding in this state.

27 293-A:15.03 Application for Certificate of Authority.

28 (a) A foreign corporation may apply for a certificate of authority to transact business in
29 this state by delivering an application to the secretary of state for filing. The application must set
30 forth:

31 (1) the name of the foreign corporation or, if its name is unavailable for use in this
32 state, a corporate name that satisfies the requirements of RSA 293-A:15.06;

33 (2) the name of the state or country under whose law it is incorporated;

34 (3) its date of incorporation and period of duration;

35 (4) the street address of its principal office;

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1 (5) the address of its registered office in this state and the name of its registered
2 agent at that office; and

3 (6) the names and usual business addresses of its current directors and officers.

4 293-A:15.04 Amended Certificate of Authority.

5 (a) A foreign corporation authorized to transact business in this state must obtain an
6 amended certificate of authority from the secretary of state if it changes:

7 (1) its corporate name;

8 (2) the period of its duration; or

9 (3) the state or country of its incorporation.

10 (b) The requirements of RSA 293-A:15.03 for obtaining an original certificate of
11 authority apply to obtaining an amended certificate under this section.

12 293-A:15.05 Effect of Certificate of Authority.

13 (a) A certificate of authority authorizes the foreign corporation to which it is issued to
14 transact business in this state subject, however, to the right of the state to revoke the certificate as
15 provided in this chapter.

16 (b) A foreign corporation with a valid certificate of authority has the same but no greater
17 rights and has the same but no greater privileges as, and except as otherwise provided by this
18 chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on,
19 a domestic corporation of like character.

20 (c) This chapter does not authorize this state to regulate the organization or internal
21 affairs of a foreign corporation authorized to transact business in this state.

22 293-A:15.06 Corporate Name of Foreign Corporation.

23 (a) If the corporate name of a foreign corporation does not satisfy the requirements of
24 RSA 293-A:4.01, the foreign corporation to obtain or maintain a certificate of authority to transact
25 business in this state:

26 (1) may add the word “corporation,” “incorporated,” or “limited,” or the abbreviation
27 “corp.,” “inc.,” or “ltd.” to its corporate name for use in this state; or

28 (2) may use an available fictitious name to transact business in this state if its real
29 name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its
30 board of directors, certified by its secretary, adopting the fictitious name.

31 (b) If a foreign corporation authorized to transact business in this state changes its
32 corporate name to one that does not satisfy the requirements of RSA 293-A:4.01, it may not transact
33 business in this state under the changed name until it adopts a name satisfying the requirements of
34 subsection (a) and obtains an amended certificate of authority under RSA 293-A:15.04.

35 293-A:15.07 Registered Office and Registered Agent of Foreign Corporation.

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1 (a) Each foreign corporation authorized to transact business in this state shall
2 continuously maintain in this state:

3 (1) a registered office that may be the same as any of its places of business; and

4 (2) a registered agent, who may be:

5 (i) an individual who resides in this state and whose business office is identical
6 with the registered office;

7 (ii) a corporation organized or authorized under RSA 292, RSA 293-A, or
8 RSA 294-A whose business office is identical with the registered office;

9 (iii) a limited liability company formed or authorized under RSA 304-C whose
10 business office is identical with the registered office; or

11 (iv) a limited liability partnership formed or authorized under RSA 304-A:44
12 whose business office is identical with the registered office.

13 293-A:15.08 Change of Registered Office or Registered Agent of Foreign Corporation.

14 (a) A foreign corporation authorized to transact business in this state may change its
15 registered office or registered agent by delivering to the secretary of state for filing a statement of
16 change that sets forth:

17 (1) its name;

18 (2) the street address of its current registered office;

19 (3) if the current registered office is to be changed, the street address of its new
20 registered office;

21 (4) the name of its current registered agent;

22 (5) if the current registered agent is to be changed, the name of its new registered
23 agent and the new agent's written consent (either on the statement or attached to it) to the
24 appointment; and

25 (6) that after the change or changes are made, the street addresses of its registered
26 office and the business office of its registered agent will be identical.

27 (b) If the street address of a registered agent's business office changes, the agent may
28 change the street address of the registered office of any foreign corporation for which the person is
29 the registered agent by notifying the corporation in writing of the change, and signing and delivering
30 to the secretary of state for filing a statement of change that complies with the requirements of
31 RSA 293-A:15.08(a) and recites that the corporation has been notified of the change.

32 293-A:15.09 Resignation of Registered Agent of Foreign Corporation.

33 (a) The registered agent of a foreign corporation may resign the agency appointment by
34 signing and delivering to the secretary of state for filing the signed original and 2 exact or conformed
35 copies of a statement of resignation. The statement of resignation may include a statement that the
36 registered office is also discontinued.

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1 (2) that it is not transacting business in this state and that it surrenders its
2 authority to transact business in this state;

3 (3) that it revokes the authority of its registered agent to accept service on its behalf
4 and appoints the secretary of state as its agent for service of process in any proceeding based on a
5 cause of action arising during the time it was authorized to transact business in this state;

6 (4) a mailing address to which the secretary of state may mail a copy of any process
7 served on the secretary of state under subparagraph (3);

8 (5) a commitment to notify the secretary of state in the future of any change in its
9 mailing address; and

10 (6) a statement of withdrawal from the New Hampshire department of revenue
11 administration in accordance with RSA 77-A:18, II and RSA 77-E:12, II.

12 (c) After the withdrawal of the corporation is effective, service of process on the secretary
13 of state under this section is service on the foreign corporation. Upon receipt of process, the
14 secretary of state shall mail a copy of the process to the foreign corporation at the mailing address
15 set forth under RSA 293-A:15.20(b).

16 293-A:15.21 Automatic Withdrawal Upon Certain Conversions. A foreign corporation
17 authorized to transact business in this state that converts to any form of domestic filing entity shall
18 be deemed to have withdrawn on the effective date of the conversion.

19 293-A:15.22 Withdrawal Upon Conversion to a Nonfiling Entity.

20 (a) A foreign corporation authorized to transact business in this state that converts to a
21 domestic or foreign nonfiling entity shall apply for a certificate of withdrawal by delivering an
22 application to the secretary of state for filing. The application must set forth:

23 (1) the name of the foreign corporation and the name of the state or country under
24 whose law it was incorporated before the conversion;

25 (2) that it surrenders its authority to transact business in this state as a foreign
26 corporation;

27 (3) the type of unincorporated entity to which it has been converted and the
28 jurisdiction whose laws govern its internal affairs;

29 (4) if it has been converted to a foreign unincorporated entity:

30 (i) that it revokes the authority of its registered agent to accept service on its
31 behalf and appoints the secretary of state as its agent for service of process in any proceeding based
32 on a cause of action arising during the time it was authorized to transact business in this state;

33 (ii) a mailing address to which the secretary of state may mail a copy of any
34 process served on the secretary of state under paragraph (i); and

35 (iii) a commitment to notify the secretary of state in the future of any change in
36 its mailing address.

37 (b) After the withdrawal under this section of a corporation that has converted to a
38 foreign unincorporated entity is effective, service of process on the secretary of state is service on the

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1 foreign unincorporated entity. Upon receipt of process, the secretary of state shall mail a copy of the
2 process to the foreign unincorporated entity at the mailing address set forth under RSA 293-
3 A:15.22(a)(4).

4 (c) After the withdrawal under this section of a corporation that has converted to a
5 domestic unincorporated entity is effective, service of process shall be made on the unincorporated
6 entity in accordance with the regular procedures for service of process on the form of unincorporated
7 entity to which the corporation was converted.

8 293-A:15.23 Transfer of Authority.

9 (a) A foreign business corporation authorized to transact business in this state that
10 converts to any form of foreign unincorporated entity that is required to obtain a certificate of
11 authority or make a similar type of filing with the secretary of state if it transacts business in this
12 state shall file with the secretary of state an application for transfer of authority signed by any
13 officer or other duly authorized representative. The application shall set forth:

14 (1) the name of the corporation;

15 (2) the type of unincorporated entity to which it has been converted and the
16 jurisdiction whose laws govern its internal affairs; and

17 (3) any other information that would be required in a filing under the laws of this
18 state by an unincorporated entity of the type the corporation has become seeking authority to
19 transact business in this state.

20 (b) The application for transfer of authority shall be delivered to the secretary of state
21 for filing and shall take effect at the effective time provided in RSA 293-A:1.23.

22 (c) Upon the effectiveness of the application for transfer of authority, the authority of the
23 corporation under this subdivision to transact business in this state shall be transferred without
24 interruption to the converted entity which shall thereafter hold such authority subject to the
25 provisions of the laws of this state applicable to that type of unincorporated entity.

26 Part C

27 Revocation of Certificate of Authority

28 293-A:15.30 Grounds for Revocation.

29 (a) The secretary of state may commence a proceeding under RSA 293-A:15.31 to revoke
30 the certificate of authority of a foreign corporation authorized to transact business in this state if:

31 (1) the foreign corporation does not deliver its annual report to the secretary of state
32 within 60 days after it is due;

33 (2) the foreign corporation does not pay within 60 days after they are due any fees or
34 penalties imposed by this chapter or other law;

35 (3) the foreign corporation is without a registered agent or registered office in this
36 state for 60 days or more;

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Records

293-A:16.01 Corporate Records.

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in the form of a document, including an electronic record, or in another form capable of conversion into paper form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in RSA 293-A:1.20(k)(5) regarding facts on which a filed document is dependent;

(2) its bylaws or restated bylaws and all amendments to them currently in effect;

(3) resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;

(4) the minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past 3 years;

(5) all written communications to shareholders generally within the past 3 years, including the financial statements furnished for the past 3 years under RSA 293-A:16.20;

(6) a list of the names and business addresses of its current directors and officers;
and

(7) its most recent annual report delivered to the secretary of state under RSA 293-A:16.21.

293-A:16.02 Inspection of Records by Shareholders.

(a) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in RSA 293-A:16.01(e) if the shareholder gives the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.

(b) For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different than the record date for notice of the

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1 meeting, any person who becomes a shareholder subsequent to the record date for notice of the
2 meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request
3 the notice and any other information provided by the corporation to shareholders in connection with
4 the meeting, unless the corporation has made such information generally available to shareholders
5 by posting it on its website or by other generally recognized means.

6 (c) A shareholder of a corporation is entitled to inspect and copy, during regular business
7 hours at a reasonable location specified by the corporation, any of the following records of the
8 corporation if the shareholder meets the requirements of RSA 293-A:16.02(d) and gives the
9 corporation a signed written notice of the shareholder's demand at least 5 business days before the
10 date on which the shareholder wishes to inspect and copy:

11 (1) excerpts from minutes of any meeting of the board of directors or a committee of
12 the board of directors while acting in place of the board of directors on behalf of the corporation,
13 minutes of any meeting of the shareholders, and records of action taken by the shareholders, board
14 of directors, or a committee of the board without a meeting, to the extent not subject to inspection
15 under RSA 293-A:16.02(a);

16 (2) accounting records of the corporation; and

17 (3) the record of shareholders.

18 (d) A shareholder may inspect and copy the records described in RSA 293-A:16.02(c) only if:

19 (1) the shareholder's demand is made in good faith and for a proper purpose;

20 (2) the shareholder describes with reasonable particularity the shareholder's
21 purpose and the records the shareholder desires to inspect; and

22 (3) the records are directly connected with the shareholder's purpose.

23 (e) For purposes of RSA 293-A:16.02(d), if a shareholder makes a written demand on a
24 corporation for an alphabetical list of the names and addresses of its shareholders who are entitled
25 to notice of a shareholders' meeting for the purpose of communicating with other shareholders
26 relating to an item of business listed in the notice, and the corporation refuses to allow inspection
27 and copying of the list, the shareholder may petition the secretary of state to issue an order requiring
28 the corporation to allow the shareholder to inspect and copy the list of shareholders pursuant to the
29 provisions of RSA 421-B:26-a. The secretary of state, or his or her designee, shall confirm that (i) the
30 petitioner is a shareholder of the corporation, (ii) the corporation has given a notice of shareholder
31 meeting to its shareholders, and (iii) the shareholder made a written demand to inspect and copy the
32 shareholder list for the purpose of communicating with the shareholders regarding an item of
33 business set forth in the notice. If the secretary of state confirms such information, he or she shall
34 schedule a hearing no later than 10 business days after making such confirmation. The secretary of
35 state shall promptly give the petitioner and the corporation notice of the hearing. At such hearing,
36 the presiding officer shall determine whether the petitioner has made the demand for the inspection

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1 and copying of the shareholder list for a proper purpose and in good faith and in accordance with
2 RSA 293-A:16.02(d) and, if so, he or she shall order the corporation to comply with the law. If the
3 corporation fails to attend the hearing, the corporation shall be deemed to be in default, and the
4 presiding officer may issue an order requiring it to allow the petitioner to inspect and copy the
5 shareholder list. Such order in the case of default shall be deemed final and may be enforced by the
6 secretary of state pursuant to RSA 293-A:16.02(f).

7 (f) Unless an order is final pursuant to RSA 293-A:16.02(e), any order or refusal to grant
8 an order by the secretary of state under this subsection may be appealed to the superior court of the
9 county where the corporation's principal office, or, if none in this state, its registered office, is located
10 or the business and commercial dispute docket of the superior court, which court shall be deemed to
11 have jurisdiction to hear such matter and to which the corporation or shareholder, as the case may
12 be, shall be deemed to have consented. The secretary of state or his or her designee may bring an
13 action in the superior court to enforce compliance with any final order under this section. Upon a
14 proper showing, an injunction or other equitable relief may be granted.

15 (g) The right of inspection granted by this section may not be abolished or limited by a
16 corporation's articles of incorporation or bylaws.

17 (h) This section does not affect:

18 (1) the right of a shareholder to inspect records under RSA 293-A:7.20 or, if the
19 shareholder is in litigation with the corporation, to the same extent as any other litigant; or

20 (2) the power of a court, independently of this chapter, to compel the production of
21 corporate records for examination.

22 (i) For purposes of this section, "shareholder" includes a beneficial owner whose shares
23 are held in a voting trust or by a nominee on the shareholder's behalf.

24 293-A:16.03 Scope of Inspection Right.

25 (a) A shareholder's agent or attorney has the same inspection and copying rights as the
26 shareholder represented.

27 (b) The right to copy records under RSA 293-A:16.02 includes, if reasonable, the right to
28 receive copies by xerographic or other means, including copies through an electronic transmission if
29 available and so requested by the shareholder.

30 (c) The corporation may comply at its expense with a shareholder's demand to inspect
31 the record of shareholders under RSA 293-A:16.02(c)(3) by providing the shareholder with a list of
32 shareholders that was compiled no earlier than the date of the shareholder's demand.

33 (d) The corporation may impose a reasonable charge, covering the costs of labor and
34 material, for copies of any documents provided to the shareholder. The charge may not exceed the
35 estimated cost of production, reproduction or transmission of the records.

36 293-A:16.04 Court-Ordered Inspection.

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1 (a) If a corporation does not allow a shareholder who complies with RSA 293-A:16.02(a)
2 to inspect and copy any records required by that subsection to be available for inspection, the
3 superior court of the county where the corporation's principal office (or, if none in this state, its
4 registered office) is located or the business and commercial dispute docket of the superior court
5 (which court shall be deemed to have jurisdiction to hear such matter and to which the corporation
6 shall be deemed to have consented) may summarily order inspection and copying of the records
7 demanded at the corporation's expense upon application of the shareholder.

8 (b) If a corporation does not within a reasonable time allow a shareholder to inspect and
9 copy any other record, the shareholder who complies with RSA 293-A:16.02(c) and (d) may apply to
10 the superior court in the county where the corporation's principal office (or, if none in this state, its
11 registered office) is located or the business and commercial dispute docket of the superior court
12 (which court shall be deemed to have jurisdiction to hear such matter and to which the corporation
13 shall be deemed to have consented) for an order to permit inspection and copying of the records
14 demanded. The court shall dispose of an application under this subsection on an expedited basis.

15 (c) If the court orders inspection and copying of the records demanded, it shall also order
16 the corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation
17 proves that it refused inspection in good faith because it had a reasonable basis for doubt about the
18 right of the shareholder to inspect the records demanded.

19 (d) If the court orders inspection and copying of the records demanded, it may impose
20 reasonable restrictions on the use or distribution of the records by the demanding shareholder.

21 293-A:16.05 Inspection of Records by Directors.

22 (a) A director of a corporation is entitled to inspect and copy the books, records and
23 documents of the corporation at any reasonable time to the extent reasonably related to the
24 performance of the director's duties as a director, including duties as a member of a committee, but
25 not for any other purpose or in any manner that would violate any duty to the corporation.

26 (b) The superior court of the county where the corporation's principal office (or if none in
27 this state, its registered office) is located may order inspection and copying of the books, records and
28 documents at the corporation's expense, upon application of a director who has been refused such
29 inspection rights, unless the corporation establishes that the director is not entitled to such inspection
30 rights. The court shall dispose of an application under this subsection on an expedited basis.

31 (c) If an order is issued, the court may include provisions protecting the corporation from
32 undue burden or expense, and prohibiting the director from using information obtained upon
33 exercise of the inspection rights in a manner that would violate a duty to the corporation, and may
34 also order the corporation to reimburse the director for the director's expenses incurred in connection
35 with the application.

36 293-A:16.06 Exception to Notice Requirement.

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1 (a) Whenever notice would otherwise be required to be given under any provision of this
2 chapter to a shareholder, such notice need not be given if:

3 (1) Notices to the shareholders of 2 consecutive annual meetings, and all notices of
4 meetings during the period between such 2 consecutive annual meetings, have been sent to such
5 shareholder at such shareholder's address as shown on the records of the corporation and have been
6 returned undeliverable or could not be delivered; or

7 (2) All, but not less than 2, payments of dividends on securities during a 12-month
8 period, or 2 consecutive payments of dividends on securities during a period of more than 12 months,
9 have been sent to such shareholder at such shareholder's address as shown on the records of the
10 corporation and have been returned undeliverable or could not be delivered.

11 (b) If any such shareholder shall deliver to the corporation a written notice setting forth
12 such shareholder's then-current address, the requirement that notice be given to such shareholder
13 shall be reinstated.

14 Part B

15 Reports

16 293-A:16.20 Financial Statements for Shareholders.

17 (a) A corporation shall deliver to its shareholders annual financial statements, which
18 may be consolidated or combined statements of the corporation and one or more of its subsidiaries,
19 as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for
20 that year, and a statement of changes in shareholders' equity for the year unless that information
21 appears elsewhere in the financial statements. If financial statements are prepared for the
22 corporation on the basis of generally accepted accounting principles, the annual financial statements
23 must also be prepared on that basis.

24 (b) If the annual financial statements are reported upon by a public accountant, the
25 report must accompany them. If not, the statements must be accompanied by a statement of the
26 president or the person responsible for the corporation's accounting records:

27 (1) stating such person's reasonable belief whether the statements were prepared on
28 the basis of generally accepted accounting principles and, if not, describing the basis of preparation;
29 and

30 (2) describing any respects in which the statements were not prepared on a basis of
31 accounting consistent with the statements prepared for the preceding year.

32 (c) Within 120 days after the close of each fiscal year, the corporation shall send the
33 annual financial statements to each shareholder. Thereafter, on written request from a shareholder to
34 whom the statements were not sent, the corporation shall send the shareholder the latest financial
35 statements. A public corporation may fulfill its responsibilities under this section by delivering the

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1 specified financial statements, or otherwise making them available, in any manner permitted by the
2 applicable rules and regulations of the United States Securities Exchange Commission.

3 293-A:16.21 Annual Report for Secretary of State.

4 (a) Each domestic corporation, and each foreign corporation authorized to transact
5 business in this state, shall deliver to the secretary of state for filing an annual report that sets forth:

6 (1) the name of the corporation and the state or country under whose law it is
7 incorporated;

8 (2) the address of its registered office and the name of its registered agent at that
9 office in this state;

10 (3) the address of its principal office;

11 (4) names and business addresses of its directors and principal officers; and

12 (5) a brief description of the nature of its business.

13 (b) Information in the annual report must be current as of January 1 of the year the
14 report is due.

15 (c) The first annual report must be delivered to the secretary of state between January 1
16 and April 1 of the year following the calendar year in which a domestic corporation was incorporated
17 or a foreign corporation was authorized to transact business; provided, however, that a foreign
18 corporation that has received its certificate of authority at any time between December 1 of the
19 preceding year and April 1, or a domestic corporation which has received its certificate of
20 incorporation during the same period shall not be required to file an annual report during that year.
21 Subsequent annual reports must be delivered to the secretary of state between January 1 and April
22 1 of the following calendar years.

23 (d) If an annual report does not contain the information required by this section, the
24 secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and
25 return the report to it for correction. If the report is corrected to contain the information required by
26 this section and delivered to the secretary of state within 30 days after the effective date of notice, it
27 is deemed to be timely filed.

28 **Transition Provisions**

29 293-A:17.01 Application to Existing Domestic Corporations. This chapter applies to all domestic
30 corporations in existence on its effective date that were incorporated under any general statute of
31 this state providing for incorporation of corporations for profit if power to amend or repeal the
32 statute under which the corporation was incorporated was reserved.

33 293-A:17.02 Application to Qualified Foreign Corporations. A foreign corporation authorized to
34 transact business in this state on the effective date of this chapter is subject to this chapter but is not
35 required to obtain a new certificate of authority to transact business under this chapter.

36 293-A:17.03 Saving Provisions.

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1 (a) Except as provided in RSA 293-A:17.03(b), the repeal of a statute by this chapter does
2 not affect:

3 (1) the operation of the statute or any action taken under it before its repeal;

4 (2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued,
5 or incurred under the statute before its repeal;

6 (3) any violation of the statute, or any penalty, forfeiture, or punishment incurred
7 because of the violation, before its repeal;

8 (4) any proceeding, reorganization, or dissolution commenced under the statute
9 before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance
10 with the statute as if it had not been repealed.

11 (b) If a penalty or punishment imposed for violation of a statute repealed by this chapter
12 is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in
13 accordance with this chapter.

14 (c) In the event that any provisions of this chapter are deemed to modify, limit, or
15 supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et
16 seq., the provisions of this chapter shall control to the maximum extent permitted by Section
17 102(a)(2) of that federal Act.

18 293-A:17.04 Severability. If any provision of this chapter or its application to any person or
19 circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other
20 provisions or applications of the chapter that can be given effect without the invalid provision or
21 application, and to this end the provisions of the chapter are severable.

22 142:2 Reference Changed. Amend the introductory paragraph of RSA 384:3, II to read as
23 follows:

24 II. Each director or trustee of a state-chartered bank or savings association shall discharge
25 his or her duties under the same standards that exist for a director of a business corporation under
26 RSA 293-A:8.30 and RSA [~~293-A:8.31~~] **293-A:8.60 through RSA 293-A:8.63**, except that:

27 142:3 Effective Date. This act shall take effect January 1, 2014.

28
29 Approved: June 27, 2013

30 Effective Date: January 1, 2014