PURPOSE: Completion of the information in this cover sheet will help expedite the WSBA Legislative Review Committee’s review and approval process of potential Bar-request legislation. Of particular importance is information related to draft development and stakeholder work.

Short title of proposal: Proposed Amendments to Washington Business Corporation Act (“WBCA”) regarding holding company reorganization transactions and stock splits

Submitted by (Section): Corporate Act Revision Committee of Business Law Section (“CARC”)

Designated Section representative and contact information (phone and email):
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Brief summary of bill and anticipated fiscal impact:
The proposed amendments would:

- Amend the WBCA (RCW 23B) to add a provision enabling Washington corporations to effect holding company reorganization transactions without obtaining shareholder approval or triggering dissenters’ rights; and
- Amend Chapter 6 of the WBCA to clarify the mechanics for effecting forward and reverse stock splits and make correlative changes in other sections

More detail on the proposed changes is included in CARC’s memo to the Committee.

CARC believes there will be no fiscal impact will result from the proposed changes.

Brief statement of need:
CARC continues to review the WBCA and propose changes designed to both modernize the WBCA where appropriate and to align the WBCA with the Model Business Corporation Act (2016 Revision) and desirable changes to the Delaware General Corporation Law. CARC believes the proposed changes would (1) help achieve this objective, (2) clarify ambiguous or eliminate unnecessary provisions, and (3) help Washington business law practitioners in advising Washington corporations.

Description of draft development: (please provide detail)
The changes were originally drafted by CARC members and presented to the committee for its consideration beginning in late 2021. After deliberations and multiple revisions over the course of several meetings, CARC approved the proposed changes in the first half of 2022. The Executive Committee of the Business Law Section approved the proposed changes in its meeting held on [______________].

How does the proposal meet requirements under GR 12.2? (please explain)
CARC believes the proposal contributes to the WSBA’s objective of promoting an effective legal system and allows the bar to maintain a legislative presence to ensure that the Washington Business Corporation Act continues to effectively serve the needs of the state’s business community.

1 For purposes of this document, “Section” means any WSBA Section, Committee, Division, or Council.
Submittal Status:

1. Has this proposal been submitted to the Committee before? Yes ☐ No ☑
   *(If no, skip the remainder of this section, and move to the Stakeholder Work on the next page.)*

2. If yes, when was this proposal initially submitted to the Committee?

3. Briefly, please provide the following:
   (a) What concerns or questions were raised (including requests for additional information) by the Committee previously?

   (b) How this proposal addresses those concerns, questions, or additional information requests made by the Committee?

   (d) Is there additional information relevant to the status of the proposal?

Summary of Stakeholder Work

*Please describe completed and ongoing activity with internal and external partners*

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<td>Rep. Drew Hansen, Chair, House Civil Rights &amp; Judiciary Committee</td>
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Summary of Additional Stakeholder Input
*Please describe other anticipated stakeholder feedback regarding the proposal.
This memorandum summarizes proposed changes to the Washington Business Corporation Act, Title 23B of the Revised Code of Washington (WBCA), relating to two general topics:

- Holding company reorganization transactions (summarized in Section A of this memorandum); and
- Stock splits (summarized in Section B of this memorandum).

CARC is also proposing some minor technical clarifications that are unrelated to these topics, and which are summarized in Section C of this memorandum.

A. Enabling Holding Company Reorganization Transactions

A holding company reorganization is a transaction in which a new parent corporation becomes the sole shareholder of an existing corporation (typically an operating company), through a merger process involving a third affiliated corporation formed solely to effect the reorganization. The end result is that the shareholders of the original operating company become shareholders of the new holding company, and the operating company becomes a wholly-owned subsidiary of the new holding company.

This transaction is a useful mechanism by which corporations facilitate the future disposition of corporate assets, better match asset ownership with asset management, or provide greater protection against liability exposure between operating subsidiaries.

The current merger provisions of the WBCA require shareholder approval and provide for dissenters’ rights for these transactions. This makes it more difficult and costly for Washington corporations to enter into holding company reorganization transactions, placing Washington corporations at a relative disadvantage to those in Delaware, where corporations have been empowered to create new holding companies without shareholder approval and without triggering dissenters’ rights.

Like the current WBCA, the Model Business Corporation Act, on which the WBCA is based, requires shareholder approval and provides for dissenters’ rights for holding company reorganization mergers. However, several states (including some Model Act states) have adopted holding company reorganization provisions substantially similar to Delaware’s holding company statute, including Florida, Minnesota, Missouri, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, and Texas.

CARC recommends Washington follow Delaware’s lead and is proposing to add a holding company reorganization merger provision modeled after Delaware’s provision, which would enable Washington
corporations to enter into these transactions without obtaining shareholder approval or triggering dissenters’ rights.

To accomplish a holding company reorganization under the proposed new provision, an existing corporation (referred to as the “parent constituent corporation”) forms a direct wholly-owned subsidiary (referred to as the “holding company”) and a second corporation that is a direct wholly-owned subsidiary of the newly formed holding company (referred to as the “subsidiary constituent corporation”). The reorganization transaction is effected when the parent constituent corporation merges with or into the subsidiary constituent corporation, and as a result of the transaction the holding company ends up as the parent of the surviving corporation. As long as the requirements of the new provision are met, the transaction is not subject to approval by the parent constituent corporation’s shareholders, nor does it give rise to dissenters’ rights under Chapter 13 of the WBCA.

The proposed provision includes important protections (consistent with Delaware’s statute), such as the following:

- The parent constituent corporation and the other constituent corporation must all be Washington corporations;
- The parent constituent corporation and the subsidiary constituent corporation are the only parties to the transaction;
- Each share of the parent constituent corporation is converted into a share of the holding company having the same designations and relative preferences, rights and limitations;
- The organizational documents of the surviving corporation must contain provisions that would preserve the rights of the parent constituent corporation’s shareholders to approve transactions that would have required shareholder approval had the holding company reorganization not taken place;
- The directors of the parent constituent corporation remain the directors of the holding company immediately after the transaction; and
- The shareholders of the of the parent constituent corporation will not recognize gain or loss for United States federal income tax purposes as a result of the transaction.

These protections are designed to ensure that the shareholders of a corporation undergoing a holding company reorganization retain the same shareholder rights and the same percentage ownership of the holding company as they did prior to the reorganization transaction.

The proposed new holding company reorganization provision is shown in Appendix A.

B. Clarification of Stock Splits

A forward stock split occurs when a company issues additional shares of stock to its current shareholders, increasing the total number of outstanding shares by a specified ratio based on the shares they held previously, and as a result, proportionally decreasing the per share price or value of the stock. Companies often undergo forward stock splits when the per share price of its stock is quite high, making it less expensive for investors to acquire new shares, or to result in greater liquidity for the stock.
A reverse stock split is the opposite of a forward stock split. A company carrying out a reverse stock split decreases the number of its outstanding shares, and as a result the share price or value per share increases proportionately. As with a forward stock split, the overall market value of the company after a reverse stock split remains the same.

Washington corporations historically have engaged in both forward stock splits and reverse stock splits. However, the WBCA generally does not explicitly address stock splits (either in regard to mechanics, record dates or related matters). Subsection (4) of Section 23B.10.020, a provision that authorizes an amendment to the articles that effects a forward or reverse stock split that is approved by the board alone (assuming the corporation has only one class of stock outstanding), is the only place in the WBCA that touches on the mechanics of a stock split. Although that section implies that stock splits require an amendment to a corporation’s articles of incorporation, CARC believes that some practitioners are not necessarily aware that a forward stock split (in contrast to a stock dividend, which involves the distribution of authorized but unissued shares as a dividend on outstanding shares) and a reverse stock split can only be effectuated through an amendment to the articles or incorporation. Moreover, nothing in the WBCA addresses record dates for stock splits.

Neither Delaware corporate law nor the MBCA substantively address the mechanics of forward and reverse stock splits or other important ancillary issues like record dates. However, CARC believes it would be helpful to Washington corporations, boards of directors, shareholders and legal practitioners to address forward and reverse stock splits more comprehensively in the WBCA. For example, CARC believes the WBCA should be clearer that a forward or reverse stock split is effectuated by means of an amendment to the articles of incorporation, as well as how the record date for a stock split is determined.

Accordingly, CARC is proposing a number of changes to the WBCA regarding stock splits, including (1) adding definitions of “forward stock split” and “reverse stock split”; (2) adding a new section governing stock splits that clarifies the mechanics for implementing a stock split; and (3) make certain non-substantive corresponding changes to Sections 23B.10.020(4) and 23B.06.210.

The proposed changes to the WBCA to clarify stock splits is shown in Appendix B and are marked against the current version of the relevant sections of the WBCA.

C. Technical Clarifications

CARC is proposing some minor technical changes to Section 23B.11.030 that would clarify when shareholder approval of a plan of merger or share exchange is not required. These proposed changes, shown in Appendix C, are consistent with other provisions of the WBCA regarding shareholder approval.

* * * *
APPENDIX A

Proposed new section of the WBCA to enable holding company reorganization transactions.

23B.11.[090]. MERGER TO EFFECT A HOLDING COMPANY REORGANIZATION

(1) As used in this section:

(a) “Holding company” means the corporation that is or becomes the direct parent of the surviving corporation of a merger accomplished under this section and whose capital stock is issued in that merger;

(b) “Parent constituent corporation” means the parent corporation that merges with or into the subsidiary constituent corporation in the merger; and

(c) “Subsidiary constituent corporation” means the subsidiary corporation that the parent constituent corporation merges with or into in the merger.

(2) Unless the articles of incorporation provide otherwise, a parent constituent corporation may merge with or into a single indirect wholly owned subsidiary of the parent constituent corporation without the approval of the plan of merger by the shareholders of the parent constituent corporation if:

(a) The plan expressly permits or requires the merger to be effected under this subsection;

(b) The holding company and the constituent corporations to the merger are each organized under this title;

(c) At all times from its incorporation until consummation of a merger under this section, the holding company was a direct wholly owned subsidiary of the parent constituent corporation;

(d) Immediately before consummation of a merger under this section, the subsidiary constituent corporation is a direct wholly owned subsidiary of the holding company and an indirect wholly owned subsidiary of the parent constituent corporation;

(e) The parent constituent corporation and the subsidiary constituent corporation are the only constituent entities to the merger;

(f) Immediately after the merger becomes effective, the survivor of the merger becomes or remains a direct wholly owned subsidiary of the holding company;

(g) Each share or fraction of a share of the parent constituent corporation outstanding immediately before the merger becomes effective is converted in the merger into a share or equal fraction of a share of the holding company having the same designations and relative preferences, rights and limitations as the share or fraction of a share of the parent constituent corporation being converted in the merger;

(h) The articles of incorporation and bylaws of the holding company immediately after the merger becomes effective contain provisions identical to the articles of incorporation and bylaws of the parent constituent corporation immediately before the merger becomes effective, other than any provisions regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors and the initial subscribers for shares, and the provisions contained in any amendment to the articles of incorporation of the parent constituent corporation that were
necessary to effect an exchange, reclassification, or cancellation of shares if the exchange, reclassification, or cancellation has become effective;

(i) The articles of incorporation and bylaws of the survivor immediately after the merger becomes effective contain provisions by specific reference to this subsection requiring that any corporate action by or involving the survivor, other than the election or removal of directors of the survivor, must be approved by the shareholders of the holding company (or any successor by merger) by the same vote as is required by this title or under the articles of incorporation or bylaws of the parent constituent corporation immediately before the merger becomes effective, if that corporate action would have required the approval of the shareholders of the parent constituent corporation under this title or under the articles of incorporation or bylaws of the parent constituent corporation immediately before the merger becomes effective;

(j) The directors of the parent constituent corporation immediately before the merger becomes effective become or remain the directors of the holding company immediately after the merger becomes effective; and

(k) The shareholders of the parent constituent corporation will not recognize gain or loss for United States federal income tax purposes as a result of the merger, as determined by the board of directors of the parent constituent corporation.

(3) The holding company must, promptly after the effective date of a merger effected under subsection (2) of this section, notify each person who was a shareholder of the parent constituent corporation as of the date the board of directors approves the merger that the merger has become effective. The notice must contain or be accompanied by a copy of the plan of merger or a summary of the material terms and conditions of the merger and the consideration to be received by those shareholders.

(4) To the extent restrictions under chapter 23B.19 RCW applied to the parent constituent corporation or any of its shareholders at the effective time of the merger, those restrictions apply to the holding company and its shareholders immediately after the merger becomes effective as though the holding company were the parent constituent corporation, and all shares of stock of the holding company acquired in the merger will, for purposes of chapter 23B.19 RCW, be deemed to have been acquired at the time that the corresponding shares of stock of the parent constituent corporation were acquired. No shareholder who, immediately before the merger becomes effective, was not an acquiring person of the parent constituent corporation will, solely by reason of the merger, become an acquiring person of the holding company.

(5) To the extent a shareholder of the parent constituent corporation immediately before the merger was eligible to commence a proceeding in the right of the parent constituent corporation in accordance with RCW 23B.07.400, nothing in this section is to be deemed to limit or extinguish that eligibility.

(6) Except as provided in subsections (2), (3), (4) and (5) of this section, a merger between a parent constituent corporation and a subsidiary constituent corporation will be governed by the provisions of this chapter applicable to mergers generally.

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APPENDIX B

Proposed changes to the WBCA related to stock splits and related provisions.

The specific amendments proposed by CARC are shown below, marked to show changes compared to the WBCA provisions as currently in effect.

[Proposed new language is indicated by underscored and proposed deletions are shown by strikeout]

RCW 23B.01.400 Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

***

(XX) “Forward stock split” means the pro rata division of all the outstanding shares of a class of stock into a greater number of shares of the same class, whether or not the authorized shares of such class are increased in the same proportion, but does not include a share dividend under RCW 23B.06.230.

(XX) “Reverse stock split” means the pro rata combination of all the outstanding shares of a class of stock into a smaller number of shares of the same class, whether or not the authorized shares of such class are reduced in the same proportion.

(XX) “Stock split” means a forward stock split or a reverse stock split.

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RCW 23B.06.230 Stock splits.

(1) A corporation may effect a stock split by means of an amendment to the articles of incorporation stating the effect of the stock split on the outstanding shares of the affected class.

(2) An amendment to the articles of incorporation to effect a stock split may, but is not required to, include a change in the authorized shares of the affected class.

(3) Except for a forward stock split that complies with RCW 23B.10.020(4)(a) or a reverse stock split that complies with RCW 23B.10.020(b), an amendment to the articles of incorporation to effect a stock split must be approved in accordance with RCW 23B.10.030 and, if applicable, RCW 23B.10.040.

(4) The board of directors may fix the record date for determining shareholders affected by a stock split, which date may not precede the date on which the amendment to the articles of incorporation effecting the stock split becomes effective in accordance with RCW 23.95.210. If the board of directors does not fix the record date for determining shareholders affected by a stock split, the record date is the date on which the amendment to the articles of incorporation effecting the stock split becomes effective in accordance with RCW 23.95.210.
RCW 23B.06.210 Issuance of shares.

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(2) Any issuance of shares must be approved by the board of directors. Shares may be issued [a] for consideration determined by the board of directors from time to time consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation, or (b) as a share dividend or upon a stock split, reclassification of outstanding shares into shares of another class or series, or conversion of outstanding shares into shares of another class or series.

(3) A good faith determination by the board of directors that the consideration received or to be received for the shares to be issued is adequate is conclusive insofar as the adequacy of consideration relates to whether the shares are validly issued, fully paid and nonassessable. When the board of directors has made such a determination and the corporation has received the consideration, the shares issued therefor are fully paid and nonassessable. Shares issued as a share dividend or upon a stock split, reclassification of outstanding shares into shares of another class or series, or conversion of outstanding shares into shares of another class or series are fully paid and nonassessable.

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RCW 23B.10.020 Amendment of articles of incorporation by board of directors.

***

(4) If the corporation has only one class of shares outstanding, solely to:

(a) Effect a forward stock split of, or change the number of authorized shares of that class in proportion to a forward stock split of, or stock share dividend in, the corporation's outstanding shares; or

(b) Effect a reverse stock split of the corporation's outstanding shares and if the number of authorized shares of that class in the same proportions is proportionately reduced by the amendment;

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APPENDIX C

Proposed technical changes to RCW 23B.11.030 to clarify then shareholder approval of a plan of merger or share exchange is not required.

The specific amendments proposed by CARC are shown below, marked to show changes compared to the WBCA provisions as currently in effect.

[Proposed new language is indicated by underscoring and proposed deletions are shown by strikeout]

RCW 23B.11.030 Approval of plan or merger or share exchange.

(1) After adopting a plan of merger or share exchange has been adopted in accordance with RCW 23B.11.040 or RCW 23B.11.020, the board of directors of each corporation party to the merger, and/or the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection (7) or subsection (9) of this section or as provided in RCW 23B.11.040, or plan of share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved by shareholders:

(a) The board of directors must recommend that the shareholders approve the plan of merger or share exchange to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should not make such a recommendation or (ii) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and

(b) The shareholders entitled to vote must approve the plan, except as provided in subsection (7) of this section.

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BILL Req. #: Z-0118.1/23

ATTY/TYPIST: CC:eab

BRIEF DESCRIPTION: Making updates to the Washington business corporation act.
AN ACT Relating to making updates to the Washington business corporation act; amending RCW 23B.01.400, 23B.06.210, and 23B.10.020; adding a new section to chapter 23B.06 RCW; and adding a new section to chapter 23B.11 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 23B.01.400 and 2022 c 42 s 101 are each amended to read as follows:

(Unless the context clearly requires otherwise, the) The definitions in this section apply throughout this title unless the context clearly requires otherwise.

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

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

(3) "Conspicuous" means so prepared that a reasonable person against whom the writing is to operate should have noticed it. For example, text in italics, boldface, contrasting color, capitals, or underlined is conspicuous.

(4) "Controlling interest" means ownership of an entity's outstanding shares or interests in such number as to entitle the holder at the time to elect a majority of the entity's directors or
other governors without regard to voting power which may thereafter
exist upon a default, failure, or other contingency.

(5) "Corporate action" means any resolution, act, policy,
contract, transaction, plan, adoption or amendment of articles of
incorporation or bylaws, or other matter approved by or submitted for
approval to a corporation's incorporators, board of directors or a
committee thereof, or shareholders.

(6) "Corporation" or "domestic corporation" means a corporation
for profit, including a social purpose corporation, which is not a
foreign corporation, incorporated under or subject to the provisions
of this title.

(7) "Deliver" or "delivery" means any method of delivery used in
conventional commercial practice, including delivery by hand, mail,
commercial delivery, and, if authorized in accordance with RCW
23B.01.410, by electronic transmission.

(8) "Distribution" means a direct or indirect transfer of money
or other property, except its own shares, or incurrence of
indebtedness by a corporation to or for the benefit of its
shareholders in respect to any of its shares. A distribution may be
in the form of a declaration or payment of a dividend; a distribution
in partial or complete liquidation, or upon voluntary or involuntary
dissolution; a purchase, redemption, or other acquisition of shares;
a distribution of indebtedness; or otherwise.

(9) "Document" means:

(a) Any tangible medium on which information is inscribed, and
includes handwritten, typed, printed, or similar instruments or
copies of such instruments; and

(b) An electronic record.

(10) "Electronic" means relating to technology having electrical,
digital, magnetic, wireless, optical, electromagnetic, or similar
capabilities.

(11) "Electronic mail" means an electronic transmission directed
to a unique electronic mail address, which electronic mail will be
deemed to include any files attached thereto and any information
hyperlinked to a website if the electronic mail includes the contact
information of an officer or agent of the corporation who is
available to assist with accessing such files and information.

(12) "Electronic mail address" means a destination, commonly
expressed as a string of characters, consisting of a unique user name
or mailbox, commonly referred to as the "local part" of the address,
and a reference to an internet domain, commonly referred to as the
"domain part" of the address, whether or not displayed, to which
electronic mail can be sent or delivered.

(13) "Electronic record" means information that is stored in an
electronic or other nontangible medium and: (a) Is retrievable in
paper form by the recipient through an automated process used in
conventional commercial practice; or (b) if not retrievable in paper
form by the recipient through an automated process used in
conventional commercial practice, is otherwise authorized in
accordance with RCW 23B.01.410(10).

(14) "Electronic transmission" or "electronically transmitted"
means internet transmission, telephonic transmission, electronic mail
transmission, transmission of a telegram, cablegram, or datagram, the
use of, or participation in, one or more electronic networks or
databases including one or more distributed electronic networks or
databases, or any other form or process of communication, not
directly involving the physical transfer of paper or another tangible
medium, which:

(a) Is suitable for the retention, retrieval, and reproduction of
information by the recipient; and
(b) Is retrievable in paper form by the recipient through an
automated process used in conventional commercial practice, or, if
not retrievable in paper form by the recipient through an automated
process used in conventional commercial practice, is otherwise
authorized in accordance with RCW 23B.01.410(10).

(15) "Employee" includes an officer but not a director. A
director may accept duties that make the director also an employee.

(16) "Entity" includes a corporation and foreign corporation,
not-for-profit corporation, business trust, estate, trust,
partnership, limited liability company, association, joint venture,
two or more persons having a joint or common economic interest, the
state, United States, and a foreign governmental subdivision, agency,
or instrumentality, or any other legal or commercial entity.

(17) "Execute," "executes," or "executed" means, with present
intent to authenticate or adopt a document:
(a) To sign or adopt a tangible symbol to the document, and
includes any manual, facsimile, or conformed signature;
(b) To attach or logically associate with an electronic
transmission an electronic sound, symbol, or process, and includes an
electronic signature; or
With respect to a document to be filed with the secretary of state, in compliance with the standards for filing with the office of the secretary of state as prescribed by the secretary of state.

(18) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(19) "Foreign limited partnership" means a partnership formed under laws other than of this state and having as partners one or more general partners and one or more limited partners.

(20) "General social purpose" means the general social purpose for which a social purpose corporation is organized as set forth in the articles of incorporation of the corporation in accordance with RCW 23B.25.040(1)(c).

(21) "Governmental subdivision" includes authority, county, district, and municipality.

(22) "Governor" has the meaning given that term in RCW 23.95.105.

(23) "Includes" denotes a partial definition.

(24) "Individual" includes the estate of an incompetent or deceased individual.

(25) "Limited partnership" or "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(26) "Means" denotes an exhaustive definition.

(27) "Notice" has the meaning provided in RCW 23B.01.410.

(28) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(29) "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

(30) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(31) "Public company" means a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 or 15 of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute.

(32) "Qualified director" means (a) with respect to a director's conflicting interest transaction as defined in RCW 23B.08.700, any
director who does not have either (i) a conflicting interest respecting the transaction, or (ii) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction; (b) with respect to RCW 23B.08.735, a qualified director under (a) of this subsection if the business opportunity were a director's conflicting interest transaction; and (c) with respect to RCW 23B.02.020(2)(g), a director who is not a director (i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply, or (ii) who has a familial, financial, professional, or employment relationship with another officer to whom the limitation or elimination would apply, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the limitation or elimination.

(33) "Record date" means the date fixed for determining the identity of a corporation's shareholders and their shareholdings for purposes of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(34) "Registered office" means the address of the corporation's registered agent.

(35) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under RCW 23B.08.400(3) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(36) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(37) "Shares" means the units into which the proprietary interests in a corporation are divided.

(38) "Social purpose" includes any general social purpose and any specific social purpose.

(39) "Social purpose corporation" means a corporation that has elected to be governed as a social purpose corporation under chapter 23B.25 RCW.

Code Rev/CC:eab
"Specific social purpose" means the specific social purpose or purposes for which a social purpose corporation is organized as set forth in the articles of incorporation of the corporation in accordance with RCW 23B.25.040(2)(a).

"State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

"Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

"Subsidiary" means an entity in which the corporation has, directly or indirectly, a controlling interest.

"United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

"Voting group" means all shares of one or more classes or series that under the articles of incorporation or this title are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this title to vote generally on the matter are for that purpose a single voting group.

"Writing" or "written" means any information in the form of a document.

"Forward stock split" means the pro rata division of all the outstanding shares of a class of stock into a greater number of shares of the same class, whether or not the authorized shares of such a class are increased in the same proportion, but does not include a share dividend under RCW 23B.06.230.

"Reverse stock split" means the pro rata combination of all the outstanding shares of a class of stock into a smaller number of shares of the same class, whether or not the authorized shares of such a class are reduced in the same proportion.

"Stock split" means a forward stock split or a reverse stock split.

Sec. 2. RCW 23B.06.210 and 2009 c 189 s 8 are each amended to read as follows:

(1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.
(2) Any issuance of shares must be approved by the board of directors. Shares may be issued:

(a) For consideration determined by the board of directors from time to time consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation; or

(b) As a share dividend or upon a stock split, reclassification of outstanding shares into shares of another class or series, or conversion of outstanding shares into shares of another class or series.

(3) A good faith determination by the board of directors that the consideration received or to be received for the shares to be issued is adequate is conclusive insofar as the adequacy of consideration relates to whether the shares are validly issued, fully paid and nonassessable. When the board of directors has made such a determination and the corporation has received the consideration, the shares issued therefor are fully paid and nonassessable. Shares issued as a share dividend or upon a stock split, reclassification of outstanding shares into shares of another class or series, or conversion of outstanding shares into shares of another class or series are fully paid and nonassessable.

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

(5) Where it cannot be determined that outstanding shares are fully paid and nonassessable, there shall be a conclusive presumption that such shares are fully paid and nonassessable if the board of directors makes a good faith determination that there is no substantial evidence that the full consideration for such shares has not been paid.

NEW SECTION. Sec. 3. A new section is added to chapter 23B.06 RCW to read as follows:
(1) A corporation may effect a stock split by means of an amendment to the articles of incorporation stating the effect of the stock split on the outstanding shares of the affected class.

(2) An amendment to the articles of incorporation to effect a stock split may, but is not required to, include a change in the authorized shares of the affected class.

(3) Except for a forward stock split that complies with RCW 23B.10.020(4)(a) or a reverse stock split that complies with RCW 23B.10.020(4)(b), an amendment to the articles of incorporation to effect a stock split must be approved in accordance with RCW 23B.10.030 and, if applicable, RCW 23B.10.040.

(4) The board of directors may fix the record date for determining shareholders affected by a stock split, which date may not precede the date on which the amendment to the articles of incorporation effecting the stock split becomes effective in accordance with RCW 23.95.210. If the board of directors does not fix the record date for determining shareholders affected by a stock split, the record date is the date on which the amendment to the articles of incorporation effecting the stock split becomes effective in accordance with RCW 23.95.210.

Sec. 4. RCW 23B.10.020 and 2009 c 189 s 31 are each amended to read as follows:

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder approval:

(1) If the corporation has only one class of shares outstanding, to provide, change, or eliminate any provision with respect to the par value of any class of shares;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;

(4) If the corporation has only one class of shares outstanding, solely to:

(a) Effect a forward stock split of, or change the number of authorized shares of that class in proportion to a forward stock split of, or (stock) share dividend in, the corporation's outstanding shares; or
(b) Effect a reverse **stock** split of the corporation's outstanding shares \((\text{and})\) if the number of authorized shares of that class \((\text{in the same proportions})\) **is proportionately reduced by the amendment**;

(5) To change the corporate name; or

(6) To make any other change expressly permitted by this title to be made without shareholder approval.

**NEW SECTION. Sec. 5.** A new section is added to chapter 23B.11 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Holding company" means the corporation that is or becomes the direct parent of the surviving corporation of a merger accomplished under this section and whose capital stock is issued in that merger.

(b) "Parent constituent corporation" means the parent corporation that merges with or into the subsidiary constituent corporation in the merger.

(c) "Subsidiary constituent corporation" means the subsidiary corporation that the parent constituent corporation merges with or into in the merger.

(2) Unless the articles of incorporation provide otherwise, a parent constituent corporation may merge with or into a single indirect wholly owned subsidiary of the parent constituent corporation without the approval of the plan of merger by the shareholders of the parent constituent corporation if:

(a) The plan expressly permits or requires the merger to be effected under this subsection;

(b) The holding company and the constituent corporations to the merger are each organized under this title;

(c) At all times from its incorporation until consummation of a merger under this section, the holding company was a direct wholly owned subsidiary of the parent constituent corporation;

(d) Immediately before consummation of a merger under this section, the subsidiary constituent corporation is a direct wholly owned subsidiary of the holding company and an indirect wholly owned subsidiary of the parent constituent corporation;

(e) The parent constituent corporation and the subsidiary constituent corporation are the only constituent entities to the merger;
(f) Immediately after the merger becomes effective, the survivor of the merger becomes or remains a direct wholly owned subsidiary of the holding company;

(g) Each share or fraction of a share of the parent constituent corporation outstanding immediately before the merger becomes effective is converted in the merger into a share or equal fraction of a share of the holding company having the same designations and relative preferences, rights, and limitations as the share or fraction of a share of the parent constituent corporation being converted in the merger;

(h) The articles of incorporation and bylaws of the holding company immediately after the merger becomes effective contain provisions identical to the articles of incorporation and bylaws of the parent constituent corporation immediately before the merger becomes effective, other than any provisions regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors and the initial subscribers for shares, and the provisions contained in any amendment to the articles of incorporation of the parent constituent corporation that were necessary to effect an exchange, reclassification, or cancellation of shares if the exchange, reclassification, or cancellation has become effective;

(i) The articles of incorporation and bylaws of the survivor immediately after the merger becomes effective contain provisions by specific reference to this subsection requiring that any corporate action by or involving the survivor, other than the election or removal of directors of the survivor, must be approved by the shareholders of the holding company, or any successor by merger, by the same vote as is required by this title or under the articles of incorporation or bylaws of the parent constituent corporation immediately before the merger becomes effective, if that corporate action would have required the approval of the shareholders of the parent constituent corporation under this title or under the articles of incorporation or bylaws of the parent constituent corporation immediately before the merger becomes effective;

(j) The directors of the parent constituent corporation immediately before the merger becomes effective become or remain the directors of the holding company immediately after the merger becomes effective; and
(k) The shareholders of the parent constituent corporation will not recognize gain or loss for United States federal income tax purposes as a result of the merger, as determined by the board of directors of the parent constituent corporation.

(3) The holding company must, promptly after the effective date of a merger effected under subsection (2) of this section, notify each person who was a shareholder of the parent constituent corporation as of the date the board of directors approves the merger that the merger has become effective. The notice must contain or be accompanied by a copy of the plan of merger or a summary of the material terms and conditions of the merger and the consideration to be received by those shareholders.

(4) To the extent restrictions under chapter 23B.19 RCW applied to the parent constituent corporation or any of its shareholders at the effective time of the merger, those restrictions apply to the holding company and its shareholders immediately after the merger becomes effective as though the holding company were the parent constituent corporation, and all shares of stock of the holding company acquired in the merger will, for the purposes of chapter 23B.19 RCW, be deemed to have been acquired at the time that the corresponding shares of stock of the parent constituent corporation were acquired. No shareholder who, immediately before the merger becomes effective, was not an acquiring person of the parent constituent corporation will, solely by reason of the merger, become an acquiring person of the holding company.

(5) To the extent a shareholder of the parent constituent corporation immediately before the merger was eligible to commence a proceeding in the right of the parent constituent corporation in accordance with RCW 23B.07.400, nothing in this section is deemed to limit or extinguish that eligibility.

(6) Except as provided in subsections (2), (3), (4), and (5) of this section, a merger between a parent constituent corporation and a subsidiary constituent corporation is governed by the provisions of this chapter applicable to mergers generally.