CASE NOS. 79807 & 80709

IN THE SUPREME COURT OF THE STATE OF NEVADA

POPE INVESTMENTS, LLC, A DELAWARE LIMITED LIABILITY COMPANY; POPE INVESTMENTS II, LLC, A DELAWARE LIMITED LIABILITY COMPANY; AND ANNUITY & LIFE REASSURANCE, LTD., AN UNKNOWN LIMITED COMPANY,

Appellants,

vs.

CHINA YIDA HOLDING, CO., A NEVADA CORPORATION,

Respondent.

ON APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, CASE NO. A-16-746732-P

APPELANTS' OPENING BRIEF

Richard J. Pocker, Esq.
Nevada Bar No. 3568
BOIES SCHILLER FLEXNER LLP
300 S. Fourth St., Suite 800
Las Vegas, Nevada 89101
Telephone: (702) 382-7300

Peter Chasey, Esq.
Nevada Bar No. 7650
CHASEY LAW OFFICES
3925 N. Fort Apache Rd.
Suite 110
Las Vegas, Nevada 89129

Counsel for Appellants

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) that must be disclosed. Those representations are made in order that judges of this Court may evaluate possible disqualification or recusal.

Appellant POPE INVESTMENTS, LLC, is a Delaware limited liability company which is neither owned by nor affiliated with any publicly traded corporation. Appellant POPE INVESTMENTS II, LLC is Delaware limited liability Company which is neither owned by nor affiliated with any publicly traded corporation. Appellant ANNUITY & LIFE REASSURANCE, LTD is a wholly owned subsidiary of Annuity and Life Re (Holdings) Ltd., which is an entity listed on the Bermuda Stock Exchange. Collectively the Appellants are referred to herein as "POPE".

The law firms whose partners or associates have or are expected to appear for appellants are Boies Schiller Flexner LLP and Chasey Law Offices.

Dated this 11th day of August, 2020.

/s/ Richard J. Pocker
Richard J. Pocker, Esq.
Nevada Bar No. 3568
BOIES SCHILLER FLEXNER LLP
300 S. Fourth St., Suite 800
Las Vegas, Nevada 89101
Telephone: (702) 382-7300
&
Peter Chasey, Esq.
Nevada Bar No. 7650
CHASEY LAW OFFICES
3925 N. Fort Apache Rd., Suite 110
Las Vegas, Nevada 89129
Counsel for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

JURISDICTIONAL STATEMENT

In this consolidated appeal, Appellants POPE INVESTMENTS, LLC, POPE INVESTMENTS II, LLC, and ANNUITY & LIFE REASSURANCE, LTD (collectively "POPE") appeal from the district court's Order Granting Respondent CHINA YIDA HOLDING, CO.'s (hereinafter "CHINA YIDA") Motion for Summary Judgment, entered on September 9, 2019 (Case Number 79807) and from the district court's Order awarding attorneys fees to CHINA YIDA, entered on January 29, 2020 (Case Number 80709).

This Court has jurisdiction pursuant to Rules 3A(b)(1) and 3A(b)(8) of the Nevada Rules of Appellate Procedure. As to the Order appealed in Case Number 79807 (the Order granting summary judgment), Notice of Entry was filed on September 9, 2019. (Volume 3, APP0567 – APP0580) POPE filed the requisite Notice of Appeal on October 9, 2019, pursuant to Rule 4(a) of the Nevada Rules of Appellate Procedure. (Volume 6, APP1377 – APP1379) As to the district court's Order awarding attorneys fees to CHINA YIDA (the Order appealed in Case Number 80709), Notice of Entry was filed on January 29, 2020, and POPE timely filed its Notice of Appeal on February 26, 2020. (Volume 8, APP1645 – APP1650, APP1656 – APP1658)

ROUTING STATEMENT

This case is presumptively assigned to the Nevada Court of Appeals pursuant to Rule 17 of the Nevada Rules of Appellate Procedure.

STATEMENT OF THE ISSUES

A. The district court granted CHINA YIDA's Motion for Summary Judgment, ruling that the provisions of Section 92A.390 of the Nevada Revised Statutes barred POPE from maintaining an action seeking a fair value determination as shareholders exercising their dissenters' rights in connection with the corporate merger transaction between CHINA YIDA and China Yida Acquisition Company. Did the district court err in granting summary judgment under the facts and circumstances of the case?

B. Is the district court's ruling as to summary judgment contrary to Nevada public policy, under the facts and circumstances of the transaction, given the district court's erroneous interpretation of Section 92A.390 of the Nevada Revised Statutes?

C. Did CHINA YIDA waive or is it estopped from asserting, by its own conduct and representations the argument that Section 92A.390 of the Nevada Revised Statutes deprives the district court of jurisdiction to adjudicate POPE's right to a fair value determination with respect to the transaction?

D This appeal also contests the district court's decision to award attorneys' fees to CHINA YIDA. Did the district court err in awarding such attorney's fees, under the facts and circumstances of the present case?

STATEMENT OF THE CASE

The present case is a dissenting shareholders' rights proceeding, commenced by CHINA YIDA on November 15, 2016, pursuant to Chapter 92A of the Nevada Revised Statutes. (Volume 1, APP0001 – APP0006) POPE, as shareholders in CHINA YIDA, asserted rights to dissent from the company's valuation of its stock in connection with a proposed merger, seeking a fair value determination in conformity with Chapter 92A. CHINA YIDA duly filed the present case in accordance with the statute.

The parties proceeded to litigate the action for approximately two and one-half years before CHINA YIDA filed its Motion for Summary Judgment, arguing that despite the company's representations to POPE and other shareholders that shareholder dissenter's rights were available with respect to the merger, Section 92A.390 of the Nevada Revised Statutes barred POPE from seeking a fair value determination before the district court. (Volume 1, APP0036 – APP0050) The district court granted CHINA YIDA's Motion for Summary Judgment. (Volume 3, APP0567 – APP0580)

After the district court's decision, CHINA YIDA sought an award of attorney's fees, premised on POPE's failure to accept an Offer of Judgment served by CHINA YIDA shortly after the filing of its Motion for Summary Judgment. (Volume 6, APP1195 – APP1205) Following briefing and a hearing, the district

court granted CHINA YIDA's motion, awarding $41,053.50 in attorneys fees. (Volume 8, APP1645 – APP1650)

Pope filed the Notice of Appeal with respect to the district court's Order granting summary judgment on October 9, 2019, and on February 26, 2020, filed the appropriate Notice of Appeal as to the district court's January 29, 2020 Order granting CHINA YIDA's request for attorneys fees. (Volume 6, APP1377 – APP1379, Volume 8, APP1656 – APP1658)

STATEMENT OF FACTS

CHINA YIDA is a Nevada corporation, having filed its Articles of Incorporation on November 12, 2012. (Volume 1, APP0069 – APP0070) The company owned extensive real estate and business operations located entirely in the People's Republic of China. (Volume 1, APP0075) CHINA YIDA's stock was publicly traded on the NASDAQ stock exchange in the United States, identified by the ticker symbol "CNYD", from 2008 until removed on July 8, 2016. (Volume 1, APP0072, APP051 – APP0053) (Volume 2, APP0386)

POPE was an investor in the stock of CHINA YIDA, purchasing 9,523,810 shares of its common stock in 2008, at a per share price of $1.05. (Volume 2, APP0406) Between 2008 and 2012 CHINA YIDA's stock underwent two reverse stock splits, one at a ratio of 4 for 1 in 2009, and the other at a ratio of 5 for 1 in

late 2012. (Volume 2, APP0439 – APP0440, APP0075) Taking into account the 20-fold reduction in the number of shares since POPE's purchase of shares in 2008, the 2008 purchase price as adjusted to account for those splits was $21.00 per share. (Volume 2, APP0427)

Prior to the 2016 merger at issue in the present case, CHINA YIDA, its publicly traded status notwithstanding, acknowledged to the public and investors that CHINA YIDA's stock price was subject to potential volatility. It admitted that the company lacked effective internal controls and procedures, and publicly asserted in its filings with the Securities Exchange Commission that this absence of effective internal controls could result in a lack of investor confidence and might cause a significant drop in the price at which CHINA YIDA common stock was traded. (Volume 2, APP0096 – APP0098) Implicitly, these revelations indicate an awareness by CHINA YIDA that its stock might be more valuable than reflected in a trading price dependent on investor confidence at any given movement.

CHINA YIDA decided to effectuate a "merger" with an entity designated as "China Yida Acquisition Co. Inc." in 2016. The merger was announced in March 2016, and one month later on April 12, 2016, CHINA YIDA and its merger partner entered the Amended and Restated Agreement and Plan of Merger (hereinafter "Plan of Merger"). (Volume 1, APP0155 – APP0159, APP0160 – APP0166) (Volume 2, APP0313 –APP0377)

The Plan of Merger included the following provisions and details of the merger:

(1) The entity with whom CHINA YIDA was merging, China Yida Acquisition Co., was formed for the sole purpose of completing the merger with CHINA YIDA. The acquisition company was completely owned by two Chinese individuals who were the controlling shareholders of CHINA YIDA, Mr. Minhua Chen and his wife, Ms. Yanling Fan. (Volume 2, APP0349 – APP0350)

(2) The China Yida Acquisition Co. would be merged with CHINA YIDA, and CHINA YIDA would be the surviving entity, continuing after the merger. (Volume 2, APP0319 – APP0377)

(3) Except for shares designated as "Excluded Shares", CHINA YIDA's common stock was to be canceled and converted into the right to receive $3.32 in cash per share. (Volume 2, APP0336)

(4) The "Excluded Shares" consisted of shares owned by the "Principal Shareholders", Minhua Chen and Yanling Fan, and those owned by "Dissenting Shareholders". (Volume 2, APP0319 – APP0377, specifically APP0328)

(5) "Dissenting Stockholder's owning shares of common stock were entitled to payment of fair value for their shares as determined under Chapter 92A of the Nevada Revised Statutes. (Volume 2, APP0336 – APP0337)

(6) The shares of common stock owned by the Principal Shareholders (Mr. Chen and Ms. Fan) would remain in effect and be converted so as to be the only shares in the surviving CHINA YIDA company, which would own the assets and liabilities of CHINA YIDA. (Volume 2, APP0335 – APP0337)

At the time of the merger, 1,145,196 shares of CHINA YIDA's issued and outstanding common stock was owned by Mr. Minhua Chen, the Chairman, President, and Chief Executive Officer of CHINA YIDA, and an additional 1,122,396 shares of common stock were owned by his wife, Ms. Yanling Fan, who also served as Chief Operating Officer and a Director of CHINA YIDA. Thus, together this named couple owned and controlled 2,267,592 shares, approximately 57.84% of the 3,914,580 issued and outstanding shares of CHINA YIDA stock. (Volume 1, APP0172) POPE owned 924,515 shares of CHINA YIDA common stock at the time of the merger. (Volume 1, APP0172)

On May 25, 2016 CHINA YIDA filed with the United States Securities Exchange Commission a Schedule 14A, giving notice of a stockholder's meeting for purposes of approving the Plan of Merger. Attached to that Schedule was a written opinion from Roth Capital stating that a price of $3.32 per share was a fair buy-out price from a financial perspective. (Volume 1, APP0169 – APP0247; Volume 2, APP0248 – APP0312, APP0297 – APP0299) Roth Capital's opinion was primarily based upon financial statements prepared by CHINA YIDA (which

CHINA YIDA has admitted in a Form 10-K filed with the United States Securities Exchange Commission are unreliable), and financial projections prepared by CHINA YIDA's management (coincidentally the same individuals about to benefit by total control and ownership of post-merger CHINA YIDA), subject to a stated conflict of interest with the other CHINA YIDA shareholders. (Volume 2, APP00297 – APP0299) (Volume 1, APP0092 – APP0093) (Volume 1, APP0169 – APP0172)

CHINA YIDA's notice of the shareholder's meeting set to approve the Plan of Merger directly informed the shareholders that:

"You have a statutory right to dissent from the Merger and demand payment of the fair value of your shares of Company Common Stock as determined in a judicial appraisal proceeding in accordance with (NRS Chapter 92A)". (Volume 1, APP0185)

Having been advised of the right to a judicial appraisal proceeding, POPE provided CHINA YIDA with a Notice of Intent to Demand Payment of Fair Value, accordance with Section 92A.420 of the Nevada Revised Statutes on June 14, 2016. (Volume 2, APP0378 –APP0381) CHINA YIDA proceeded to hold the special meeting of shareholders (conducted in the People's Republic of China), at which Mr. Chen and Ms. Fang voted in favor of adopting the Plan of Merger, and

the company's Board of Directors resolved to approve the Plan of Merger. The Plan of Merger which was the subject of the resolution by the CHINA YIDA Board of Director's expressly provided dissenting shareholders the right to a judicial appraisal proceeding. (Volume 2, APP0382 – APP0384) (Volume 1, APP0051 – APP0058, APP0173 – APP0174)

POPE moved forward toward its appraisal proceedings. On July25, 2016, in accordance with Section 92A.440 of the Nevada Revised Statutes. POPE Demanded Payment of Fair Value. (Volume 2, APP0387 – APP0393) On or about August 30, 2016, CHINA YIDA paid POPE $3.32 per share (plus interest) for POPE's 924,515 shares, pursuant to Section 92A.460 of the Nevada Revised Statutes. (Volume 1, APP0051 – APP0058) (Volume 2, APP0394 – APP0400)

In response, and pursuant to Section 92A.480, on September 21, 2016, POPE provided to CHINA YIDA its Estimate of Fair Value and Demand for Payment. (Volume 2, APP0401 – APP0404) POPE's valuation of its CHINA YIDA shares was much higher than CHINA YIDA's offer, but it was based upon the detailed appraisals of CHINA YIDA's assets, which primarily consisted of major resort properties and real property rights in property located in the People's Republic of China, and a customary asset appraisal methodology compliant with the provisions of Section 92A.320 used to estimate the firm value of POPE's shares.

Rejecting POPE's demand for further compensation to address fair value, CHINA YIDA commenced the district court case at issue in this appeal, filing a petition for a fair value determination as to POPE's 924,515 shares of CHINA YIDA common stock on November 15, 2016. (Volume 1, APP0001 – APP0006)

The parties proceeded to litigate the present case in the district court for nearly two and one-half years before CHINA YIDA filed its Motion for Summary Judgment on May 22, 2019. (Volume 1, APP0036 – APP0050). A few weeks after filing that Motion CHINA YIDA served POPE with an Offer of Judgment, proposing to pay a mere $10,000 to POPE as additional fair value compensation. (Volume 2, APP0418 – APP0420) The date by which the Offer of Judgment could be accepted was June 27, 2019. POPE was required to respond to CHINA YIDA's Motion for Summary Judgment shortly before that date, and POPE elected to instead respond and obtain the district court's ruling on the summary judgment issues, rather than accept the Offer of Judgment. (Volume 2, APP0421 – APP0440)

On July 18, 2019, the district court conducted a hearing with respect to CHINA YIDA's summary judgment request. (Volume 3, APP0538 – APP0566) The district court accepted CHINA YIDA's erroneous argument that despite more than two and one-half years of litigation and CHINA YIDA's representations to its shareholders in its Plan of Merger and other communications stating that they were

entitled to the very dissenters rights and judicial fair value proceeding POPE was litigating, no such fair value determination was permitted as a result of CHINA YIDA's stock listing on the NASDAQ stock exchange. The district court concluded that Section 92A.390 of the Nevada Revised Statutes bars such a fair value proceeding. (Volume 3, APP0563 – APP0566)

The district court memorialized its decision in its Order entered on September 9, 2019. (Volume 3, APP0567 – APP0580) CHINA YIDA sought an award of attorney's fees based upon POPE's rejection of the Offer of Judgment, and the parties litigated that issue, an application for costs, and a motion to retax costs, in the Autumn of 2019. On January 29, 2020, the district court entered its Order granting CHINA YIDA an award of $41,053.50 in attorneys fees, ruling that POPE had been unreasonable in not accepting CHINA YIDA's Offer of Judgment. (Volume 8, APP1645 – APP1650).

SUMMARY OF ARGUMENT

The district court, based upon erroneous findings of fact, a failure to resolve disputed facts, and a misreading of the statutory requirements of Section 92A.390 of the Nevada Revised Statutes, improperly granted summary judgment, terminating POPE's dissenters rights litigation after more than two and one-half years of litigation. The Plan of Merger clearly contemplated that POPE and other dissenting CHINA YIDA shareholders would have the right to a judicial valuation

of their shares, the publicly traded nature of CHINA YIDA notwithstanding. The district court misinterpreted the impact of the corporate resolution approving the Plan of Merger, and erroneously concluded that POPE lacked dissenters rights.

The district court also erroneously awarded attorney's fees in favor of CHINA YIDA. POPE's conduct in not accepting the Offer of Judgment was not unreasonable, and CHINA YIDA's Offer of Judgment was not reasonable or in good faith as to amount or timing. In calculating the amount of attorneys fees awarded, the district court erred in compensating CHINA YIDA's attorneys for the cost of preparing an unnecessary motion attacking the admissibility of the report, opinions and testimony of POPE's expert witness. Consequently, any award of attorneys fees should be reduced to account for this error.

ARGUMENT

A. The District Court erred in granting CHINA YIDA's Motion for Summary Judgment

A grant of summary judgment by a district court is subject to de novo review, conducted "without deference to the finding of the lower court." Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d. 1026, 1029 (2005). In conducting its review, the Court must view and construe the evidence in the light most favorable to the non-moving party. Allstate Insurance Company v. Fackett, 125 Nev. 132, 137, 206 P.3d. 572, 575 (2009). Pressler v. City of Reno, 118 Nev. 506, 510, 50

P.3d. 1096, 1098 (2002). An award of summary judgment is warranted only "when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact (remains) and that the moving party is entitled to judgment as a matter of law." Wood v. Safeway, Inc., 121 Nev., at 729, 121 P.3d. at 1029 (quoting Rule 56(c) of the Nevada Rules of Civil Procedure).

While the district court's resolution of CHINA YIDA's Motion for Summary Judgment hinged upon its erroneous factual determination that the corporate resolution approving the merger with China Yida Acquisition Company did not provide dissenter's rights to CHINA YIDA's stockholders, its interpretation of the statutory provisions of Section 92A.390 of the Nevada Revised Statutes was also incorrect. The interpretation of statutory language is a question of law, reviewed by this Court de novo. Allstate v. Fackett, *supra*., 125 Nev., at 128, 206 P.3d., at 576.

CHINA YIDA's Motion for Summary Judgment and the district court's Order granting the same abruptly interrupted POPE's efforts to obtain their statutorily established right to a judicial determination of the fair value of their CHINA YIDA stock. Ignoring the facts surrounding the terms of the merger and seizing upon a statutory provision sometimes referred to as the "market out exception". (Volume 1, APP0037) CHINA YIDA successfully convinced the district court to circumvent POPE's statutory rights to payment of fair value for its

shares. This egregious result, based on a misapprehension of the facts and an erroneous view of the requirements of Chapter 92A of the Nevada Revised Statutes, flies in the face of the public policy favoring protection of minority shareholders in "squeeze out" mergers such as the transaction at issue in the present case.

The history of, and rationale behind, the evolution of dissenter's rights in American corporate law was best summarized by the United States Supreme Court, back in 1941. In Voeller v. Neilston Warehouse Company, 311 U.S. 531,535 note 6, 61 S.Ct. 376, 377 (1941) the Court explained that:

> At common law, unanimous shareholder consent was a prerequisite to fundamental changes in the corporation. This made it possible for an arbitrary minority to establish a nuisance value for its shares by refusal to cooperate. To meet the situation, legislatures authorized the making of changes by majority vote. This, however, opened the door to victimization of the minority. To solve the dilemma, statutes permitting a dissenting minority to recover the appraised value of its shares, were widely adopted.

Voeller v. Neilston Warehouse Company, 311 U.S. 531, 535, note 6, 61 S.Ct. 376, 377 (1941) (citing the SEC Report on the Work of Protective and Reorganization Committees, Part VII pages 557 and 590).

In Nevada the statutory framework adopted to establish, preserve and protect those minority rights is set forth in Chapter 92A of the Nevada Revised Statutes. Nevada's statutes as to dissenting shareholder's rights were "designed to facilitate

business mergers, while protecting minority shareholders from being unfairly impacted by the majority shareholders' decision to approve a merger. Thus, minority stockholders who dissent from a corporate action such as a merger are entitled to receive payment for the fair value of their shares." American Ethanol, Inc. v. Cordillera Fund, Ltd. Partnership, 127 Nev. 147, 151-152, 252 P.3d. 663, 665-66 (2011). Cohen v. Mirage Resorts, Inc., 119 Nev. 1, 10, 62 P.3d. 720, 726 (2003). Section 92A.380(1) of the Nevada Revised Statutes.

The process and standards that apply to such a fair value determination were summarized by this Court, as follows:

> [I]n a stockholder's right-to-dissent appraisal action, both the dissenting stockholder and the corporation have the burden of proving their respective valuation conclusions by a preponderance of the evidence in the district court. Final responsibility for determining fair value, however, lies with the court, which must make its own independent value determination.

American Ethanol, Inc. v. Cordillera Fund, Ltd. Partnership, *supra*., at 154-155.

In the application of these protective statutes in the Delaware courts, dissenting shareholder rights "requirements . . . are to be liberally construed for the protection of objecting shareholders." Raab v. Villager Industries, Inc., 355 A.2d. 888, 891 (Del. 1976). Such is the practice in Nevada's courts, as well. The "Nevada Supreme Court frequently looks to the Delaware Supreme Court and Delaware Courts of Chancery as persuasive authority on questions of corporate

law." Brown v. Kinross Gold U.S.A., Inc., 531 F.Supp. 1342, 1347 (D. Nev. 1997).

The district court disregarded this statutorily mandated duty to construe and apply the dissenters' rights provisions so as to protect the minority shareholders, adopting CHINA YIDA's argument that an alleged technicality based upon an erroneous interpretation of the factual record erased those rights.

The terms of the Plan of Merger expressly provided CHINA YIDA shareholders with dissenting shareholder rights pursuant to Chapter 92A of the Nevada Revised Statutes. Mergers by and between Nevada corporations are governed by the relevant provisions of Chapter 92A. (See Section 92A.100 of the Nevada Revised Statutes.) Plans of merger are required to be in writing, and must set forth all of the conditions and terms of the merger. (See Section 92A.100(2)(c) of the Nevada Revised Statutes.) Before a Nevada corporation can implement a plan of merger, its board of directors must submit the plan to the shareholders for a vote of approval at a properly noticed meeting of those shareholders conducted for that purpose. (See Sections 92A.120(2)(a) and 92A.120(4).) Approval of a plan of merger requires the favorable vote of a majority of the shareholders. (See Section 92A.120(2)(b) of the Nevada Revised Statutes.)

CHINA YIDA provided notice to the shareholders of the meeting to approve the Plan of Merger, which included both a written summary and a complete copy

of the Plan of Merger, on May 25, 2016. (Volume 1, APP0169 – APP0247) (Volume 2, APP0248 – APP0312) The Plan of Merger which the shareholders were asked to approve expressly provided as follows, concerning the rights of dissenting shareholders:

> "Each Dissenting Share that is issued and outstanding immediately prior to the Effective Time shall be cancelled and cease to exist, in consideration for the right to receive the fair value of such Dissenting Share. . ." (Volume 2, APP0268 – APP0269)

> "Notwithstanding anything in this Agreement to the contrary, any Company Shares that are issued and outstanding immediately prior to the Effective Time and are held by a Company Shareholder (each, a "Dissenting Shareholder") who has validly exercised and not lost its rights to dissent from the Merger pursuant to the NRS (collectively, the "Dissenting Shares") shall not be converted into or exchangeable for or represent the right to receive the Per Share Merger Consideration (except as provided in this Section 2.7(c)), and shall entitle such Dissenting Shareholder only to payment of the fair value of such Dissenting Shares as determined in accordance with the NRS. . ." (Volume 2, APP0268 – APP0269)

The Plan of Merger, ultimately adopted by the vote of the corporation's shareholders, thus, in its very terms provides shareholders with the right to dissent from the merger and obtain fair value in a judicial proceeding such as the one filed by CHINA YIDA, and in which POPE pursued a fair value determination.

As noted earlier, CHINA YIDA sent to its shareholders not just a copy of the Plan of Merger, but a "summary" of that plan, designed apparently to explain the

most salient features and terms of the merger in language straightforward and easy to understand. The summary also confirmed that CHINA YIDA shareholders had a right to dissent, stating:

> "Shares with respect to which dissenters' rights have been properly exercised and not withdrawn or lost will be cancelled in consideration for the right to receive the fair value of such dissenting shares in accordance with the Nevada Revised Statutes." (Volume 1, APP0169 – APP0171, APP0180)
>
> "You have a statutory right to dissent from the Merger and demand payment of the fair value of your shares of Company Common Stock as determined in a judicial appraisal proceeding in accordance with Chapter 92A (Section 300 through 500 inclusive) of the NRS." (Volume 1, APP0185)
>
> Q: Am I entitled to exercise dissenters' or appraisals rights instead of receiving the Merger Consideration for my shares of Company Stock?
>
> A: Yes, Nevada law provides that you may dissent from the disposal of assets . . ." (Volume 1, APP0189)
>
> ". . .Shareholders of the Company are entitled to exercise dissenters' rights and demand fair value for their shares of Company Common Stock as determined by a Nevada state district court. . ." (Volume 1, APP0201, APP0216)

The notice of shareholders meeting was also supplemented by Annex E, entitled "Nevada Rights of Dissenting Owners", consisting of a copy of Sections 92A.300 through 92A.500 of the Nevada Revised Statutes. (Volume 2, APP0305 – APP0312)

As planned, CHINA YIDA conducted its stockholders meeting on June 28, 2016. The Principal Shareholders (Mr. Chen and Ms. Fang) voted to approve the Plan of Merger, and the company's board of directors proceeded to authorize, approve and adopt the Plan of Merger. (See Statement of Facts, herein) The Plan of Merger which was approved and adopted by the resolution of CHINA YIDA's board of directors explicitly and expressly represents to its shareholders that they have the right to dissent and obtain the fair value of their shares as determined by the district court in precisely the type of proceeding litigated by POPE in the present case, in conformity with provisions of Section 92A.380 of the Nevada Revised Statutes.

The district court granted summary judgment against POPE and terminated the ongoing dissenters' rights proceeding in the mistaken belief that such a proceeding was unavailable to POPE and barred by the provisions of Section 92A.390(1) of the Nevada Revised Statutes. That statutory provision states (in full), as follows:

> 1. There is no right of dissent with respect to a plan of merger, conversion or exchange in favor of stockholders of any class or series which is:
>
> (a) A covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(1)(A) or (B), as amended;
>
> (b) Traded in an organized market and has at least 2,000 stockholders and a market value of at least

> $20,000,000, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors and beneficial stockholders owning more than 10 percent of such shares; or
>
> (c) Issued by an open end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., as amended, and which may be redeemed at the option of the holder at net asset value,
>
> - unless the articles of incorporation of the corporation issuing the class of series or the resolution of the board of directors approving the plan of merger, conversion or exchange expressly provide otherwise.

CHINA YIDA and the district court relied upon Section 92A.390(1)(a) as the basis for concluding that because CHINA YIDA was a "covered security" within the meaning of the federal securities laws, traded on a recognized stock exchange, dissenters' rights were not available. There is no dispute between the parties as to whether CHINA YIDA shares were covered securities at the time of the merger. They were. Where the parties differ is with respect to the impact of Section 92A.390(1)'s final sentence, which serves to create an exception to this Section's preclusion of dissenters' rights where ". . . the resolution of the board of directors approving the plan of merger, conversion or exchange expressly provide otherwise." The resolution in the present case approved a Plan of Merger which expressly and repeatedly preserves dissenters' rights.

CHINA YIDA's contrary argument and the district courts' ruling that a corporate resolution expressly approving a Plan of Merger which itself expressly provides dissenters' rights is not "express" enough to remove the present situation from the strictures of Section 92A.390(1) is simply factually incorrect, and could not possibly be an interpretation of that statute consistent with the intent behind Chapter 92A of the Nevada Revised Statutes. Such a reading of the statutes as applied to the facts present in this case would permit a corporation to structure a merger with dissenters' rights an essential component of its terms, mislead shareholders about the availability of those rights, and actually approve a merger which included those rights in the merger plan, yet escape responsibility for litigating those rights. The resolution expressly approved the Plan of Merger. The Plan of Merger expressly provided dissenters rights. CHINA YIDA cannot escape the consequences of its actions through a strained interpretation of a statute.

In the district court proceedings, CHINA YIDA argued that the provisions of Section 92A.390 established a jurisdictional hurdle to POPE's ability to litigate fair value, the discussion of dissenters rights and the representations to shareholders about the existence of those rights notwithstanding. It further argued that jurisdiction could not be "waived", or serve as a basis for an estoppel. This argument attempted to sidestep the issue as to whether in order to implement the approved Plan of Merger, CHINA YIDA would need to abide by its

representations that dissenters rights were available. That is clearly the intent behind the last sentence of Section 92A.390(1). If a corporation chooses or agrees to provide dissenters' rights, even though it could have declined to do so for a "covered security", it has preserved that right for its shareholders.

The "facts" before the district court, but more importantly the permissible logical inferences from those facts, demonstrate that its and CHINA YIDA's analysis is flawed and erroneous. CHINA YIDA's Plan of Merger clearly did not contemplate dissenting shareholders being denied their rights to fair value determinations. The record in this case is rife with references to language representing that dissenters rights are available. Nowhere in the Plan of Merger or the summary regarding that Plan does CHINA YIDA state that Section 92A.390 deprives shareholders of such rights. It and its officers, attorneys and consultants know that CHINA YIDA is a publicly traded, "covered security" listed on the NASDAQ. Yet it never honestly (if CHINA YIDA's arguments below are correct) says to its shareholders when explaining the merger "you really don't have dissenters rights, because we are publicly traded." Such a revelation would be a simple matter, and surely the attorneys at Sidley and Austin were capable at stating that situation clearly. Assuming that CHINA YIDA was not seeking to mislead or defraud its shareholders (and the factual record is by no means definitive on this issue), it can logically be inferred that no such statement was made because

CHINA YIDA, consistent with its representations throughout the documentation, intended for dissenting shareholders to have the right to proceedings pursuant to Chapter 92A of the Nevada Revised Statutes. The district court never really bothered to resolve these factual disputes or credit these inferences. Consequently, its ruling was clearly erroneous, in that at the very least, factual issues remain with respect to the proceedings so abruptly arrested.

The factual record also demonstrates why CHINA YIDA was willing to grant dissenters' rights. As outlined in the Statement of Facts, CHINA YIDA recognized its own deficiencies with respect to financial controls and the reliability of its books and records, even advising American federal regulators of the potential for these failings to inject volatility into its stock price. And it no doubt recognized the skepticism American regulators and investors have been developing towards financial accountability and transparency of Chinese companies. In proceeding with the Merger, it did not simply offer a price close to its market trading value. It analyzed stock value differently, but still based upon its own unreliable financials. It is reasonable to infer that CHINA YIDA made the conscious decision to make sure its dissenting shareholders had an avenue for getting a judicial valuation of their shares, so as to encourage approval of the Merger and eliminate potential litigation concerning its financial practices. With the exception of inferring fraudulent intent, there is no evidentiary basis to support the conclusion that

CHINA YIDA knew or intended that the "market out" exception would alleviate the need for it to prove the value of its shares. Otherwise, the extensive discussion of dissenters rights would have absolutely no purpose.

Perhaps the greatest demonstration of the erroneous analysis offered up by CHINA YIDA and adopted by the district court is to consider a simple hypothetical. Assuming that CHINA YIDA's Plan of Merger, boldly stated, in neon lighting if that were possible, "CHINA YIDA HEREBY PROCLAIMS THAT YOU HAVE A RIGHT TO A FAIR VALUE DETERMINATION UNDER CHAPTER 92A OF THE NEVADA REVISED STATUTES, COME HELL OR HIGH WATER", if the resolution adopting that Plan of Merger simply stated "Plan of Merger approved", the district court's analysis would still result in a finding that no such rights existed. This is clearly contrary to all maxims of shareholder protection.

The district court no only ignored facts and applied an incorrect analysis of the requirements of Section 92A.390 of the Nevada Revised Statutes, it also failed to address the factual issues still relevant to the case below. There is only one way to correct these errors, and that is to reverse the grant of summary judgment and return this matter to the district court for the resumption of the fair value litigation upon which the parties have so diligently worked.

B. The District Court erred in awarding CHINA YIDA Attorneys Fees

A district court's award of attorney's fees is reviewed by this Court under a highly deferential standard. An award of attorneys fees based upon a party's rejection of an offer of judgment made pursuant to Rule 68 of the Nevada Rules of Civil Procedure is within the district court's discretion, and unless that discretion is exercised in an arbitrary and capricious manner, the district court's decision will not be disturbed on appeal. Dillard Department Stores v. Beckwith, 115 Nev. 372, 382, 989 P.2d. 882, 888 (1999). Schouweiler v. Yancey, Co., 101 Nev. 827, 833, 712 P.2d. 786, 790 (1985). Such an abuse of discretion occurred in the present case.

As a threshold matter, the district court erred in awarding attorney's fees because it had previously erred in granting CHINA YIDA's summary judgment request. (See Section A, herein). Rule 68 of the Nevada Rules of Civil Procedure provides a basis for awarding attorneys fees only against a party which failed to achieve an outcome more favorable than the terms of the offer of judgment it declined to accept. The correct disposition of the present case is the reversal of the district court's Order granting summary judgment, and the return to district court to resume the fair value determination litigation. Thus, an award of attorneys fees is premature at best, and the district court's Order of January 28, 2020 should be reversed.

More fundamentally, the district court's analysis and findings regarding the reasonableness of POPE's conduct in connection with the Offer of Judgment are erroneous, and fail to serve the policy reasons and rationale behind the Offer of Judgment jurisprudence. The parties agree that the result ultimately achieved by POPE in the district court litigation (so far) was less favorable (barely so) than the additional payment of a penny per share of stock offered by CHINA YIDA. Such an observation does not conclude the analysis however, as there is no automatic award of attorneys fees just because the offeree fails to win an award which exceeds the Offer.

The purpose of Nevada's legal framework regarding offers of judgment, whether made pursuant to Rule 68 of the Nevada Rules of Civil Procedure or under the provisions of Section 18.010 of the Nevada Revised Statutes, is to encourage reasonable settlement proposals, while saving both time and money for the litigants, the taxpayers, and the judicial system. Dillard Department Stores, Inc. v. Beckwith, 115 Nev. 372, 382, 989 P.2d. 882, 888 (1999). In advancing the purposes behind the offer of judgment regimen, the Court is required to evaluate what have been conveniently categorized as the "Beattie factors", derived from the Court's analysis in Beattie v. Thomas, 99 Nev. 579, 588, 668 P.2d. 268, 274 (1983). Those factors include:

(1) whether the offeree's claim was brought in good faith;

(2) whether the offerors' offer of judgment was reasonable and in good faith both as to timing and amount;

(3) whether the offerree's decision to reject the offer was grossly unreasonable or in bad faith; and

(4) whether the fees sought by the offeror are reasonable and justified in amount.

The reasonableness of the parties' conduct and positions is the touchstone for this analysis, and the application of Rule 68 should operate so as to "reward the party who makes a reasonable offer and punish the party who refuses to accept such offer". Albios v. Horizon Communities, Inc., 122 Nev. 409, 419, 132 P.3d. 1022, 1029 (2006).

The reasonableness of POPE's conduct and also that of CHINA YIDA must be examined in the context of the facts and circumstances surrounding the Offer of Judgment in question. Two and one-half years into the district court fair value litigation, after discovery was closed and the extensive and expensive expert reports completed, CHINA YIDA filed its summary judgment motion, premised on a statutory provision never mentioned in prior filings in the case, not even in the Rule 16.1 Early Case Conference Report, where the parties are expected to identify the claims, defenses and issues which are to be the subjects of discovery and litigation. (Volume 1, APP0030 – APP0036) Days after the filing of its summary

judgment motion, CHINA YIDA served the Offer of Judgment. POPE was then required to analyze the Offer in relation to the developments to date in the litigation, and respond in a matter of weeks. Given the facts and circumstances of the Offer, POPE's rejection was eminently reasonable, the district court's erroneous conclusion to the contrary notwithstanding.

It is worth remembering that, unlike in the typical situation where the Beattie factors are analyzed, it was the offeror, CHINA YIDA, that commenced the present action in the district court, as it was statutorily required to do. POPE did not commence an unreasonable action based upon invalid claims. It simply made the statutorily mandated demand for fair value (as the Plan of Merger explicitly encouraged it and other shareholders to do) based upon its disagreement with the valuation made by CHINA YIDA and its consultants. This Beattie factor is, at best, a neutral consideration in evaluating the propriety of an award of attorneys fees. As noted earlier, POPE's valuation of CHINA YIDA's stock was both derived from an accepted valuation methodology for corporate assets and consistent with the relationship between the price POPE paid for the shares originally and the impact of the stock splits on the adjusted price. (See Statement of Facts, herein.) The district court proceedings involved an absolutely sincere and justified dispute as to fair value. Ironically, in light of the ultimate disposition of the litigation, it was CHINA YIDA which acted unreasonably by filing the

dissenters rights petition if, in fact, it was convinced that the district court did not have "jurisdiction" to entertain such a lawsuit. All of the wasted resources and unreasonable use of court time can actually be laid at the feet of CHINA YIDA, for invoking the district court's jurisdiction needlessly.

The district court also erroneously concluded that CHINA YIDA's Offer of Judgment was reasonable and in good faith as to the amount and the timing. In light of the vast difference between the valuations assigned by the parties to share value ($3.32 by CHINA YIDA and in excess of $23.00 by POPE), CHINA YIDA's offer of $10,000 was tantamount to offering POPE settlement by unconditional surrender. This is totally inconsistent with the aims of offer of judgment practice, which is to make a sincere, good faith offer in the spirit of compromise to avoid unnecessary cost to the parties and the courts. CHINA YIDA argued in the district court that its Offer of Judgment was timed and made based upon unexplained strategic considerations. (Volume 8, APP1631 – APP1632) Whatever those strategic reasons may have been, it is abundantly clear that timing the Offer for a stage in the litigation after which tens of thousands of dollars had been spent by the parties collectively in the course of discovery and expert preparation was not a reasonable measure to lessen the cost of the litigation or the burden on the courts.

Most importantly, POPE's decision not to accept CHINA YIDA's Offer of Judgment was reasonable. And it was manifestly not "grossly" unreasonable in any regard, nor made in bad faith. POPE's decision to instead respond to the summary judgment motion and to receive the benefit of the district court's decision before settling for a vastly smaller sum than its expert assigned to the stock's value was reasonable, especially in light of the factual controversy regarding whether CHINA YIDA had, whether statutorily required to or not, provided POPE with the right to proceed with litigation to determine fair value. POPE cannot be faulted for standing on its rights to have a tough issue adjudicated by the district court.

In the typical case litigated pursuant to Chapter 92A of the Nevada Revised Statutes, in the absence of an offer of judgment, attorneys fees and costs are always assessed against the corporation (in this case, CHINA YIDA) except where the district court finds the dissenters' (in this case, POPE's) conduct to have been arbitrary, vexatious or in bad faith. (See Section 92A.500(1) of the Nevada Revised Statutes). While the district court concluded that Section 92A.500 did, in fact, warrant the denial of CHINA YIDA's request for an award of costs, it regarded Section 92A.500(6) as a carve out which permitted application of the more traditional Rule 68 analysis where an offer of judgment was made. (Volume 8, APP1632 – APP1634) The preservation of the possibility of using Rule 68 offers in fair value litigation does not, however, detract from the fact that Section

92A.500 sets a high bar for efforts to pass on fees and costs to shareholders, rather than the corporation. Requiring CHINA YIDA to demonstrate "vexatious", "arbitrary", or bad faith conduct in the litigation is still the best measure of whether fees should be awarded without eroding the protection afforded dissenting shareholders in challenging a corporate transaction in situations where the corporation has an advantage in resources and information. The district court explicitly found no vexatious or bad faith conduct on the part of POPE. (Volume 8, APP1643 – APP1644)

The last of the Beattie factors addresses the reasonableness of the amount of attorney's fees to be awarded. The reasonableness of the "amount" of fees to be awarded is evaluated with reference to the factors set forth in Brunzell v.Golden State National Bank, 85 Nev. 345, 349, 124 P.2d. 530, 533 (1969). Those factors include:

> "(1) the qualities of the advocate: his ability, training, educpation, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, it intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived." (Emphasis Added)

If the Court is inclined to affirm the district court's award of attorneys fees, that award should be reduced by $9,715.00, the amount of fees incurred in connection

with work that was unnecessary, and unreasonable to compensate. (Volume 6, APP1210 – APP1214)

POPE does not contest the findings of the district court with respect to the qualifications of CHINA YIDA's advocates, the skill and time contributed by those advocates, or the success of advocates' efforts, given the rulings below. POPE does contest, however, the reasonableness of awarding fees to CHINA YIDA's counsel for the preparation of its Motion to Strike Respondents' (POPE) Expert Reports and Exclude Respondents' Expert Joseph Leaunae. (Volume 3, APP0459 – APP0534)

CHINA YIDA's Motion to Strike was unnecessary given the status of the district court litigation at the time that Motion was filed. (July 12, 2019). The district court was scheduled to hear argument on CHINA YIDA's summary judgment motion on July 18, 2019. If the disposition of that motion in favor of CHINA YIDA was so obviously correct that POPE must be deemed to have been "unreasonable" in rejecting CHINA YIDA's Offer of Judgment, it logically follows that CHINA YIDA was unreasonable in proceeding to file the Motion to Strike, an activity which did nothing more than generate additional fees to assess against POPE. Moreover, the litigation in the district court was not destined to be heard by a jury, and the effort to resolve the admissibility of Mr. Leaunae's testimony and opinions prior to trial was not required. In fact, the district court's

most efficient resolution as to the Motion to Strike would have been to deny it without prejudice, waiting until the context of trial to rule upon CHINA YIDA's objections. The fees attributable to the work performed in connection with the Motion to Strike are $9,715.00. This includes work on the Motion to Strike performed by CHINA YIDA's attorneys Josh Halen (14.5 hours at $250 per hour) and J. Robert Smith (14 hours at $435 per hour). (Volume 6, APP1210 – APP1214), and this amount should be deducted from any amount of attorneys fees upheld by this Court.

The district court's award of attorneys fees must be reversed as (1) it is premature, as the judgment against POPE must be reversed and the matter set for trial in district court, and (2) the correct analysis of the Beattie factors dictates that POPE's conduct in not accepting the Offer of Judgment was reasonable. In the event the Court determines that an award of attorneys fees is justified, that award should be reduced by $9,715, the amount of fees attributed to the unnecessary work associated with CHINA YIDA's motion to strike Mr. Leaunae's expert reports and testimony.

CONCLUSION

For the reasons set forth herein, the district court's Order granting summary judgment in favor of CHINA YIDA must be reversed, as well as its Order awarding attorneys fees.

Dated this 11th day of August, 2020.

/s/ Richard J. Pocker
Richard J. Pocker, Esq.
Nevada Bar No. 3568
BOIES SCHILLER FLEXNER LLP
300 S. Fourth St., Suite 800
Las Vegas, Nevada 89101
Telephone: (702) 382-7300
&
Peter Chasey, Esq.
Nevada Bar No. 7650
CHASEY LAW OFFICES
3925 N. Fort Apache Rd., Suite 110
Las Vegas, Nevada 89129
Counsel for Appellants

RULE 28.2 CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point, double-spaced Times New Roman font.

2. I further certify that his brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(1)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 7,203 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 11th day of August, 2020.

/s/ Richard J. Pocker
Richard J. Pocker, Esq.
Nevada Bar No. 3568
BOIES SCHILLER FLEXNER LLP
300 S. Fourth St., Suite 800
Las Vegas, Nevada 89101
Telephone: (702) 382-7300
&
Peter Chasey, Esq.
Nevada Bar No. 7650
CHASEY LAW OFFICES
3925 N. Fort Apache Rd., Suite 110
Las Vegas, Nevada 89129
Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Boies Schiller Flexner LLP and that on the 11th day of August, 2020 I electronically filed the foregoing *APPELLANTS' OPENING BRIEF* with the Clerk of the Court using the Supreme Court Electronic Filing System, which will send notification of such filing to the following attorneys of record:

J. Robert Smith, Esq.
Joshua Halen, Esq.
Attorneys for Respondents

/s/ Shilah Wisniewski
SHILAH WISNIEWSKI
An employee of Boies Schiller Flexner LLP

ADDENDUM

[Rev. 12/21/2019 10:22:26 AM--2019]

CHAPTER 92A - MERGERS, CONVERSIONS, EXCHANGES AND DOMESTICATIONS

GENERAL PROVISIONS

AUTHORITY, PROCEDURE AND EFFECT

RIGHTS OF DISSENTING OWNERS

GENERAL PROVISIONS

NRS 92A.005 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 92A.007 to 92A.092, inclusive, have the meanings ascribed to them in those sections.
(Added to NRS by 1995, 2079; A 1997, 726; 1999, 1626; 2001, 1406, 3199; 2003, 3181; 2007, 2702; 2009, 1717; 2011, 2812; 2013, 774)

NRS 92A.007 "Approval" and "vote" defined. "Approval" and "vote" as describing action by directors or stockholders mean the vote by directors in person or by written consent, or action of stockholders in person, by proxy or by written consent.
(Added to NRS by 1997, 726)

NRS 92A.0075 "Articles," "articles of incorporation" and "certificate of incorporation" defined. "Articles," "articles of incorporation" and "certificate of incorporation" are synonymous terms and, unless the context otherwise requires, include all certificates filed pursuant to NRS 78.030, 78.1955, 78.209, 78.380, 78.385 and 78.390 and any articles of merger, conversion, exchange or domestication filed pursuant to NRS 92A.200 to 92A.240, inclusive, or 92A.270. Unless the context otherwise requires, these terms include restated articles and certificates of incorporation.
(Added to NRS by 2003, 3180)

NRS 92A.008 "Business trust" defined. "Business trust" means:
1. A domestic business trust; or
2. An unincorporated association formed pursuant to, existing under or governed by the law of a jurisdiction other than this State and generally described by NRS 88A.030.
(Added to NRS by 1999, 1626)

NRS 92A.009 "Charter document" defined. "Charter document" means the articles of incorporation of a foreign corporation, whether or not for profit, the articles of incorporation of a domestic corporation and a domestic nonprofit corporation, the articles of organization of a limited-liability company, the certificate of limited partnership of a limited partnership or the certificate of trust of a business trust and all amendments thereto.
(Added to NRS by 2003, 3180)

NRS 92A.010 "Constituent document" defined. "Constituent document" means the articles of incorporation or bylaws of a corporation, whether or not for profit, the articles of organization or operating agreement of a limited-liability company, the certificate of limited partnership or partnership agreement of a limited partnership, or the certificate of trust or governing instrument of a business trust.
(Added to NRS by 1995, 2079; A 2001, 1406, 3199)

NRS 92A.015 "Constituent entity" defined. "Constituent entity" means:
1. With respect to a merger, each merging or surviving entity;
2. With respect to an exchange, each entity whose owner's interests will be acquired or each entity acquiring those interests; and
3. With respect to the conversion of an entity or a general partnership, the entity or general partnership that will be converted into another entity.
(Added to NRS by 1995, 2079; A 2001, 1407, 3199)

NRS 92A.020 "Domestic" defined. "Domestic" as applied to an entity means one organized and existing under the laws of this State.
(Added to NRS by 1995, 2079)

NRS 92A.022 "Domestic business trust" defined. "Domestic business trust" means a business trust formed and existing pursuant to the provisions of chapter 88A of NRS.
(Added to NRS by 1999, 1626)

NRS 92A.025 "Domestic corporation" defined. "Domestic corporation" means a corporation organized and existing under chapter 78, 78A, 78B or 89 of NRS.
(Added to NRS by 1995, 2079; A 1997, 726; 2013, 418, 774)

NRS 92A.027 "Domestic general partnership" defined. "Domestic general partnership" means a general partnership governed by the provisions of chapter 87 of NRS.
(Added to NRS by 2001, 1403; A 2001, 3199)

NRS 92A.030 "Domestic limited-liability company" defined. "Domestic limited-liability company" means a limited-liability company organized and existing under chapter 86 of NRS.
(Added to NRS by 1995, 2079)

NRS 92A.035 "Domestic limited partnership" defined. "Domestic limited partnership" means a limited partnership organized and existing under chapter 87A or 88 of NRS.
(Added to NRS by 1995, 2079; A 2007, 483)

NRS 92A.040 "Domestic nonprofit corporation" defined. "Domestic nonprofit corporation" means a corporation organized or existing under chapter 82 of NRS, including those listed in NRS 82.051.
(Added to NRS by 1995, 2079)

NRS 92A.045 "Entity" defined. "Entity" means a foreign or domestic:
1. Corporation, whether or not for profit;
2. Limited-liability company;
3. Limited partnership; or
4. Business trust.

(Added to NRS by 1995, 2079; A 1999, 1626; 2003, 3181)

NRS 92A.050 "Exchange" defined. "Exchange" means the acquisition by one or more foreign or domestic entities of all an owner's interests or one or more classes or series of an owner's interests of one or more foreign or domestic entities.
(Added to NRS by 1995, 2079)

NRS 92A.055 "Foreign" defined. "Foreign" as applied to an entity means one not organized or existing under the laws of this State.
(Added to NRS by 1995, 2079)

NRS 92A.060 "Limited partner" defined. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.
(Added to NRS by 1995, 2079)

NRS 92A.070 "Member" defined. "Member" means:
1. A member of a limited-liability company, as defined in NRS 86.081; or
2. A member of a nonprofit corporation which has members.

(Added to NRS by 1995, 2080; A 2001, 1407, 3199)

NRS 92A.073 "Nonprofit cooperative corporation" defined. "Nonprofit cooperative corporation" means a nonprofit cooperative corporation organized pursuant to NRS 81.010 to 81.160, inclusive.
(Added to NRS by 2013, 773)

NRS 92A.075 "Owner" defined. "Owner" means the holder of an interest described in NRS 92A.080 or a noneconomic member of a limited-liability company described in NRS 86.095.
(Added to NRS by 1995, 2080; A 2001, 1407, 3199)

NRS 92A.080 "Owner's interest" defined. "Owner's interest" means shares of stock in a corporation, membership in a nonprofit corporation, the interest of a member of a limited-liability company or a beneficial owner of a business trust, or the partnership interest of a general or limited partner of a limited partnership.
(Added to NRS by 1995, 2080; A 1999, 1626)

NRS 92A.083 "Principal office" defined. "Principal office" has the meaning ascribed to it in NRS 78.010.
(Added to NRS by 2007, 2702)

NRS 92A.090 "Resulting entity" defined. "Resulting entity" means, with respect to a conversion, the entity that results from conversion of the constituent entity.
(Added to NRS by 2001, 1403; A 2001, 3199)

NRS 92A.092 "Senior executive" defined. "Senior executive" means the chief executive officer, chief operating officer, chief financial officer or anyone in charge of a principal business unit or function of a domestic corporation.
(Added to NRS by 2009, 1717)

NRS 92A.098 Notice and other communications. Any notice or other communication sent pursuant to any provision of this chapter may be delivered by electronic transmission pursuant to NRS 75.150.

(Added to NRS by 2011, 2812)

AUTHORITY, PROCEDURE AND EFFECT

NRS 92A.100 Authority for merger; approval, contents and form of plan of merger.

1. Except as limited by NRS 78.411 to 78.444, inclusive, one or more domestic entities may merge into another entity if the plan of merger is approved pursuant to the provisions of this chapter.

2. Except as otherwise provided in NRS 92A.180, the plan of merger must set forth:

(a) The name and jurisdiction of organization of each constituent entity;

(b) The name, jurisdiction of organization and kind of entity or entities that will survive the merger;

(c) The terms and conditions of the merger; and

(d) The manner and basis, if any, of converting the owner's interests of each constituent entity into owner's interests, rights to purchase owner's interests, or other securities of the surviving or other entity or into cash or other property in whole or in part or cancelling such owner's interests in whole or in part.

3. The plan of merger may set forth:

(a) Amendments to the constituent documents of the surviving entity; and

(b) Other provisions relating to the merger.

4. The plan of merger must be in writing.

(Added to NRS by 1995, 2080; A 1997, 726; 2003, 3181; 2005, 2200)

NRS 92A.105 Authority for conversion; approval, form and contents of plan of conversion.

1. Except as limited by NRS 78.411 to 78.444, inclusive, one domestic general partnership or one domestic entity, except a domestic nonprofit corporation, may convert into a domestic entity of a different type or into a foreign entity if a plan of conversion is approved pursuant to the provisions of this chapter.

2. The plan of conversion must be in writing and set forth the:

(a) Name of the constituent entity and the proposed name for the resulting entity;

(b) Jurisdiction of the law that governs the constituent entity;

(c) Jurisdiction of the law that will govern the resulting entity;

(d) Terms and conditions of the conversion;

(e) Manner and basis, if any, of converting the owner's interest of the constituent entity or the interest of a partner in a general partnership that is the constituent entity into owner's interests, rights of purchase and other securities in the resulting entity or cancelling such owner's interests in whole or in part; and

(f) Full text of the charter documents of the resulting entity.

3. The plan of conversion may set forth other provisions relating to the conversion.

(Added to NRS by 2001, 1403; A 2001, 3199; 2003, 3181; 2005, 2200; 2011, 2812)

NRS 92A.110 Authority for exchange; approval, contents and form of plan of exchange.

1. Except as a corporation is limited by NRS 78.411 to 78.444, inclusive, one or more domestic entities may acquire all of the outstanding owner's interests of one or more classes or series of another entity not already owned by the acquiring entity or an affiliate thereof if the plan of exchange is approved pursuant to the provisions of this chapter.

2. The plan of exchange must set forth:

(a) The name and jurisdiction of organization of each constituent entity;

(b) The name, jurisdiction of organization and kind of each entity whose owner's interests will be acquired by one or more other entities;

(c) The terms and conditions of the exchange; and

(d) The manner and basis, if any, of exchanging the owner's interests to be acquired for owner's interests, rights to purchase owner's interests, or other securities of the acquiring or any other entity or for cash or other property in whole or in part or cancelling such owner's interests in whole or in part.

3. The plan of exchange may set forth other provisions relating to the exchange.

4. This section does not limit the power of a domestic entity to acquire all or part of the owner's interests or one or more class or series of owner's interests of another person through a voluntary exchange or otherwise.

5. The plan of exchange must be in writing.

(Added to NRS by 1995, 2080; A 1997, 726; 2005, 2201)

NRS 92A.120 Approval of plan of merger, conversion or exchange for domestic corporation.

1. After adopting a plan of merger, exchange or conversion, the board of directors of each domestic corporation that is a constituent entity in the merger or conversion, or the board of directors of the domestic corporation whose shares will be acquired in the exchange, must submit the plan of merger, except as otherwise provided in NRS 92A.130 and 92A.180, the plan of conversion or the plan of exchange for approval by its stockholders who are entitled to vote on the plan in accordance with the provisions of this section.

2. For a plan of merger, conversion or exchange to be approved:

(a) The board of directors must recommend the plan of merger, conversion or exchange to the stockholders, unless the board of directors determines that because of a conflict of interest or other special circumstances it should make no recommendation and it communicates the basis for its determination to the stockholders with the plan; and

(b) The stockholders entitled to vote must approve the plan.

3. The board of directors may condition its submission of the proposed merger, conversion or exchange on any basis. The provisions of this section or this chapter must not be construed to permit a board of directors to submit, or to agree to submit, a plan of merger, conversion or exchange to the stockholders without the recommendation of the board required pursuant to paragraph (a) of subsection 2 unless the board of directors determines that because of a conflict of interest or other special circumstances it should make no recommendation and it communicates the basis for its determination to the stockholders with the plan. Any agreement of the board of directors to submit a plan of merger, conversion or exchange to the stockholders notwithstanding an adverse recommendation of the board of directors shall be deemed to be of no force or effect.

4. Unless the plan of merger, conversion or exchange is approved by the written consent of stockholders pursuant to subsection 7, the domestic corporation must notify each stockholder, whether or not the stockholder is entitled to vote, of the proposed stockholders'

meeting in accordance with NRS 78.370. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger, conversion or exchange and must contain or be accompanied by a copy or summary of the plan.

5. Unless this chapter, the articles of incorporation, the resolutions of the board of directors establishing the class or series of stock or the board of directors acting pursuant to subsection 3 require a greater vote or a vote by classes of stockholders, the plan of merger or conversion must be approved by a majority of the voting power of the stockholders.

6. Unless the articles of incorporation or the resolution of the board of directors establishing a class or series of stock provide otherwise, or unless the board of directors acting pursuant to subsection 3 requires a greater vote, the plan of exchange must be approved by a majority of the voting power of each class and each series to be exchanged pursuant to the plan of exchange.

7. Unless otherwise provided in the articles of incorporation or the bylaws of the domestic corporation, the plan of merger, conversion or exchange may be approved by written consent as provided in NRS 78.320.

8. If an officer, director or stockholder of a domestic corporation, which will be the constituent entity in a conversion, will have any liability for the obligations of the resulting entity after the conversion because the officer, director or stockholder will be the owner of an owner's interest in the resulting entity, then that officer, director or stockholder must also approve the plan of conversion.

9. Unless otherwise provided in the articles of incorporation or bylaws of a domestic corporation, a plan of merger, conversion or exchange may contain a provision that permits amendment of the plan of merger, conversion or exchange at any time after the stockholders of the domestic corporation approve the plan of merger, conversion or exchange, but before the articles of merger, conversion or exchange become effective, without obtaining the approval of the stockholders of the domestic corporation for the amendment if the amendment does not:

(a) Alter or change the manner or basis of exchanging an owner's interest to be acquired for owner's interests, rights to purchase owner's interests, or other securities of the acquiring entity or any other entity, or for cash or other property in whole or in part; or

(b) Alter or change any of the terms and conditions of the plan of merger, conversion or exchange in a manner that adversely affects the stockholders of the domestic corporation.

10. A board of directors shall cancel the proposed meeting or remove the plan of merger, conversion or exchange from consideration at the meeting if the board of directors determines that it is not advisable to submit the plan of merger, conversion or exchange to the stockholders for approval.

(Added to NRS by 1995, 2081; A 2001, 1407, 3199; 2003, 3182; 2005, 2201)

NRS 92A.130 Approval of plan of merger for domestic corporation: Conditions under which action by stockholders of surviving corporation is not required.

1. Action by the stockholders of a surviving domestic corporation on a plan of merger is not required if:

(a) The articles of incorporation of the surviving domestic corporation will not differ from its articles before the merger;

(b) Each stockholder of the surviving domestic corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations and relative rights immediately after the merger;

(c) The number of voting shares issued and issuable as a result of the merger will not exceed 20 percent of the total number of voting shares of the surviving domestic corporation outstanding immediately before the merger; and

(d) The number of participating shares issued and issuable as a result of the merger will not exceed 20 percent of the total number of participating shares outstanding immediately before the merger.

2. As used in this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(Added to NRS by 1995, 2082; A 2011, 2813)

NRS 92A.133 Circumstances under which vote of stockholders of publicly traded corporation not required to authorize merger in which publicly traded corporation is constituent entity.

1. Unless otherwise expressly required by the articles of incorporation, no vote of the stockholders of a publicly traded corporation is necessary to authorize a merger in which the publicly traded corporation is a constituent entity if the plan of merger expressly permits or requires the merger to be effected under this section and:

(a) The ownership threshold requirement is satisfied without any offer, subject to the provisions of subsection 2; or

(b) The ownership threshold requirement is satisfied in whole or in part by way of an offer and the plan of merger requires that:

(1) The merger must be effected as soon as practicable following the consummation of the offer if the merger is effected under this section; and

(2) Each outstanding share of each class or series of stock of the publicly traded corporation that is the subject of, and not irrevocably accepted for purchase or exchange in, the offer must be converted in such merger into, or into the right to receive, the same amount and kind of cash, property, rights or securities to be paid for shares of such class or series of stock of the publicly traded corporation irrevocably accepted for purchase or exchange in the offer. The plan of merger may expressly provide that the requirements of this subparagraph must not apply to specified categories of excluded shares.

2. If a merger pursuant to this section is to be effectuated without any offer:

(a) The ownership threshold requirement must be satisfied without counting the voting power of any shares of the stock of the publicly traded corporation acquired from the publicly traded corporation, or any of the directors, officers, affiliates or associates thereof, within the 6 months immediately preceding the adoption of the plan of merger; and

(b) The publicly traded corporation must provide notice of the merger to all of its stockholders not less than 30 days before the effective date of the merger.

3. This section does not apply to circumvent or contravene the provisions of NRS 78.378 to 78.3793, inclusive, or NRS 78.411 to 78.444, inclusive.

4. As used in this section:

(a) "Affiliate" has the meaning ascribed to it in NRS 78.412.

(b) "Associate" has the meaning ascribed to it in NRS 78.413.

(c) "Consummation" means the irrevocable acceptance for purchase or exchange of shares tendered pursuant to an offer.

(d) "Excluded shares" means:

(1) Rollover shares; and

(2) Shares of the publicly traded corporation that are owned beneficially or of record at the commencement of an offer by:

(I) The publicly traded corporation;

(II) The constituent entity making the offer;

(III) Any person who owns, directly or indirectly, all of the outstanding equity interests of the constituent entity making the offer; or

(IV) Any direct or indirect wholly owned subsidiary of any of the foregoing.

(e) "Offer" means an offer made by the other constituent entity in the merger for all of the outstanding shares of each class or series of stock of the publicly traded corporation listed on a national securities exchange, on the terms provided in the plan of merger that, absent this section, would be entitled to vote on the adoption of the plan of merger. The other constituent entity in the merger may, but is not required to, engage in the consummation of separate offers for separate classes or series of the stock of the publicly traded corporation. An offer may, but is not required to:

(1) Exclude any excluded shares; and

(2) Be conditioned on the tender of a minimum number or proportion of shares of any class or series of the stock of the publicly traded corporation.

(f) "Owned affiliate" means, with respect to a constituent entity, any other person who owns, directly or indirectly, all of the outstanding equity interests of the constituent entity, or any direct or indirect wholly owned subsidiary of the constituent entity or other person.

(g) "Ownership threshold requirement" means that the voting power of the stock of the publicly traded corporation otherwise owned beneficially or of record by the other constituent entity in the merger or any of the owned affiliates of the other constituent entity, together with the voting power of any rollover shares and any shares irrevocably accepted for purchase or exchange pursuant to any offer and received before the expiration of the offer by the agent or depositary appointed to facilitate the consummation of the offer, equals at least that proportion of the voting power of the stock, and of each class or series thereof, of the publicly traded corporation that, absent this section, would be required to approve the plan of merger under this chapter and the articles of incorporation and bylaws of the publicly traded corporation. For the purposes of this paragraph, shares are received:

(1) If the shares are certificated shares, upon physical receipt by the agent or depositary of a stock certificate with an executed letter of transmittal or other instrument of transfer;

(2) If the shares are uncertificated shares held of record by a clearing corporation as nominee, upon transfer into the account of the agent or depositary by way of an agent's message; and

(3) If the shares are uncertificated shares held of record by a person other than a clearing corporation as nominee, upon physical receipt by the agent or depositary of an executed letter of transmittal or other instrument of transfer.

(h) "Publicly traded corporation" means a domestic corporation that has a class or series of voting shares which is a covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(1)(A) or (B), as amended.

(i) "Rollover shares" means any shares of any class or series of the capital stock of the publicly traded corporation that are the subject of a written agreement requiring such shares to be contributed or otherwise transferred to the other constituent entity in the merger or any of the owned affiliates of the other constituent entity in exchange for shares or other equity interest in the other constituent entity or any of its owned affiliates. Shares must cease to be rollover shares if, as of the effective time of the merger, the shares have not been contributed or otherwise transferred pursuant to the written agreement.

(Added to NRS by 2019, 107)

NRS 92A.135 Approval of plan of conversion for domestic general partnership. Unless otherwise provided in the partnership agreement, all partners must approve a plan of conversion involving a domestic general partnership.

(Added to NRS by 2001, 1403; A 2001, 3199)

NRS 92A.140 Approval of plan of merger, conversion or exchange for domestic limited partnership.

1. Unless otherwise provided in the partnership agreement or the certificate of limited partnership, a plan of merger, conversion or exchange involving a domestic limited partnership must be approved by all general partners and by limited partners who own a majority in interest of the partnership then owned by all the limited partners. If the partnership has more than one class of limited partners, the plan of merger, conversion or exchange must be approved by those limited partners who own a majority in interest of the partnership then owned by the limited partners in each class.

2. For the purposes of this section, "majority in interest of the partnership" means a majority of the interests in capital and profits of the limited partners of a domestic limited partnership which:

(a) In the case of capital, is determined as of the date of the approval of the plan of merger, conversion or exchange.

(b) In the case of profits, is based on any reasonable estimate of profits for the period beginning on the date of the approval of the plan of merger, conversion or exchange and ending on the anticipated date of the termination of the domestic limited partnership, including any present or future division of profits distributed pursuant to the partnership agreement.

3. If any partner of a domestic limited partnership, which will be the constituent entity in a conversion, will have any liability for the obligations of the resulting entity after the conversion because the partner will be the owner of an owner's interest in the resulting entity, then that partner must also approve the plan of conversion.

(Added to NRS by 1995, 2082; A 1997, 727; 2001, 1409, 3199)

NRS 92A.150 Approval of plan of merger, conversion or exchange for domestic limited-liability company.

1. Unless otherwise provided in the articles of organization or an operating agreement:

(a) A plan of merger, conversion or exchange involving a domestic limited-liability company must be approved by members who own a majority of the interests in the current profits of the company then owned by all of the members; and

(b) If the company has more than one class of members, the plan of merger, conversion or exchange must be approved by those members who own a majority of the interests in the current profits of the company then owned by the members in each class.

2. If any manager or member of a domestic limited-liability company, which will be the constituent entity in a conversion, will have any liability for the obligations of the resulting entity after the conversion because the manager or member will be the owner of an owner's interest in the resulting entity, then that manager or member must also approve the plan of conversion.

(Added to NRS by 1995, 2082; A 1997, 727; 1999, 1627; 2001, 1409, 3199)

NRS 92A.160 Approval of plan of merger or exchange for domestic nonprofit corporation.

1. A plan of merger or exchange involving a domestic nonprofit corporation must be adopted by the board of directors. The plan must also be approved by each public officer or other person whose approval of a plan of merger or exchange is required by the articles of incorporation of the domestic nonprofit corporation.

2. If the domestic nonprofit corporation has members entitled to vote on plans of merger or exchange, the board of directors of the domestic nonprofit corporation must recommend the plan of merger or exchange to the members, unless the board of directors

determines that because of a conflict of interest or other special circumstances it should make no recommendation and it communicates the basis for its determination to the members with the plan.

3. The board of directors may condition its submission of the proposed merger or exchange on any basis.

4. The members entitled to vote on a plan of merger or exchange must approve the plan at a meeting of members called for that purpose, by written consent pursuant to NRS 82.276, or by a vote by written ballot pursuant to NRS 82.326.

5. The corporation must notify, in the manner required by NRS 82.336, each nonprofit member of the time and place of the meeting of members at which the plan of merger or exchange will be submitted for a vote.

6. Unless the articles of incorporation of the domestic nonprofit corporation or the board of directors acting pursuant to subsection 3 require a greater vote or a vote by classes of members, the plan of merger or exchange to be authorized must be approved by a majority of a quorum of the members unless a class of members is entitled to vote thereon as a class. If a class of members is so entitled, the plan must be approved by a majority of a quorum of the votes entitled to be cast on the plan by each class.

7. Separate voting by a class of members is required:

(a) On a plan of merger if the plan contains a provision that, if contained in the proposed amendment to articles of incorporation, would entitle particular members to vote as a class on the proposed amendment; and

(b) On a plan of exchange by each class or series of memberships included in the exchange, with each class or series constituting a separate voting class.

(Added to NRS by 1995, 2082)

NRS 92A.162 Approval of plan of merger, conversion or exchange for nonprofit cooperative corporation. Unless otherwise provided in the articles of incorporation, a plan of merger, conversion or exchange involving a nonprofit cooperative corporation must be approved and adopted by the board of directors.

(Added to NRS by 2013, 774)

NRS 92A.165 Approval of plan of merger, conversion or exchange for domestic business trust. Unless otherwise provided in the certificate of trust or governing instrument of a domestic business trust, a plan of merger, conversion or exchange must be approved by all the trustees and beneficial owners of each domestic business trust that is a constituent entity in the merger.

(Added to NRS by 1999, 1626; A 2001, 1409, 3199; 2003, 3183)

NRS 92A.170 Abandonment of planned merger, conversion or exchange before filing of articles. After a merger, conversion or exchange is approved, and at any time before the articles of merger, conversion or exchange are filed, the planned merger, conversion or exchange may be abandoned, subject to any contractual rights, without further action, in accordance with the procedure set forth in the plan of merger, conversion or exchange or, if none is set forth, in the case of:

1. A domestic corporation, whether or not for profit, by the board of directors;

2. A domestic limited partnership, unless otherwise provided in the partnership agreement or certificate of limited partnership, by all general partners;

3. A domestic limited-liability company, unless otherwise provided in the articles of organization or an operating agreement, by members who own a majority in interest in the current profits of the company then owned by all of the members or, if the company has more than one class of members, by members who own a majority in interest in the current profits of the company then owned by the members in each class;

4. A domestic business trust, unless otherwise provided in the certificate of trust or governing instrument, by all the trustees;

5. A domestic general partnership, unless otherwise provided in the partnership agreement, by all the partners; and

6. A nonprofit cooperative corporation, unless otherwise provided in the articles of incorporation, by the board of directors.

(Added to NRS by 1995, 2083; A 1999, 1627; 2001, 1409, 3199; 2013, 774)

NRS 92A.175 Termination of planned merger, conversion or exchange after filing of articles. After a merger, conversion or exchange is approved, at any time after the articles of merger, conversion or exchange are filed but before an effective date specified in the articles which is later than the date of filing the articles, the planned merger, conversion or exchange may be terminated in accordance with a procedure set forth in the plan of merger, conversion or exchange by filing articles of termination pursuant to the provisions of NRS 92A.240.

(Added to NRS by 1999, 1626; A 2001, 1410, 3199)

NRS 92A.180 Merger of subsidiary into parent or parent into subsidiary.

1. A parent domestic corporation, whether or not for profit, parent domestic limited-liability company, unless otherwise provided in the articles of organization or operating agreement, or parent domestic limited partnership owning at least 90 percent of the outstanding shares of each class of a subsidiary corporation entitled to vote on a merger, 90 percent of the percentage or other interest in the capital and profits of a subsidiary limited-liability company then owned by each class of members entitled to vote on a merger or 90 percent of the percentage or other interest in the capital and profits of a subsidiary limited partnership then owned by both the general partners and each class of limited partners entitled to vote on a merger may merge the subsidiary into itself without approval of the owners of the owner's interests of the parent domestic corporation, parent domestic limited-liability company or parent domestic limited partnership or the owners of the owner's interests of the subsidiary domestic corporation, subsidiary domestic limited-liability company or subsidiary domestic limited partnership.

2. A parent domestic corporation, whether or not for profit, parent domestic limited-liability company, unless otherwise provided in the articles of organization or operating agreement, or parent domestic limited partnership owning at least 90 percent of the outstanding shares of each class of a subsidiary corporation entitled to vote on a merger, 90 percent of the percentage or other interest in the capital and profits of a subsidiary limited-liability company then owned by each class of members entitled to vote on a merger, or 90 percent of the percentage or other interest in the capital and profits of a subsidiary limited partnership then owned by both the general partners and each class of limited partners entitled to vote on a merger may merge with and into the subsidiary without approval of the owners of the owner's interests of the subsidiary domestic corporation, subsidiary domestic limited-liability company or subsidiary domestic limited partnership.

3. The board of directors of a parent corporation, the managers of a parent limited-liability company with managers unless otherwise provided in the operating agreement, all members of a parent limited-liability company without managers unless otherwise provided in the operating agreement, or all general partners of a parent limited partnership shall adopt a plan of merger that sets forth:

(a) The names of the parent and subsidiary; and

(b) The manner and basis of converting the owner's interests of the disappearing entity into the owner's interests, obligations or other securities of the surviving or any other entity or into cash or other property in whole or in part.

4. The surviving entity shall mail a copy or summary of the plan of merger to each owner of the subsidiary who does not waive the mailing requirement in writing.

5. Articles of merger under this section may not contain amendments to the constituent documents of the surviving entity except that the name of the surviving entity may be changed.

6. The articles of incorporation of a domestic corporation, the articles of organization of a domestic limited-liability company, the certificate of limited partnership of a domestic limited partnership or the certificate of trust of a domestic business trust may forbid that entity from entering into a merger pursuant to this section.

(Added to NRS by 1995, 2083; A 1997, 727; 1999, 1627; 2001, 1410, 3199; 2005, 2203; 2009, 1717; 2015, 3242)

NRS 92A.190 Merger or exchange with foreign entity.

1. One or more foreign entities may merge or enter into an exchange of owner's interests with one or more domestic entities if:

(a) In a merger, the merger is permitted by the law of the jurisdiction under whose law each foreign entity is organized and governed and each foreign entity complies with that law in effecting the merger;

(b) In an exchange, the entity whose owner's interests will be acquired is a domestic entity, whether or not an exchange of owner's interests is permitted by the law of the jurisdiction under whose law the acquiring entity is organized;

(c) The foreign entity complies with NRS 92A.200 to 92A.240, inclusive, if it is the surviving entity in the merger or acquiring entity in the exchange and sets forth in the articles of merger or exchange its address where copies of process may be sent by the Secretary of State; and

(d) Each domestic entity complies with the applicable provisions of NRS 92A.100 to 92A.180, inclusive, and, if it is the surviving entity in the merger or acquiring entity in the exchange, with NRS 92A.200 to 92A.240, inclusive.

2. When the merger or exchange takes effect, the surviving foreign entity in a merger and the acquiring foreign entity in an exchange shall be deemed:

(a) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation which accrued before the merger or exchange became effective or the rights of dissenting owners of each domestic entity that was a party to the merger or exchange. Service of such process must be made by personally delivering to and leaving with the Secretary of State duplicate copies of the process and the payment of a fee of $100 for accepting and transmitting the process. The Secretary of State shall forthwith send by registered or certified mail one of the copies to the surviving or acquiring entity at its specified address, unless the surviving or acquiring entity has designated in writing to the Secretary of State a different address for that purpose, in which case it must be mailed to the last address so designated.

(b) To agree that it will promptly pay to the dissenting owners of each domestic entity that is a party to the merger or exchange the amount, if any, to which they are entitled under or created pursuant to NRS 92A.300 to 92A.500, inclusive.

3. This section does not limit the power of a foreign entity to acquire all or part of the owner's interests of one or more classes or series of a domestic entity through a voluntary exchange or otherwise.

(Added to NRS by 1995, 2086; A 1997, 728; 1999, 1628; 2001, 3192; 2003, 3183; 2003, 20th Special Session, 125)

NRS 92A.195 Conversion of foreign or domestic entity or foreign or domestic general partnership.

1. One foreign entity or foreign general partnership may convert into one domestic entity if:

(a) The conversion is permitted by the law of the jurisdiction governing the foreign entity or foreign general partnership and the foreign entity or foreign general partnership complies with that law in effecting the conversion;

(b) The foreign entity or foreign general partnership complies with the applicable provisions of NRS 92A.205, 92A.207, 92A.210, 92A.230 and 92A.240; and

(c) The resulting domestic entity complies with the applicable provisions of NRS 92A.205 and 92A.220.

2. One domestic entity or domestic general partnership may convert into one foreign entity if:

(a) The conversion is permitted by the law of the jurisdiction governing the resulting foreign entity and the resulting foreign entity complies with that law in effecting the conversion; and

(b) The domestic entity complies with the applicable provisions of NRS 92A.105, 92A.120, 92A.135, 92A.140, 92A.165, 92A.205, 92A.207, 92A.210, 92A.230 and 92A.240.

3. When a conversion pursuant to subsection 2 takes effect, the resulting foreign entity shall be deemed to have appointed the Secretary of State as its agent for service of process in a proceeding to enforce any obligation. Service of process must be made personally by delivering to and leaving with the Secretary of State duplicate copies of the process and the payment of a fee of $100 for accepting and transmitting the process. The Secretary of State shall send one of the copies of the process by registered or certified mail to the resulting entity at its specified address, unless the resulting entity has designated in writing to the Secretary of State a different address for that purpose, in which case it must be mailed to the last address so designated.

(Added to NRS by 2001, 1403; A 2001, 3199; 2003, 20th Special Session, 126; 2011, 2813)

NRS 92A.200 Filing requirements for mergers or exchanges; dependency of terms of plan of merger, conversion or exchange on extrinsic facts.

1. After a plan of merger or exchange is approved as required by this chapter, the surviving or acquiring entity shall deliver to the Secretary of State for filing articles of merger or exchange setting forth:

(a) The name and jurisdiction of organization of each constituent entity;

(b) That a plan of merger or exchange has been adopted by each constituent entity or the parent domestic entity only, if the merger is pursuant to NRS 92A.180;

(c) If approval of the owners of one or more constituent entities was not required, a statement to that effect and the name of each entity;

(d) If approval of owners of one or more constituent entities was required, the name of each entity and a statement for each entity that the plan was approved by the required consent of the owners;

(e) In the case of a merger, the amendment, if any, to the charter document of the surviving entity, which amendment may be set forth in the articles of merger as a specific amendment or in the form of an amended and restated charter document or attached in that form as an exhibit; and

(f) If the entire plan of merger or exchange is not set forth, a statement that the complete signed plan of merger or plan of exchange is on file at the principal office or with the custodian of records if a corporation, limited-liability company or business trust, or at the principal office or with the custodian of records, as described in paragraph (a) of subsection 1 of NRS 87A.215 or paragraph (a) of subsection 1 of NRS 88.330, if a limited partnership, or other place of business of the surviving entity or the acquiring entity, respectively.

2. Any of the terms of the plan of merger, conversion or exchange may be made dependent upon facts ascertainable outside of the plan of merger, conversion or exchange, provided that the plan of merger, conversion or exchange clearly and expressly sets forth the manner in which such facts shall operate upon the terms of the plan. As used in this section, the term "facts" includes, without limitation, the occurrence of an event, including a determination or action by a person or body, including a constituent entity.

(Added to NRS by 1995, 2084; A 1997, 729; 1999, 1629; 2001, 1411, 3199; 2003, 3184; 2003, 20th Special Session, 126; 2007, 483; 2015, 1319)

NRS 92A.205 Filing requirements for conversions.

1. After a plan of conversion is approved as required by this chapter, if the resulting entity is a domestic entity, the constituent entity shall, at the time of filing the articles of conversion, deliver to the Secretary of State for filing:

(a) Articles of conversion setting forth:

(1) The name and jurisdiction of organization of the constituent entity and the resulting entity; and

(2) That a plan of conversion has been adopted by the constituent entity in compliance with the law of the jurisdiction governing the constituent entity.

(b) The charter document of the domestic resulting entity required by the applicable provisions of chapter 78, 78A, 78B, 82, 86, 87A, 88, 88A or 89 of NRS.

(c) The information required pursuant to NRS 77.310.

2. After a plan of conversion is approved as required by this chapter, if the resulting entity is a foreign entity, the constituent entity shall deliver to the Secretary of State for filing articles of conversion setting forth:

(a) The name and jurisdiction of organization of the constituent entity and the resulting entity;

(b) That a plan of conversion has been adopted by the constituent entity in compliance with the laws of this State; and

(c) The address of the resulting entity where copies of process may be sent by the Secretary of State.

3. If the entire plan of conversion is not set forth in the articles of conversion, the filing party must include in the articles of conversion a statement that the complete signed plan of conversion is on file at the principal office or with the custodian of records of the resulting entity or, if the resulting entity is a domestic limited partnership, at the principal office or with the custodian of records, as described in paragraph (a) of subsection 1 of NRS 87A.215 or paragraph (a) of subsection 1 of NRS 88.330.

4. If the conversion takes effect on a later date specified in the articles of conversion pursuant to NRS 92A.240, the charter document to be filed with the Secretary of State pursuant to paragraph (b) of subsection 1 must state the name and the jurisdiction of the constituent entity and that the existence of the resulting entity does not begin until the later date.

5. Any records filed with the Secretary of State pursuant to this section must be accompanied by the fees required pursuant to this title for filing the charter document.

(Added to NRS by 2001, 1404; A 2001, 3199; 2003, 3185; 2003, 20th Special Session, 127; 2007, 484, 1343, 2702; 2009, 1718; 2013, 418; 2015, 1320)

NRS 92A.207 Form required for filing of records.

1. Each record filed with the Secretary of State pursuant to this chapter must be on or accompanied by a form prescribed by the Secretary of State.

2. The Secretary of State may refuse to file a record which does not comply with subsection 1 or which does not contain all of the information required by statute for filing the record.

3. If the provisions of the form prescribed by the Secretary of State conflict with the provisions of any record that is submitted for filing with the form:

(a) The provisions of the form control for all purposes with respect to the information that is required by statute to appear in the record in order for the record to be filed; and

(b) Unless otherwise provided in the record, the provisions of the record control in every other situation.

4. The Secretary of State may by regulation provide for the electronic filing of records with the Office of the Secretary of State.

(Added to NRS by 2003, 20th Special Session, 125)

NRS 92A.210 Filing fees.

1. Except as otherwise provided in this section, the fee for filing articles of merger, articles of conversion, articles of exchange, articles of domestication or articles of termination is $350. The fee for filing the charter documents of a domestic resulting entity is the fee for filing the charter documents determined by the chapter of NRS governing the particular domestic resulting entity.

2. The fee for filing articles of merger of two or more domestic corporations, including, without limitation, a nonprofit cooperative corporation, is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporation.

3. The fee for filing articles of merger of one or more domestic corporations, including, without limitation, a nonprofit cooperative corporation, with one or more foreign corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporations which have paid the fees required by NRS 78.760 and 80.050.

4. The fee for filing articles of merger of two or more domestic corporations, including, without limitation, nonprofit cooperative corporations, or foreign corporations must not be less than $350. The amount paid pursuant to subsection 3 must not exceed $35,000.

(Added to NRS by 1995, 2085; A 1999, 1629; 2001, 1412, 3192, 3199; 2003, 3186; 2003, 20th Special Session, 128; 2013, 774)

NRS 92A.220 Duty when entire plan of merger, conversion or exchange is not set forth in articles. If the entire plan of merger, conversion or exchange is not set forth in the articles of merger, conversion or exchange, a copy of the plan of merger, conversion or exchange must be furnished by the surviving, acquiring or resulting entity, on request and without cost, to any owner of any entity which is a party to the merger, conversion or exchange.

(Added to NRS by 1995, 2085; A 2001, 1413, 3199)

NRS 92A.230 Signing of articles of merger, conversion or exchange. Articles of merger, conversion or exchange must be signed by each foreign and domestic constituent entity as follows:

1. By an officer of a corporation, whether or not for profit;

2. By one of the general partners of a limited partnership;

3. By a manager of a limited-liability company with managers or by one member of a limited-liability company without managers;

4. By a trustee of a business trust; and
5. By one general partner of a general partnership.

(Added to NRS by 1995, 2085; A 1997, 730; 1999, 1630; 2001, 101, 1413, 2726, 3199; 2003, 48, 3186)

NRS 92A.240 Effective date and time of merger, conversion or exchange; articles of termination.

1. A merger, conversion or exchange takes effect:

(a) At the time of the filing of the articles of merger, conversion or exchange with the Secretary of State;

(b) Upon a later date and time as specified in the articles, which date must not be more than 90 days after the date on which the articles are filed; or

(c) If the articles specify a later effective date but do not specify an effective time, at 12:01 a.m. in the Pacific time zone on the specified later date.

2. If the filed articles of merger, conversion or exchange specify such a later effective date or effective date and time, the constituent entity or entities may file articles of termination before the effective time, setting forth:

(a) The name of each constituent entity and, for a conversion, the resulting entity; and

(b) That the merger, conversion or exchange has been terminated pursuant to the plan of merger, conversion or exchange.

3. The articles of termination must be signed in the manner provided in NRS 92A.230.

(Added to NRS by 1995, 2085; A 1999, 1630; 2001, 1413, 3199; 2003, 3187; 2011, 2814)

NRS 92A.250 Effect of merger, conversion or exchange.

1. When a merger takes effect:

(a) Every other entity that is a constituent entity merges into the surviving entity and the separate existence of every entity except the surviving entity ceases;

(b) The title to all real estate and other property owned by each merging constituent entity is vested in the surviving entity without reversion or impairment;

(c) An owner of a constituent entity remains liable for all the obligations of such constituent entity existing at the time of the merger to the extent the owner was liable before the merger;

(d) The surviving entity has all of the liabilities of each other constituent entity;

(e) A proceeding pending against any constituent entity may be continued as if the merger had not occurred or the surviving entity may be substituted in the proceeding for the entity whose existence has ceased;

(f) The articles of incorporation, articles of organization, certificate of limited partnership or certificate of trust of the surviving entity are amended to the extent provided in the plan of merger; and

(g) The owner's interests of each constituent entity that are to be converted into owner's interests, obligations or other securities of the surviving or any other entity or into cash or other property are converted, and the former holders of the owner's interests are entitled only to the rights provided in the articles of merger or any created pursuant to NRS 92A.300 to 92A.500, inclusive.

2. When an exchange takes effect, the owner's interests of each acquired entity are exchanged as provided in the plan, and the former holders of the owner's interests are entitled only to the rights provided in the articles of exchange or any rights created pursuant to NRS 92A.300 to 92A.500, inclusive.

3. When a conversion takes effect:

(a) The constituent entity is converted into the resulting entity and is governed by and subject to the law of the jurisdiction of the resulting entity;

(b) The conversion is a continuation of the existence of the constituent entity;

(c) The title to all real estate and other property owned by the constituent entity is vested in the resulting entity without reversion or impairment;

(d) The resulting entity has all the liabilities of the constituent entity;

(e) A proceeding pending against the constituent entity may be continued as if the conversion had not occurred or the resulting entity may be substituted in the proceeding for the constituent entity;

(f) The owner's interests of the constituent entity that are to be converted into the owner's interests of the resulting entity are converted;

(g) An owner of the resulting entity remains liable for all the obligations of the constituent entity existing at the time of the conversion to the extent the owner was liable before the conversion; and

(h) The domestic constituent entity is not required to wind up its affairs, pay its liabilities, distribute its assets or dissolve, and the conversion is not deemed a dissolution of the domestic constituent entity.

(Added to NRS by 1995, 2085; A 1999, 1630; 2001, 1413, 3199; 2015, 3243)

NRS 92A.260 Liability of owner after merger, conversion or exchange. An owner that is not personally liable for the debts, liabilities or obligations of the entity pursuant to the laws and constituent documents under which the entity was organized does not become personally liable for the debts, liabilities or obligations of the surviving entity or entities of the merger or exchange or the resulting entity of the conversion unless the owner consents to becoming personally liable by action taken in connection with the plan of merger, conversion or exchange.

(Added to NRS by 1995, 2081; A 2001, 1414, 3199)

NRS 92A.270 Domestication of undomesticated organization.

1. Any undomesticated organization may become domesticated in this State as a domestic entity by:

(a) Paying to the Secretary of State the fees required pursuant to this title for filing the charter document; and

(b) Filing with the Secretary of State:

(1) Articles of domestication which must be signed by an authorized representative of the undomesticated organization approved in compliance with subsection 6;

(2) The appropriate charter document for the type of domestic entity;

(3) The information required pursuant to NRS 77.310;

(4) A certified copy of the charter document, or the equivalent, if any, of the undomesticated organization; and

(5) A certificate of good standing, or the equivalent, from the jurisdiction where the undomesticated organization was chartered immediately before filing the articles of domestication pursuant to subparagraph (1).

2. The articles of domestication must set forth the:

(a) Date when and the jurisdiction where the undomesticated organization was first formed, incorporated, organized or otherwise created and, if applicable, any date when and jurisdiction where the undomesticated organization was chartered after its formation;

(b) Name of the undomesticated organization immediately before filing the articles of domestication;

(c) Name and type of domestic entity as set forth in its charter document pursuant to subsection 1; and

(d) Jurisdiction that constituted the principal place of business or central administration of the undomesticated organization, or any other equivalent thereto pursuant to applicable law, immediately before filing the articles of domestication.

3. Upon filing the articles of domestication and the charter document with the Secretary of State, and the payment of the requisite fee for filing the charter document of the domestic entity, the undomesticated organization is domesticated in this State as the domestic entity described in the charter document filed pursuant to subsection 1. The existence of the domestic entity begins on the date the undomesticated organization began its existence in the jurisdiction in which the undomesticated organization was first formed, incorporated, organized or otherwise created.

4. The domestication of any undomesticated organization does not affect any obligations or liabilities of the undomesticated organization incurred before its domestication.

5. The filing of the charter document of the domestic entity pursuant to subsection 1 does not affect the choice of law applicable to the undomesticated organization. From the date the charter document of the domestic entity is filed, the law of this State applies to the domestic entity to the same extent as if the undomesticated organization was organized and created as a domestic entity on that date.

6. Before filing articles of domestication, the domestication must be approved in the manner required by:

(a) The document, instrument, agreement or other writing governing the internal affairs of the undomesticated organization and the conduct of its business; and

(b) Applicable foreign law.

7. When a domestication becomes effective, all rights, privileges and powers of the undomesticated organization, all property owned by the undomesticated organization, all debts due to the undomesticated organization, and all causes of action belonging to the undomesticated organization are vested in the domestic entity and become the property of the domestic entity to the same extent as vested in the undomesticated organization immediately before domestication. The title to any real property vested by deed or otherwise in the undomesticated organization is not reverted or impaired by the domestication. All rights of creditors and all liens upon any property of the undomesticated organization are preserved unimpaired and all debts, liabilities and duties of an undomesticated organization that has been domesticated attach to the domestic entity resulting from the domestication and may be enforced against it to the same extent as if the debts, liability and duties had been incurred or contracted by the domestic entity.

8. When an undomesticated organization is domesticated, the domestic entity resulting from the domestication is for all purposes deemed to be the same entity as the undomesticated organization. Unless otherwise agreed by the owners of the undomesticated organization or as required pursuant to applicable foreign law, the domestic entity resulting from the domestication is not required to wind up its affairs, pay its liabilities or distribute its assets. The domestication of an undomesticated organization does not constitute the dissolution of the undomesticated organization. The domestication constitutes a continuation of the existence of the undomesticated organization in the form of a domestic entity. If, following domestication, an undomesticated organization that has become domesticated pursuant to this section continues its existence in the foreign country or foreign jurisdiction in which it was existing immediately before the domestication, the domestic entity and the undomesticated organization are for all purposes a single entity formed, incorporated, organized or otherwise created and existing pursuant to the laws of this State and the laws of the foreign country or other foreign jurisdiction. If, following domestication, an undomesticated organization that has become domesticated pursuant to this section does not continue its existence in the foreign country or foreign jurisdiction in which it existed immediately before the domestication, the domestic entity resulting from the domestication continues and is not required to wind up its affairs, pay its liabilities or distribute its assets.

9. The owner liability of an undomesticated organization that is domesticated in this State:

(a) Is not discharged, pursuant to the laws of the previous jurisdiction of the organization, to the extent the owner liability arose before the effective date of the articles of domestication;

(b) Does not attach, pursuant to the laws of the previous jurisdiction of the organization, to any debt, obligation or liability of the organization that arises after the effective date of the articles of domestication;

(c) Is governed by the law of the previous jurisdiction of the organization, as if the domestication has not occurred, for the collection or discharge of owner liability not discharged pursuant to paragraph (a);

(d) Is subject to the right of contribution from any other shareholder, member, trustee, partner, limited partner or other owner of the undomesticated organization pursuant to the laws of the previous jurisdiction of the organization, as if the domestication has not occurred, for the collection or discharge of owner liability not discharged pursuant to paragraph (a); and

(e) Applies only to the debts, obligations or liabilities of the organization that arise after the effective date of the articles of domestication if the owner becomes subject to owner liability or some or all of the debts, obligations or liabilities of the undomesticated entity as a result of its domestication in this State.

10. As used in this section:

(a) "Owner liability" means the liability of a shareholder, member, trustee, partner, limited partner or other owner of an organization for debts of the organization, including the responsibility to make additional capital contributions to cover such debts.

(b) "Undomesticated organization" means any incorporated organization, private law corporation, whether or not organized for business purposes, public law corporation, limited-liability company, general partnership, registered limited-liability partnership, limited partnership or registered limited-liability limited partnership, proprietorship, joint venture, foundation, business trust, real estate investment trust, common-law trust or any other unincorporated business formed, organized, created or the internal affairs of which are governed by the laws of any foreign country or jurisdiction other than this State.

(Added to NRS by 2001, 1405; A 2001, 3199; 2003, 3187; 2007, 2702; 2009, 1719, 2859; 2013, 1283)

NRS 92A.280 Cancellation of filings. If an entity has made a filing with the Secretary of State pursuant to this chapter and the Secretary of State has not processed the filing and placed the filing into the public record, the entity may cancel the filing by:

1. Filing a statement of cancellation with the Secretary of State; and
2. Paying a fee of $50.

(Added to NRS by 2009, 2859)

RIGHTS OF DISSENTING OWNERS

NRS 92A.300 Definitions. As used in NRS 92A.300 to 92A.500, inclusive, unless the context otherwise requires, the words and terms defined in NRS 92A.305 to 92A.335, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1995, 2086)

NRS 92A.305 "Beneficial stockholder" defined. "Beneficial stockholder" means a person who is a beneficial owner of shares held in a voting trust or by a nominee as the stockholder of record.
(Added to NRS by 1995, 2087)

NRS 92A.310 "Corporate action" defined. "Corporate action" means the action of a domestic corporation.
(Added to NRS by 1995, 2087)

NRS 92A.315 "Dissenter" defined. "Dissenter" means a stockholder who is entitled to dissent from a domestic corporation's action under NRS 92A.380 and who exercises that right when and in the manner required by NRS 92A.400 to 92A.480, inclusive.
(Added to NRS by 1995, 2087; A 1999, 1631)

NRS 92A.320 "Fair value" defined. "Fair value," with respect to a dissenter's shares, means the value of the shares determined:
1. Immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable;
2. Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and
3. Without discounting for lack of marketability or minority status.
(Added to NRS by 1995, 2087; A 2009, 1720)

NRS 92A.325 "Stockholder" defined. "Stockholder" means a stockholder of record or a beneficial stockholder of a domestic corporation.
(Added to NRS by 1995, 2087)

NRS 92A.330 "Stockholder of record" defined. "Stockholder of record" means the person in whose name shares are registered in the records of a domestic corporation or the beneficial owner of shares to the extent of the rights granted by a nominee's certificate on file with the domestic corporation.
(Added to NRS by 1995, 2087)

NRS 92A.335 "Subject corporation" defined. "Subject corporation" means the domestic corporation which is the issuer of the shares held by a dissenter before the corporate action creating the dissenter's rights becomes effective or the surviving or acquiring entity of that issuer after the corporate action becomes effective.
(Added to NRS by 1995, 2087)

NRS 92A.340 Computation of interest. Interest payable pursuant to NRS 92A.300 to 92A.500, inclusive, must be computed from the effective date of the action until the date of payment, at the rate of interest most recently established pursuant to NRS 99.040.
(Added to NRS by 1995, 2087; A 2009, 1721)

NRS 92A.350 Rights of dissenting partner of domestic limited partnership. A partnership agreement of a domestic limited partnership or, unless otherwise provided in the partnership agreement, an agreement of merger or exchange, may provide that contractual rights with respect to the partnership interest of a dissenting general or limited partner of a domestic limited partnership are available for any class or group of partnership interests in connection with any merger or exchange in which the domestic limited partnership is a constituent entity.
(Added to NRS by 1995, 2088)

NRS 92A.360 Rights of dissenting member of domestic limited-liability company. The articles of organization or operating agreement of a domestic limited-liability company or, unless otherwise provided in the articles of organization or operating agreement, an agreement of merger or exchange, may provide that contractual rights with respect to the interest of a dissenting member are available in connection with any merger or exchange in which the domestic limited-liability company is a constituent entity.
(Added to NRS by 1995, 2088)

NRS 92A.370 Rights of dissenting member of domestic nonprofit corporation.
1. Except as otherwise provided in subsection 2, and unless otherwise provided in the articles or bylaws, any member of any constituent domestic nonprofit corporation who voted against the merger may, without prior notice, but within 30 days after the effective date of the merger, resign from membership and is thereby excused from all contractual obligations to the constituent or surviving corporations which did not occur before the member's resignation and is thereby entitled to those rights, if any, which would have existed if there had been no merger and the membership had been terminated or the member had been expelled.
2. Unless otherwise provided in its articles of incorporation or bylaws, no member of a domestic nonprofit corporation, including, but not limited to, a cooperative corporation, which supplies services described in chapter 704 of NRS to its members only, and no person who is a member of a domestic nonprofit corporation as a condition of or by reason of the ownership of an interest in real property, may resign and dissent pursuant to subsection 1.
(Added to NRS by 1995, 2088)

NRS 92A.380 Right of stockholder to dissent from certain corporate actions and to obtain payment for shares.
1. Except as otherwise provided in NRS 92A.370 and 92A.390 and subject to the limitation in paragraph (f), any stockholder is entitled to dissent from, and obtain payment of the fair value of the stockholder's shares in the event of any of the following corporate actions:
(a) Consummation of a plan of merger to which the domestic corporation is a constituent entity:
(1) If approval by the stockholders is required for the merger by NRS 92A.120 to 92A.160, inclusive, or the articles of incorporation, regardless of whether the stockholder is entitled to vote on the plan of merger;
(2) If the domestic corporation is a subsidiary and is merged with its parent pursuant to NRS 92A.180; or
(3) If the domestic corporation is a constituent entity in a merger pursuant to NRS 92A.133.
(b) Consummation of a plan of conversion to which the domestic corporation is a constituent entity as the corporation whose subject owner's interests will be converted.

(c) Consummation of a plan of exchange to which the domestic corporation is a constituent entity as the corporation whose subject owner's interests will be acquired, if the stockholder's shares are to be acquired in the plan of exchange.

(d) Any corporate action taken pursuant to a vote of the stockholders to the extent that the articles of incorporation, bylaws or a resolution of the board of directors provides that voting or nonvoting stockholders are entitled to dissent and obtain payment for their shares.

(e) Accordance of full voting rights to control shares, as defined in NRS 78.3784, only to the extent provided for pursuant to NRS 78.3793.

(f) Any corporate action not described in this subsection pursuant to which the stockholder would be obligated, as a result of the corporate action, to accept money or scrip rather than receive a fraction of a share in exchange for the cancellation of all the stockholder's outstanding shares, except where the stockholder would not be entitled to receive such payment pursuant to NRS 78.205, 78.2055 or 78.207. A dissent pursuant to this paragraph applies only to the fraction of a share, and the stockholder is entitled only to obtain payment of the fair value of the fraction of a share.

2. A stockholder who is entitled to dissent and obtain payment pursuant to NRS 92A.300 to 92A.500, inclusive, must not challenge the corporate action creating the entitlement unless the action is unlawful or constitutes or is the result of actual fraud against the stockholder or the domestic corporation.

3. Subject to the limitations in this subsection, from and after the effective date of any corporate action described in subsection 1, no stockholder who has exercised the right to dissent pursuant to NRS 92A.300 to 92A.500, inclusive, is entitled to vote his or her shares for any purpose or to receive payment of dividends or any other distributions on shares. This subsection does not apply to dividends or other distributions payable to stockholders on a date before the effective date of any corporate action from which the stockholder has dissented. If a stockholder exercises the right to dissent with respect to a corporate action described in paragraph (f) of subsection 1, the restrictions of this subsection apply only to the shares to be converted into a fraction of a share and the dividends and distributions to those shares.

(Added to NRS by 1995, 2087; A 2001, 1414, 3199; 2003, 3189; 2005, 2204; 2007, 2438; 2009, 1721; 2011, 2814; 2019, 109)

NRS 92A.390 Limitations on right of dissent: Stockholders of certain classes or series; action of stockholders not required for plan of merger; shares of stock not issued and outstanding on date of first announcement of proposed action.

1. There is no right of dissent pursuant to paragraph (a), (b), (c) or (f) of subsection 1 of NRS 92A.380 in favor of stockholders of any class or series which is:

(a) A covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(1)(A) or (B), as amended;

(b) Traded in an organized market and has at least 2,000 stockholders and a market value of at least $20,000,000, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors and beneficial stockholders owning more than 10 percent of such shares; or

(c) Issued by an open end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., as amended, and which may be redeemed at the option of the holder at net asset value,

➥ unless the articles of incorporation of the corporation issuing the class or series or the resolution of the board of directors approving the plan of merger, conversion or exchange expressly provide otherwise.

2. The applicability of subsection 1 must be determined as of:

(a) The record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders to act upon the corporate action requiring dissenter's rights; or

(b) The day before the effective date of such corporate action if there is no meeting of stockholders.

3. Subsection 1 is not applicable and dissenter's rights are available pursuant to NRS 92A.380 for the holders of any class or series of shares who are required by the terms of the corporate action to accept for such shares anything other than:

(a) Cash;

(b) Any security or other proprietary interest of any other entity, including, without limitation, shares, equity interests or contingent value rights, that satisfies the standards set forth in subsection 1 at the time the corporate action becomes effective; or

(c) Any combination of paragraphs (a) and (b).

4. There is no right of dissent for any holders of stock of the surviving domestic corporation if the plan of merger does not require action of the stockholders of the surviving domestic corporation under NRS 92A.130.

5. There is no right of dissent for any holders of stock of the parent domestic corporation if the plan of merger does not require action of the stockholders of the parent domestic corporation under NRS 92A.180.

6. There is no right of dissent with respect to any share of stock that was not issued and outstanding on the date of the first announcement to the news media or to the stockholders of the terms of the proposed action requiring dissenter's rights.

(Added to NRS by 1995, 2088; A 2009, 1722; 2013, 1285; 2019, 110, 2495)

NRS 92A.400 Limitations on right of dissent: Assertion as to portions only to shares registered to stockholder; assertion by beneficial stockholder.

1. A stockholder of record may assert dissenter's rights as to fewer than all of the shares registered in his or her name only if the stockholder of record dissents with respect to all shares of the class or series beneficially owned by any one person and notifies the subject corporation in writing of the name and address of each person on whose behalf the stockholder of record asserts dissenter's rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which the partial dissenter dissents and his or her other shares were registered in the names of different stockholders.

2. A beneficial stockholder may assert dissenter's rights as to shares held on his or her behalf only if the beneficial stockholder:

(a) Submits to the subject corporation the written consent of the stockholder of record to the dissent not later than the time the beneficial stockholder asserts dissenter's rights; and

(b) Does so with respect to all shares of which he or she is the beneficial stockholder or over which he or she has power to direct the vote.

(Added to NRS by 1995, 2089; A 2009, 1723)

NRS 92A.410 Notification of stockholders regarding right of dissent.

1. If a proposed corporate action creating dissenter's rights is submitted to a vote at a stockholders' meeting, the notice of the meeting must state that stockholders are, are not or may be entitled to assert dissenter's rights under NRS 92A.300 to 92A.500, inclusive. If the domestic corporation concludes that dissenter's rights are or may be available, a copy of NRS 92A.300 to 92A.500, inclusive, must accompany the meeting notice sent to those stockholders of record entitled to exercise dissenter's rights.

2. If the corporate action creating dissenter's rights is taken by written consent of the stockholders or without a vote of the stockholders, the domestic corporation shall notify in writing all stockholders of record entitled to assert dissenter's rights that the action was taken and send them the dissenter's notice described in NRS 92A.430.

(Added to NRS by 1995, 2089; A 1997, 730; 2009, 1723; 2013, 1286; 2019, 111)

NRS 92A.420 Prerequisites to demand for payment for shares.

1. If a proposed corporate action creating dissenter's rights is submitted to a vote at a stockholders' meeting, a stockholder who wishes to assert dissenter's rights with respect to any class or series of shares:

(a) Must deliver to the subject corporation, before the vote is taken, written notice of the stockholder's intent to demand payment for his or her shares if the proposed action is effectuated; and

(b) Must not vote, or cause or permit to be voted, any of his or her shares of such class or series in favor of the proposed action.

2. If a proposed corporate action creating dissenter's rights is taken by written consent of the stockholders, a stockholder who wishes to assert dissenter's rights with respect to any class or series of shares must not consent to or approve the proposed corporate action with respect to such class or series.

3. A stockholder who does not satisfy the requirements of subsection 1 or 2 and NRS 92A.400 is not entitled to payment for his or her shares under this chapter.

(Added to NRS by 1995, 2089; A 1999, 1631; 2005, 2204; 2009, 1723; 2013, 1286)

NRS 92A.430 Dissenter's notice: Delivery to stockholders entitled to assert rights; contents.

1. The subject corporation shall deliver a written dissenter's notice to all stockholders of record entitled to assert dissenter's rights in whole or in part, and any beneficial stockholder who has previously asserted dissenter's rights pursuant to NRS 92A.400.

2. The dissenter's notice must be sent no later than 10 days after the effective date of the corporate action specified in NRS 92A.380, and must:

(a) State where the demand for payment must be sent and where and when certificates, if any, for shares must be deposited;

(b) Inform the holders of shares not represented by certificates to what extent the transfer of the shares will be restricted after the demand for payment is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to the news media or to the stockholders of the terms of the proposed action and requires that the person asserting dissenter's rights certify whether or not the person acquired beneficial ownership of the shares before that date;

(d) Set a date by which the subject corporation must receive the demand for payment, which may not be less than 30 nor more than 60 days after the date the notice is delivered and state that the stockholder shall be deemed to have waived the right to demand payment with respect to the shares unless the form is received by the subject corporation by such specified date; and

(e) Be accompanied by a copy of NRS 92A.300 to 92A.500, inclusive.

(Added to NRS by 1995, 2089; A 2005, 2205; 2009, 1724; 2013, 1286)

NRS 92A.440 Demand for payment and deposit of certificates; loss of rights of stockholder; withdrawal from appraisal process.

1. A stockholder who receives a dissenter's notice pursuant to NRS 92A.430 and who wishes to exercise dissenter's rights must:

(a) Demand payment;

(b) Certify whether the stockholder or the beneficial owner on whose behalf he or she is dissenting, as the case may be, acquired beneficial ownership of the shares before the date required to be set forth in the dissenter's notice for this certification; and

(c) Deposit the stockholder's certificates, if any, in accordance with the terms of the notice.

2. If a stockholder fails to make the certification required by paragraph (b) of subsection 1, the subject corporation may elect to treat the stockholder's shares as after-acquired shares under NRS 92A.470.

3. Once a stockholder deposits that stockholder's certificates or, in the case of uncertified shares makes demand for payment, that stockholder loses all rights as a stockholder, unless the stockholder withdraws pursuant to subsection 4.

4. A stockholder who has complied with subsection 1 may nevertheless decline to exercise dissenter's rights and withdraw from the appraisal process by so notifying the subject corporation in writing by the date set forth in the dissenter's notice pursuant to NRS 92A.430. A stockholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the subject corporation's written consent.

5. The stockholder who does not demand payment or deposit his or her certificates where required, each by the date set forth in the dissenter's notice, is not entitled to payment for his or her shares under this chapter.

(Added to NRS by 1995, 2090; A 1997, 730; 2003, 3189; 2009, 1724)

NRS 92A.450 Uncertificated shares: Authority to restrict transfer after demand for payment. The subject corporation may restrict the transfer of shares not represented by a certificate from the date the demand for their payment is received.

(Added to NRS by 1995, 2090; A 2009, 1725)

NRS 92A.460 Payment for shares: General requirements.

1. Except as otherwise provided in NRS 92A.470, within 30 days after receipt of a demand for payment pursuant to NRS 92A.440, the subject corporation shall pay in cash to each dissenter who complied with NRS 92A.440 the amount the subject corporation estimates to be the fair value of the dissenter's shares, plus accrued interest. The obligation of the subject corporation under this subsection may be enforced by the district court:

(a) Of the county where the subject corporation's principal office is located;

(b) If the subject corporation's principal office is not located in this State, in the county in which the corporation's registered office is located; or

(c) At the election of any dissenter residing or having its principal or registered office in this State, of the county where the dissenter resides or has its principal or registered office.

➥ The court shall dispose of the complaint promptly.

2. The payment must be accompanied by:

(a) The subject corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, a statement of income for that year, a statement of changes in the stockholders' equity for that year or, where such financial statements are not reasonably available, then such reasonably equivalent financial information and the latest available quarterly financial statements, if any;

(b) A statement of the subject corporation's estimate of the fair value of the shares; and

(c) A statement of the dissenter's rights to demand payment under NRS 92A.480 and that if any such stockholder does not do so within the period specified, such stockholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under this chapter.

(Added to NRS by 1995, 2090; A 2007, 2704; 2009, 1725; 2013, 1287)

NRS 92A.470 Withholding payment for shares acquired on or after date of dissenter's notice: General requirements.

1. A subject corporation may elect to withhold payment from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenter's notice as the first date of any announcement to the news media or to the stockholders of the terms of the proposed action.

2. To the extent the subject corporation elects to withhold payment, within 30 days after receipt of a demand for payment pursuant to NRS 92A.440, the subject corporation shall notify the dissenters described in subsection 1:

(a) Of the information required by paragraph (a) of subsection 2 of NRS 92A.460;

(b) Of the subject corporation's estimate of fair value pursuant to paragraph (b) of subsection 2 of NRS 92A.460;

(c) That they may accept the subject corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under NRS 92A.480;

(d) That those stockholders who wish to accept such an offer must so notify the subject corporation of their acceptance of the offer within 30 days after receipt of such offer; and

(e) That those stockholders who do not satisfy the requirements for demanding appraisal under NRS 92A.480 shall be deemed to have accepted the subject corporation's offer.

3. Within 10 days after receiving the stockholder's acceptance pursuant to subsection 2, the subject corporation shall pay in cash the amount offered under paragraph (b) of subsection 2 to each stockholder who agreed to accept the subject corporation's offer in full satisfaction of the stockholder's demand.

4. Within 40 days after sending the notice described in subsection 2, the subject corporation shall pay in cash the amount offered under paragraph (b) of subsection 2 to each stockholder described in paragraph (e) of subsection 2.

(Added to NRS by 1995, 2091; A 2009, 1725; 2013, 1287)

NRS 92A.480 Dissenter's estimate of fair value: Notification of subject corporation; demand for payment of estimate.

1. A dissenter paid pursuant to NRS 92A.460 who is dissatisfied with the amount of the payment may notify the subject corporation in writing of the dissenter's own estimate of the fair value of his or her shares and the amount of interest due, and demand payment of such estimate, less any payment pursuant to NRS 92A.460. A dissenter offered payment pursuant to NRS 92A.470 who is dissatisfied with the offer may reject the offer pursuant to NRS 92A.470 and demand payment of the fair value of his or her shares and interest due.

2. A dissenter waives the right to demand payment pursuant to this section unless the dissenter notifies the subject corporation of his or her demand to be paid the dissenter's stated estimate of fair value plus interest under subsection 1 in writing within 30 days after receiving the subject corporation's payment or offer of payment under NRS 92A.460 or 92A.470 and is entitled only to the payment made or offered.

(Added to NRS by 1995, 2091; A 2009, 1726)

NRS 92A.490 Legal proceeding to determine fair value: Duties of subject corporation; powers of court; rights of dissenter.

1. If a demand for payment pursuant to NRS 92A.480 remains unsettled, the subject corporation shall commence a proceeding within 60 days after receiving the demand and petition the court to determine the fair value of the shares and accrued interest. If the subject corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded by each dissenter pursuant to NRS 92A.480 plus interest.

2. A subject corporation shall commence the proceeding in the district court of the county where its principal office is located in this State. If the principal office of the subject corporation is not located in this State, the right to dissent arose from a merger, conversion or exchange and the principal office of the surviving entity, resulting entity or the entity whose shares were acquired, whichever is applicable, is located in this State, it shall commence the proceeding in the county where the principal office of the surviving entity, resulting entity or the entity whose shares were acquired is located. In all other cases, if the principal office of the subject corporation is not located in this State, the subject corporation shall commence the proceeding in the district court in the county in which the corporation's registered office is located.

3. The subject corporation shall make all dissenters, whether or not residents of Nevada, whose demands remain unsettled, parties to the proceeding as in an action against their shares. All parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

4. The jurisdiction of the court in which the proceeding is commenced under subsection 2 is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the powers described in the order appointing them, or any amendment thereto. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

5. Each dissenter who is made a party to the proceeding is entitled to a judgment:

(a) For the amount, if any, by which the court finds the fair value of the dissenter's shares, plus interest, exceeds the amount paid by the subject corporation; or

(b) For the fair value, plus accrued interest, of the dissenter's after-acquired shares for which the subject corporation elected to withhold payment pursuant to NRS 92A.470.

(Added to NRS by 1995, 2091; A 2007, 2705; 2009, 1727; 2011, 2815; 2013, 1288)

NRS 92A.500 Assessment of costs and fees in certain legal proceedings.

1. The court in a proceeding to determine fair value shall determine all of the costs of the proceeding, including the reasonable compensation and expenses of any appraisers appointed by the court. The court shall assess the costs against the subject corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously or not in good faith in demanding payment.

2. The court may also assess the fees and expenses of the counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the subject corporation and in favor of all dissenters if the court finds the subject corporation did not substantially comply with the requirements of NRS 92A.300 to 92A.500, inclusive; or

(b) Against either the subject corporation or a dissenter in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by NRS 92A.300 to 92A.500, inclusive.

3. If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the subject corporation, the court may award to those counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

4. In a proceeding commenced pursuant to NRS 92A.460, the court may assess the costs against the subject corporation, except that the court may assess costs against all or some of the dissenters who are parties to the proceeding, in amounts the court finds equitable, to the extent the court finds that such parties did not act in good faith in instituting the proceeding.

5. To the extent the subject corporation fails to make a required payment pursuant to NRS 92A.460, 92A.470 or 92A.480, the dissenter may bring a cause of action directly for the amount owed and, to the extent the dissenter prevails, is entitled to recover all expenses of the suit.

6. This section does not preclude any party in a proceeding commenced pursuant to NRS 92A.460 or 92A.490 from applying the provisions of NRS 17.117 or N.R.C.P. 68.

(Added to NRS by 1995, 2092; A 2009, 1727; 2015, 2566; 2019, 276)