



SPONSOR: Rep. Bush & Sen. Mantzavinos & Sen. Townsend
Rep. Carson; Sens. Hocker, Walsh, Wilson

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE BILL NO. 298

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION, AND DISSOLUTION OF STATUTORY TRUSTS.

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

Section 1. Amend § 3802, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3802. Contributions by beneficial owners.

(d) For all purposes of the laws of the State of Delaware, a subscription for a beneficial interest, whether submitted in writing, by means of electronic transmission, or as otherwise permitted by applicable law, is irrevocable if the subscription states that it is irrevocable to the extent provided by the terms of the subscription.

Section 2. Amend § 3803, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3803. Liability of beneficial owners and trustees.

(c) Except to the extent otherwise provided in the governing instrument of a statutory trust, an officer, employee, ~~manager~~ manager, adviser (as defined in § 3313 of this title), or other person acting pursuant to § 3806(b)(7) or (i) of this title, when acting in such capacity, shall not be personally liable to any person other than the statutory trust or a trustee or a beneficial owner for any act, omission or obligation of the statutory trust or any trustee thereof.

Section 3. Amend § 3805, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3805. Rights of beneficial owners and trustees in statutory trust property.

(c) A beneficial owner's beneficial interest in the statutory trust is personal property notwithstanding the nature of the property of the statutory trust. Except to the extent otherwise provided in the governing instrument of a statutory trust, a beneficial owner has no interest in specific statutory trust property.

Section 4. Amend § 3806, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3806. Management of statutory trust.

(b) A governing instrument may contain any provision relating to the management of the business and affairs of the statutory trust, and the rights, duties and obligations of the trustees, beneficial owners and other persons, which is not contrary to any provision or requirement of this ~~subchapter~~ chapter and, without limitation:

(9) May provide for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the governing instrument or the satisfaction of conditions, and to the extent the governing instrument provides for the manner in which it may be amended such governing instrument may be amended only in that manner or as otherwise permitted by law, including as permitted by ~~§ 3815(f)~~ §§ 3815(f) and 3825(f) of this title (provided that the approval of any person may be waived by such person and that any such conditions may be waived by all persons for whose benefit such conditions were intended). Unless otherwise provided in a governing instrument, a supermajority amendment provision shall only apply to provisions of the governing instrument that are expressly included in the governing instrument. As used in this section, “supermajority amendment provision” means any amendment provision set forth in a governing instrument requiring that an amendment to a provision of the governing instrument be adopted by no less than the vote or consent required to take action under such latter provision. If a governing instrument does not provide for the manner in which it may be amended, the governing instrument may be amended with the approval of all of the beneficial owners and trustees or as otherwise permitted by law, including as permitted by §§ 3815(f) and 3825(f) of this title; or

Section 5. Amend § 3806, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3806. Management of statutory trust.

(o) Any act or transaction that may be taken by or in respect of a statutory trust under this ~~subchapter~~ chapter or the governing instrument of the statutory trust, including, in either case, any act or transaction by any trustee, beneficial owner, or other person, whether the trustee, beneficial owner, or other person is acting in the trustee’s, beneficial owner’s, or other person’s individual capacity or on behalf of the statutory trust, but that is void or voidable when taken, may be ratified (or the failure to comply with any requirements of the governing instrument making such act or transaction void or voidable may be waived) by the beneficial owners, ~~trustees~~ trustees, or other persons whose approval would be required under the governing instrument:

(1) For such act or transaction to be validly taken; or

(2) To amend the governing instrument in a manner that would permit such act or transaction to be validly taken, in each case at the time of such ratification or ~~waiver~~; waiver.

52 ~~provided, that if~~ Any such ratification or waiver may be express or implied, including by the statements, action,
53 inaction, or acquiescence of or by such trustees, beneficial owners, or other persons. If the void or voidable act or
54 transaction was the issuance or assignment of any beneficial interests, the beneficial interests purportedly issued or assigned
55 shall be deemed not to have been issued or assigned for purposes of determining whether the void or voidable act or
56 transaction was ratified or waived pursuant to this subsection. Any act or transaction ratified, or with respect to which the
57 failure to comply with any requirements of the governing instrument is waived, pursuant to this subsection shall be deemed
58 validly taken at the time of such act or transaction. If an amendment to the governing instrument to permit any such act or
59 transaction to be validly taken would require notice to any beneficial owners, ~~trustees~~ trustees, or other persons under the
60 governing instrument and the ratification or waiver of such act or transaction is effectuated pursuant to this subsection by
61 the beneficial owners, ~~trustees~~ trustees, or other persons whose approval would be required to amend the governing
62 instrument, notice of such ratification or waiver shall be given following such ratification or waiver to the beneficial
63 owners, ~~trustees~~ trustees, or other persons who would have been entitled to notice of such an amendment and who have not
64 otherwise received notice of, or participated in, such ratification or waiver; provided that the giving of the notice is not a
65 condition to the effectiveness of such ratification or waiver. The provisions of this subsection shall not be construed to limit
66 the accomplishment of a ratification or waiver of a void or voidable act by other means permitted by law. Upon application
67 of the statutory trust, any beneficial owner, any trustee or any person claiming to be substantially and adversely affected by
68 a ratification or waiver pursuant to this subsection (excluding any harm that would have resulted if such act or transaction
69 had been valid when taken), the Court of Chancery may hear and determine the validity and effectiveness of the ratification
70 of, or waiver with respect to, any void or voidable act or transaction effectuated pursuant to this subsection, and in any such
71 application, the statutory trust shall be named as a party and service of the application upon the Delaware trustee or
72 registered agent of the statutory trust required by § 3807 of this title shall be deemed to be service upon the statutory trust,
73 and no other party need be joined in order for the Court to adjudicate the validity and effectiveness of the ratification or
74 waiver, and the Court may make such order respecting further or other notice of such application as it deems proper under
75 these circumstances; provided, that nothing herein limits or affects the right to serve process in any other manner now or
76 hereafter provided by law, and this sentence is an extension of and not a limitation upon the right otherwise existing of
77 service of legal process upon nonresidents.

78 Section 6. Amend § 3807, Title 12 of the Delaware Code by making deletions as shown by strike through and
79 insertions as shown by underline as follows:

80 § 3807. Trustee in State; registered agent.

81 (i)(1) Every registered agent shall:

(4)a. If an entity, maintain a business office in the State of Delaware which is generally open, or if an individual, be generally present at a designated location in the State of Delaware, at sufficiently frequent times to accept service of process and otherwise perform the functions of a registered agent;

(2)b. If a foreign entity, be authorized to transact business in the State of Delaware;

(3)c. Accept service of process and other communications directed to the statutory trusts and foreign statutory trusts for which it serves as registered agent and forward same to the statutory trust or foreign statutory trust to which the service or communication is directed; and

(4)d. Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the registered agent maintains a record for the reduction of risk of unlawful business purposes.

(2) A registered agent may not perform its duties or functions solely through the use of a virtual office, the retention by the agent of a mail forwarding service, or both. For purposes of this subsection, "virtual office" means the performance of duties or functions solely through the internet or solely through other means of remote communication.

Section 7. Amend § 3808, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3808. Existence of statutory trust.

(c) In the event that a statutory trust does not have perpetual existence, a statutory trust is dissolved and its affairs shall be wound up at the time or upon the happening of events specified in the governing instrument. If a governing instrument provides the manner in which a dissolution may be revoked, it may be revoked in that manner and, unless a governing instrument prohibits revocation of dissolution, then notwithstanding the happening of ~~events~~ an event specified in the governing instrument, the statutory trust shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation as provided in § 3810 of this title, the statutory trust is continued, effective as of the happening of such event:

(1) In the case of dissolution effected by the approval of the beneficial owners ~~or other persons, (or other persons whose approval is required for such dissolution under the governing instrument)~~, pursuant to such approval (and the approval of any beneficial owners or other persons whose approval is required under the governing instrument to revoke a dissolution contemplated by this ~~elause~~); paragraph (c)(1)); and

(2) In the case of dissolution at the time or upon the happening of events specified in a governing instrument (other than a dissolution effected by the approval of the beneficial owners ~~or other persons~~); (or other persons whose approval is required for such dissolution under the governing instrument)), pursuant to such approval that, pursuant to

the terms of the governing instrument, is required to amend the provision of the governing instrument effecting such dissolution (and the approval of any beneficial owners or other persons whose approval is required under the governing instrument to revoke a dissolution contemplated by this ~~clause~~- paragraph (c)(2)).

The provisions of this section shall not be construed to limit the accomplishment of a revocation of dissolution by other means permitted by law.

Section 8. Amend § 3808, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3808. Existence of statutory trust.

(f) Except to the extent otherwise provided in the governing instrument of the statutory trust, a series established in accordance with § 3804(a) of this title may be dissolved and its affairs wound up without causing the dissolution of the statutory trust or any other series thereof. Unless otherwise provided in the governing instrument of the statutory trust, the dissolution, winding up, liquidation or termination of the statutory trust or any series thereof shall not affect the limitation of liability with respect to a series established in accordance with § 3804(a) of this title. A series established in accordance with § 3804(a) of this title is dissolved and its affairs shall be wound up at the time or upon the happening of events specified in the governing instrument of the statutory trust. Except to the extent otherwise provided in the governing instrument of a statutory trust, the death, incapacity, dissolution, termination or bankruptcy of a beneficial owner or a trustee of such series shall not result in the termination or dissolution of such series and such series may not be terminated or revoked by a beneficial owner of such series or other person except in accordance with the terms of the governing instrument of the statutory trust. If a governing instrument provides the manner in which a dissolution of a series may be revoked, it may be revoked in that manner and, unless the statutory trust has dissolved and such dissolution has not been revoked or the governing instrument prohibits revocation of dissolution of a series, then notwithstanding the happening of an event specified in the governing instrument of the statutory trust as an event of dissolution of the series, the series shall not be dissolved and its affairs shall not be wound up if, prior to the completion of the winding up of the series, the series is continued, effective as of the happening of such event:

(1) In the case of dissolution effected by the approval of the beneficial owners associated with the series (or other persons whose approval is required for such dissolution under the governing instrument), pursuant to such approval (and the approval of any beneficial owners associated with the series or other persons whose approval is required under the governing instrument to revoke a dissolution contemplated by this paragraph (f)(1)); and

(2) In the case of dissolution at the time or upon the happening of events specified in the governing instrument of the statutory trust (other than a dissolution effected by the approval of the beneficial owners associated with the

series (or other persons whose approval is required for such dissolution under the governing instrument)), pursuant to such approval that, pursuant to the terms of the governing instrument, is required to amend the provision of the governing instrument effecting such dissolution (and the approval of any beneficial owners associated with the series (or other persons whose approval is required under the governing instrument) to revoke a dissolution contemplated by this paragraph (f)(2)).

If a series is dissolved by the dissolution of the statutory trust, unless the winding up of the series has been completed or the governing instrument prohibits revocation of dissolution of the series, the dissolution of the series shall be automatically revoked upon any revocation of dissolution of the statutory trust in accordance with subsection (c) of this section.

Section 9. Amend § 3809, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3809. Applicability of trust law.

Except to the extent otherwise provided in the governing instrument of a statutory trust or in this ~~subchapter,~~
chapter, the laws of this State pertaining to trusts are hereby made applicable to statutory trusts; provided however, that for purposes of any tax imposed by this State or any instrumentality, agency or political subdivision of this State a statutory trust shall be classified as a corporation, an association, a partnership, a trust or otherwise, as shall be determined under the United States Internal Revenue Code of 1986 [26 U.S. Code § 1 et seq.], as amended, or under any successor provision.

Section 10. Amend § 3810, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3810. Certificate of trust; amendment; restatement; cancellation.

(d) A certificate of trust shall be cancelled upon the dissolution and the completion of winding up of a statutory trust, or upon the filing of a certificate of merger or consolidation if the statutory trust is not the surviving or resulting person in a merger or consolidation, or upon the future effective date or time of a certificate of merger or consolidation if the statutory trust is not the surviving or resulting person in a merger or consolidation, or upon the filing of a certificate of transfer, or upon the future effective date or time of a certificate of transfer, or upon the filing of a certificate of conversion to non-Delaware other business entity or upon the future effective date or time of a certificate of conversion to non-Delaware entity or upon the filing of a certificate of division if the statutory trust is a dividing statutory trust that is not a surviving statutory trust or upon the future effective date or time of a certificate of division if the statutory trust is a dividing statutory trust that is not a surviving statutory trust. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

(1) The name of the statutory trust;

(2) The date of filing of its certificate of trust;

(3) The future effective date or time (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate; and

(4) Any other information the trustee determines to include therein.

A certificate of cancellation that is filed in the office of the Secretary of State prior to the dissolution or the completion of winding up of a statutory trust may be corrected or nullified as an erroneously executed certificate of cancellation by filing with the office of the Secretary of State a certificate of correction of such certificate of cancellation in accordance with subsection (e) of this section. The Secretary of State shall not issue a certificate of good standing with respect to a statutory trust if its certificate of trust is cancelled.

(e) Whenever any certificate authorized to be filed with the office of the Secretary of State under this ~~subchapter~~ chapter has been so filed and is an inaccurate record of the action therein referred to or was defectively or erroneously executed, such certificate may be corrected or nullified by filing with the office of the Secretary of State a certificate of correction of such certificate. ~~The~~ If the certificate is to be corrected, the certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the certificate in corrected form and shall be executed and filed as required by this ~~subchapter~~ chapter. If the certificate is to be nullified, the certificate of correction shall specify the inaccuracy or defect with respect to the certificate, shall provide for the nullification of the certificate, and shall be executed and filed as required by this chapter. The certificate of correction shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the ~~correction~~ correction or nullification, and as to those persons the certificate of correction shall be effective from the filing date. In lieu of filing a certificate of correction, the certificate may be corrected by filing with the office of the Secretary of State a corrected certificate which shall be executed and filed in accordance with this ~~subchapter~~ chapter. The corrected certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected and shall set forth the entire certificate in corrected form. The corrected certificate shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the corrections, and as to those persons the corrected certificate shall be effective from the filing date.

(f) If any certificate filed in accordance with this ~~subchapter~~ chapter provides for a future effective date or time and if the transaction is terminated or amended to change the future effective date or time prior to the future effective date or time, the certificate shall be terminated or amended by the filing, prior to the future effective date or time set forth in such original certificate, of a certificate of termination or amendment of the original certificate, executed and filed in

201 accordance with this ~~subchapter~~, chapter, which shall identify the original certificate which has been terminated or amended
202 and shall state that the original certificate has been terminated or amended.

203 Section 11. Amend § 3812, Title 12 of the Delaware Code by making deletions as shown by strike through and
204 insertions as shown by underline as follows:

205 § 3812. Filing of certificate.

206 (a) Any certificate authorized to be filed with the office of the Secretary of State under this ~~subchapter~~ chapter (or
207 any judicial decree of amendment or cancellation) shall be delivered to the office of the Secretary of State for filing. A
208 person who executes a certificate as an agent or fiduciary need not exhibit evidence of the person's authority as a
209 prerequisite to filing. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all
210 filing fees required by law the Secretary of State shall:

211 Section 12. Amend § 3812, Title 12 of the Delaware Code by making deletions as shown by strike through and
212 insertions as shown by underline as follows:

213 § 3812. Filing of certificate.

214 (d) A fee as set forth in § 3813(a)(3) of this title shall be paid for a certified copy of any certificate on file as
215 provided for by this ~~subchapter~~ chapter and a fee as set forth in § 3813(a)(4) of this title shall be paid for each page copied.

216 (e) Any signature on any certificate authorized to be filed with the Secretary of State under any provision of this
217 ~~subchapter~~ chapter may be a facsimile, a conformed signature or an electronically transmitted signature. Any such
218 certificate may be filed by telecopy, fax or similar electronic transmission; provided, however, that the Secretary of State
219 shall have no obligation to accept such filing if such certificate is illegible or otherwise unsuitable for processing.

220 Section 13. Amend § 3813, Title 12 of the Delaware Code by making deletions as shown by strike through and
221 insertions as shown by underline as follows:

222 § 3813. Fees.

223 (a) No documents required to be filed under this subchapter shall be effective until the applicable fee required by
224 this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of this State:

225 (3) For certifying copies of any paper on file as provided for by this ~~subchapter~~ chapter, a fee in the amount
226 of \$50 for each copy certified.

227 Section 14. Amend § 3815, Title 12 of the Delaware Code by making deletions as shown by strike through and
228 insertions as shown by underline as follows and by redesignating accordingly:

229 § 3815. Merger and consolidation.

(b) If a statutory trust is merging or consolidating under this section, the statutory trust or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation in the office of the Secretary of State. The certificate of merger or consolidation shall state:

(4) In the case of a merger in which a statutory trust is the surviving entity, such amendments, if any, to the certificate of trust of the surviving statutory trust ~~to change its name, registered office or registered agent~~ as are desired to be effected by the ~~merger~~, merger (which amendments may amend and restate the certificate of trust of the surviving statutory trust in its entirety);

(5) In the case of a consolidation in which the resulting entity is a statutory trust, that the certificate of trust of the resulting trust shall be as set forth in an attachment to the certificate of consolidation;

Section 15. Amend § 3825, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3825. Division of a statutory trust.

(h) If a statutory trust divides under this section, the dividing trust shall file a certificate of division executed by at least 1 trustee of the dividing trust on behalf of such dividing trust in the office of the Secretary of State in accordance with § 3811 of this title and a certificate of trust that complies with § 3810 of this title for each resulting trust executed by all of the trustees of each resulting trust in accordance with § 3811 of this title. ~~The certificate of division shall state:~~

(1) The certificate of division shall state:

~~(1)a.~~ The name of the dividing trust and, if it has been changed, the name under which its certificate of trust was originally filed and whether the dividing trust is a surviving trust;

~~(2)b.~~ The date of filing of the dividing trust's original certificate of trust with the Secretary of State;

~~(3)c.~~ The name of each division trust;

~~(4)d.~~ The name and business address of the division contact required by paragraph (g)(3) of this section;

~~(5)e.~~ The future effective date or time (which shall be a date or time certain) of the division if it is not to be effective upon the filing of the certificate of division;

~~(6)f.~~ That the division has been approved in accordance with this section;

~~(7)g.~~ That the plan of division is on file at a place of business of such division trust as is specified therein, and shall state the address thereof;

~~(8)h.~~ That a copy of the plan of division will be furnished by such division trust as is specified therein, on request and without cost, to any beneficial owner of the dividing trust; and

~~(9)i.~~ Any other information the dividing trust determines to include therein.

260 (2) A certificate of division may be amended to change the name or business address of the division contact in
261 a certificate of division or to change information in the certificate of division required by paragraph (h)(1)g. of this
262 section. A certificate of division is amended by filing a certificate of amendment thereto for each division trust that
263 exists as a statutory trust in the office of the Secretary of State. Each certificate of amendment of certificate of division
264 must include all of the following:

265 a. The name of the dividing trust and, if the name has been changed, the name under which the dividing
266 trust's certificate of trust was originally filed.

267 b. The name of the division trust to which the amendment to the certificate of division relates.

268 c. The amendment to the certificate of division.

269 (3) If the dividing trust is a surviving trust, a trustee of the dividing trust who becomes aware that the name or
270 business address of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of
271 this section, in a certificate of division was false when made, or that the name or business address of the division
272 contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of
273 division has changed, must promptly amend the certificate of division. If the dividing trust is not a surviving trust or no
274 longer exists as a statutory trust, a trustee of any resulting trust who becomes aware that the name or business address
275 of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a
276 certificate of division was false when made, or that the name or business address of the division contact, or information
277 in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of division has changed, must
278 promptly amend the certificate of division. This subsection does not apply after the expiration of a period of 6 years
279 following the effective date of the division.

280 (4)a. Unless otherwise provided in the plan of division or the certificate of division, each certificate of
281 amendment of certificate of division must be executed as follows:

282 1. If the dividing trust is a surviving trust, by at least 1 of the trustees of the dividing trust acting on
283 behalf of the division trust to which the certificate of amendment of certificate of division relates.

284 2. If the dividing trust is not a surviving trust or no longer exists as a statutory trust, by 1 or more
285 authorized persons on behalf of the resulting trust acting on behalf of the division trust to which the certificate
286 of amendment of certificate of division relates.

287 b. Each division trust is deemed to have consented to the execution of a certificate of amendment of
288 certificate of division under this paragraph (h)(4).

(5) Unless otherwise provided in this chapter or unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of amendment of certificate of division, a certificate of amendment of certificate of division is effective at the time of its filing with the Secretary of State.

(6) Subject to this chapter, the Secretary of State shall accept the filing of certificates of amendment of certificate of division for all division trusts resulting from the same certificate of division if at least 1 division trust is in good standing at the time of such filings.

Section 16. Amend § 3825, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3825. Division of a statutory trust.

(I) Upon the division of a statutory trust becoming effective:

(1) The dividing trust shall be divided into the distinct and independent ~~resulting~~ division trusts named in the plan of division, and, if the dividing trust is not a surviving trust, the existence of the dividing trust shall cease.

(9) Any action or proceeding pending against a dividing trust may be continued against the surviving ~~trust~~ trust, if any, as if the division did not occur, but subject to paragraph (I)(4) of this section, and against any resulting trust to which the asset, property, right, series, debt, liability or duty associated with such action or proceeding was allocated pursuant to the plan of division by adding or substituting such resulting trust as a party in the action or proceeding.

Section 17. Amend § 3852, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3852. Registration required; application.

(a) Before doing business in the State of Delaware, a foreign statutory trust shall register with the Secretary of State. In order to register, a foreign statutory trust shall submit to the Secretary of State:

(1) A copy executed by a trustee or other authorized person of an application for registration as a foreign statutory trust, setting forth:

e. A statement that the Secretary of State is appointed the agent of the foreign statutory trust for service of process under the circumstances set forth in § 3860(b) of this title; and

Section 18. Amend § 3881, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3881. Control beneficial interest acquisition definitions.

(c) "Associate," when used to indicate a relationship with any person, means:

(4) Any other person that:

a. Directly or indirectly controls, or is controlled by, or is under common control with, the person specified, which will include any investment fund or other collective investment vehicle or separate account managed or advised by the person specified or any investment fund or other collective investment vehicle that has the same investment adviser as the person specified;

Section 19. Amend § 3881, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3881. Control beneficial interest acquisition definitions.

(d)(1) “Control beneficial interest acquisition” means the acquisition, directly or indirectly, by any person of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding beneficial interests that, upon such acquisition, would constitute control beneficial interests.

(2) “Control beneficial interest acquisition” does not include the acquisition of beneficial interests:

a. Before August 1, 2022;

b. Under a contract entered into before August 1, 2022, creating a binding obligation to purchase beneficial interests at a set price;

c. Under the laws of descent and distribution;

d. Under the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this subchapter as determined by the trustees; or

e. Under a merger or consolidation effected under § 3815 of this title if the statutory trust is the surviving or resulting ~~party~~ person in the merger or consolidation, except with respect to any ~~shares~~ beneficial interests issued to a holder of control beneficial interests in the ~~target party~~ statutory trust which is not the surviving or resulting person.

Section 20. Amend § 3881, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3881. Control beneficial interest acquisition definitions.

(e)(1) “Control beneficial interests” means beneficial interests that, except for this subchapter, would, if aggregated with all other beneficial interests of the statutory trust (including beneficial interests the acquisition of which is excluded from “control beneficial interest acquisition” in paragraph (d)(2) of this section) owned by a person or in respect of which that person is entitled to exercise or direct the exercise of voting power (whether such power is direct or indirect or through any contract, arrangement, understanding, relationship or otherwise), except solely by virtue of a revocable

proxy, entitle that person, directly or indirectly, to exercise or direct the exercise of the voting power of beneficial interests of the statutory trust in the election of trustees (either generally or with respect to any subset, series or class of trustees, including any trustees elected solely by a particular series or class of beneficial interests) within any of the following ranges of voting power:

- a. Ten percent or more, but less than 15% of all voting power;
- b. Fifteen percent or more, but less than 20% of all voting power;
- c. Twenty percent or more, but less than 25% of all voting power;
- d. Twenty-five percent or more, but less than 30% of all voting power;
- e. Thirty percent or more, but less than a majority of all voting power; or
- f. A majority or more of all voting power.

Notwithstanding the foregoing, a member of a national securities exchange shall not be deemed to be a beneficial owner of beneficial interests held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, pursuant to the rules of such exchange, may direct the vote of such beneficial interests, without instruction, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the beneficial interests to be voted but is otherwise precluded by the rules of such exchange from voting without instructions.

(2) "Control beneficial interests" includes:

a. Beneficial interests of a statutory trust only to the extent that the acquiring person, following the acquisition of the beneficial interests, is entitled, directly or indirectly, to exercise or direct the exercise of voting power within any level of voting power set forth in this section for which approval has not been obtained under § 3883 of this title; provided that, if the statutory trust subsequently issues additional beneficial interests, all control beneficial interests prior to such issuance will remain control beneficial interests, even if they represent a percentage of voting power that is below the ranges described in paragraph (e)(1) of this section; and

b. Beneficial interests of a statutory trust ~~acquired~~ within any range of voting power described in paragraph (e)(1) of this section, even if the ~~initial~~ acquisition of the beneficial interests ~~acquired~~ is not initially within the ~~applicable~~ any range of voting power ~~are excluded from a control beneficial interest acquisition,~~ described in paragraph (e)(1) of this section, if the beneficial interests acquired in the acquisition are subsequently within any range of voting power described in paragraph (e)(1) of this section for any reason, including due to a reduction in the outstanding beneficial interests ~~outstanding due to of the statutory trust resulting from the~~ statutory trust repurchasing or redeeming beneficial ~~interests,~~ interests, in which case, the control beneficial

interests shall be the beneficial interests more recently acquired by the acquiring person that are subsequently within any such range of voting power; and

c. Except as provided in paragraphs (e)(2)a. and (e)(2)b. of this section, only the beneficial interests acquired in a control beneficial interest acquisition within any of the ranges of voting power described in paragraph (e)(1) of this section and not any beneficial interests in the range of voting power below 10% of all voting power.

Section 21. Amend § 3881, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3881. Control beneficial interest acquisition definitions.

(f) “Interested beneficial interests” means beneficial interests of a statutory trust in respect of which any of the following persons is entitled to exercise or direct the exercise of the voting power ~~of beneficial interests of the statutory trust~~ in the election of trustees:

(1) An acquiring person;

(2) An officer of the statutory trust;

(3) An employee of the statutory trust who is also a trustee of the statutory trust; or

(4) A trustee of the statutory trust who is an “interested person” of the statutory trust as defined in the 1940 Act or any rule adopted thereunder.

Section 22. Amend § 3882, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3882. ~~Related acquisitions;~~ Beneficial interests within a range; beneficial interests held for the benefit of others.

For the purposes of this subchapter:

(1) ~~Beneficial interests acquired within 90 days or beneficial interests acquired in a series of related transactions are considered to have been acquired in the same acquisition including for purposes of approvals or exemptions~~ Unless otherwise provided in an approval or exemption pursuant to § 3883(b) of this title or an approval of a control beneficial interest acquisition by the beneficial owners pursuant to at a meeting held under § 3885 of this title; title, such approval or exemption applies to all of the beneficial interests acquired at any time within the range of voting power to which such approval or exemption applied; and

(2) A person will not be deemed to be entitled to exercise or direct the exercise of voting power with respect to beneficial interests held for the benefit of others if the person:

a. Is acting in the ordinary course of business, in good faith and not for the purpose of circumventing the provisions of this section as determined by the trustees; and

b. Is not entitled to exercise or to direct the exercise of the voting power of the beneficial interests unless the person either:

1. Obtains the instruction of another unaffiliated person; or

2. Is subject to Rule 452 of the New York Stock Exchange LLC (or any successor rule) and ~~has~~ complied is in compliance with such rule.

Section 23. Amend § 3883, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3883. Voting rights; approvals and exemptions; application.

(b) This subchapter does not apply to the voting rights of beneficial interests if the acquisition of the beneficial interests specifically, generally, or generally by types, as to specifically-identified or unidentified existing or future beneficial owners or their affiliates or associates, or as to any series or classes of beneficial interests, has been approved or exempted by a provision contained in the governing instrument or by action of the ~~trustees~~ trustees, which approval or exemption may be before, at the time of, or after the acquisition. In the event that either a request is made under § 3885(a) of this title to have the issue of the voting rights to be accorded the beneficial interests acquired in the control beneficial interest acquisition presented for consideration at a meeting of beneficial owners or the trustees determine under § 3885(e)(1) of this title to present for consideration at a meeting of beneficial owners the issue of the voting rights to be accorded the beneficial interests acquired in the control beneficial interest acquisition, then, in either case, the trustees shall have no obligation to approve or exempt any such acquisition of the beneficial interests.

Section 24. Amend § 3888, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3888. Disclosure of control beneficial interest acquisitions and related information.

(a) A holder of beneficial interests shall disclose in writing to the statutory trust any control beneficial interest acquisition within 10 days of such control beneficial interest acquisition. A statutory trust may require a holder of beneficial interests or an associate of such person to disclose in writing the number of beneficial interests owned or with respect to which such person or an associate thereof has the direct or indirect power to exercise voting power.

(b) A holder of beneficial interests or an associate of ~~such person~~ a holder of beneficial interests shall provide in writing to the statutory trust within 10 days of receiving a request therefor from the statutory trust any information that the trustees reasonably believe is necessary or desirable to determine ~~whether~~ any of the following:

(1) Whether a control beneficial interest acquisition has occurred.

(2) Whether any beneficial interests are control beneficial interests.

(3) Whether and how many beneficial interests may have been voted in violation of this subchapter including whether and how many control beneficial interests may have been voted on any matter in violation of this subchapter.

(c) All information required to be provided under this section to the statutory trust shall be provided to the statutory trust at its principal place of business or as otherwise directed by the statutory trust.

(d) The statutory trust may adopt any procedures that the trustees reasonably believe are necessary or desirable to determine whether and how many control beneficial interests held by a holder or its associates and any other beneficial interests held by such holder or its associates will be or have been voted in violation of this subchapter on a matter submitted for a vote of holders of beneficial interests.

(1) The procedures may include presumptions about whether and how a holder of beneficial interests or its associates will vote or has voted some or all of its beneficial interests on any matter in violation of this subchapter.

(2) The statutory trust's proxy statement or other proxy materials shall include a description of each procedure and presumption to be applied with respect to voting at the meeting.

(3) Beneficial interests shall be deemed to have been voted in a manner consistent with any presumption included in a procedure adopted in accordance with this subsection, except to the extent the holder of such beneficial interests, within 5 days, or such longer period of time as the trustees may determine, of the conclusion of voting on a matter, presents proof to the statutory trust that is reasonably satisfactory to the trustees that the holder acted in a manner different from the presumption.

Section 25. This Act shall become effective on August 1, 2026.

SYNOPSIS

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

Section 1 adds a new § 3802(d) to the Statutory Trust Act to clarify that a subscription for a beneficial interest may be irrevocable if the subscription states it is irrevocable to the extent provided by the terms of the subscription.

Section 2 amends § 3803(c) of the Statutory Trust Act to provide that advisers, as defined in § 3313 of Title 12 of the Delaware Code, shall receive the same liability protections as officers, employees, managers and other persons acting pursuant to § 3806(b)(7) or § 3806(i) of the Statutory Trust Act.

Section 3 amends § 3805 of the Statutory Trust Act to include the word "statutory" before the word "trust" in the heading.

Section 4 amends § 3806(b) of the Statutory Trust Act, which relates to the provisions that may be included in a governing instrument, to clarify that the limitation on those provisions is that they cannot be contrary to any provision or requirement of the Statutory Trust Act and not just to Subchapter I thereof. Section 4 also amends § 3806(b)(9) of the Statutory Trust Act to confirm that a governing instrument may be amended in connection with a division of a statutory trust as specifically contemplated by § 3825(f) of the Statutory Trust Act.

Section 5 amends § 3806(o) of the Statutory Trust Act to provide that § 3806(o) applies to ratification or waiver of a void or voidable act or transaction by any trustee, beneficial owner or other person in respect of a statutory trust, in addition to acts or transactions by a statutory trust. This Section also amends § 3806(o) to provide that ratification or waiver pursuant to § 3806(o) may be express or implied, including by the statements, action, inaction, or acquiescence of or by trustees, beneficial owners or other persons. Further, this Section amends § 3806(o) to clarify that in a circumstance in which § 3806(o) requires notice of the ratification or waiver to be given, the giving of the notice is not a condition to the effectiveness of the ratification or waiver. The amendments to § 3806(o) in this Section are intended to provide rules different from the rules applied in existing case law that § 18-106(e) of the Delaware Limited Liability Company Act, which is the same in all material respects as § 3806(o), is limited to ratification or waiver of a limited liability company's own acts and transactions and that § 18-106(e) of the Delaware Limited Liability Company Act does not apply to ratification or waiver by conduct.

Section 6 amends § 3807 of the Statutory Trust Act, which addresses certain duties of a registered agent of a statutory trust. Amended § 3807 specifies that a registered agent may not perform its duties or functions solely through the use of a virtual office, the retention by the agent of a mail forwarding service, or both. Amended § 3807 defines "virtual office" as the performance of duties or functions solely through the internet or solely through other means of remote communication.

Section 7 amends § 3808(c) of the Statutory Trust Act to confirm and clarify certain of the mechanisms for revoking dissolution of a statutory trust. Specifically, this Section amends § 3808(c) to confirm and clarify that the references to "other persons" in § 3808(c)(1) and (2) are references to other persons whose approval is required for such dissolution of the statutory trust pursuant to the governing instrument.

Section 8 amends § 3808(f) of the Statutory Trust Act. Currently, § 3808(c) of the Statutory Trust Act permits revocation of dissolution of a statutory trust prior to the filing of a certificate of cancellation of the certificate of trust in the office of the Secretary of State; however, the Statutory Trust Act does not currently address revocation of dissolution of a series prior to the completion of the winding up of the series. This amendment adds new language to permit revocation of dissolution of a series prior to the completion of the winding up of the series.

Section 9 amends § 3809 of the Statutory Trust Act, which relates to the application of Delaware trust law, to clarify that those laws are applicable to statutory trusts except to the extent otherwise provided in the governing instrument of a statutory trust or to the extent otherwise provided in the Statutory Trust Act and not just in Subchapter I thereof.

Section 10 amends § 3810(d) and (e) of the Statutory Trust Act, which provides for the correction of certificates filed with the Secretary of State. The amendment confirms that, in addition to correcting a previously filed certificate, a certificate of correction may nullify a previously filed certificate by specifying the inaccuracy or defect with respect to such previously filed certificate and providing that the previously filed certificate is nullified. Such a provision is sufficient if it states that the previously filed certificate is nullified or void or uses words of similar meaning. Section 10 also amends § 3810 of the Statutory Trust Act to include the word "statutory" before the word "trust" in §3810(d) and to clarify that § 3810 applies to the Statutory Trust Act and not just to Subchapter I thereof.

Section 11 and Section 12 amend § 3812 of the Statutory Trust Act, which relates to filing of certificates, to clarify that § 3812 applies to the Statutory Trust Act and not just to Subchapter I thereof.

Section 13 amends § 3813(a)(3) of the Statutory Trust Act, which relates to the payment of certain fees, to clarify that § 3813(a)(3) applies to the Statutory Trust Act and not just to Subchapter I thereof.

Section 14 amends § 3815(b)(4) of the Statutory Trust Act to permit a certificate of merger to state any amendments to the certificate of trust of a surviving domestic statutory trust in a merger as are desired to be effected by the merger. This Section also amends § 3815(b)(5) of the Statutory Trust Act to provide that a certificate of trust must be attached to a certificate of consolidation for a consolidation in which the resulting entity from such consolidation is a domestic statutory trust.

Section 15 amends § 3825(h) of the Statutory Trust Act. Currently, among other requirements, a certificate of division must state the name and business address of the division contact and the name and address of the division trust where the plan of division is on file. Because this information may change over time, this amendment permits or requires the filing of a certificate of amendment of certificate of division to amend the name or business address of the division contact or the name and address of the division trust where the plan of division is on file. The requirement to update such

information in a certificate of division ends after the expiration of a period of 6 years following the effective date of the division.

Section 16 amends § 3825(l)(1) of the Statutory Trust Act to clarify that pursuant to a division, a dividing trust is divided into distinct and independent division trusts as such term is used in the Statutory Trust Act. Section 16 also amends § 3825(l)(9) of the Statutory Trust Act. Currently, under § 3825 of the Statutory Trust Act, a dividing trust does not need to survive a division. This amendment confirms that a dividing trust need not be a surviving trust.

Section 17 amends § 3852(a)(1)e. of the Statutory Trust Act to include the words “foreign statutory” before the word “trust”.

Section 18 amends § 3881(c) of the Statutory Trust Act to confirm that the definition of “associate” of a person includes any investment fund or other collective investment vehicle or separate account managed or advised by the person specified.

Section 19 amends § 3881(d)(1) of the Statutory Trust Act to reflect that beneficial interests are not control beneficial interests until after a control beneficial interest acquisition. This Section also amends §3881(d)(2) of the Statutory Trust Act to replace the words “target shares” with the words “beneficial interests” and to replace the words “target party” with the words “statutory trust which is not the surviving or resulting person”.

Section 20 amends § 3881(e)(2) of the Statutory Trust Act to clarify that reductions in the outstanding beneficial interests of a statutory trust for any reason can cause beneficial interests that previously were not control beneficial interests to become control beneficial interests. This Section also amends § 3881(e)(2) of the Statutory Trust Act to confirm that, except as provided in § 3881(e)(2)a. and §3881(e)(2)b. of the Statutory Trust Act, beneficial interests in the range of voting power below ten percent of all voting power are not control beneficial interests.

Section 21 amends § 3881(f) of the Statutory Trust Act to delete redundant language.

Section 22 amends § 3882 of the Statutory Trust Act to clarify that approvals and exemptions, unless otherwise explicitly provided, cover all of the beneficial interests acquired at any time within the range of voting power to which such approval or exemption applies. This amendment also removes the requirement that beneficial interests acquired within 90 days or acquired in a series of related transactions be considered acquired in the same acquisition.

Section 23 amends § 3883(b) of the Statutory Trust Act to confirm that approvals and exemptions of beneficial interests from Subchapter III of the Statutory Trust Act can occur before, at the time of, or after the acquisition of such beneficial interests.

Section 24 amends § 3888 of the Statutory Trust Act to expand the categories of information that a holder of beneficial interests or an associate of such a holder must disclose to the trustees in connection with determinations by the trustees relating to control beneficial interests and control beneficial interest acquisitions and authorizes the trustees to adopt procedures that the trustees reasonably believe are necessary or desirable to determine whether and how many control beneficial interests will be or have been voted in violation of Subchapter III of the Statutory Trust Act.

Section 25 provides that the proposed amendments to the Statutory Trust Act take effect on August 1, 2026.