

17-78-304. Amendment or termination of agreement of interest exchange. (a) An agreement of interest exchange of a domestic acquired entity may be amended:

(1) In the same manner as the agreement was approved, if the agreement does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the agreement, but an interest holder that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the agreement that will change:

(A) The amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by any of the interest holders of the acquired entity under the agreement;

(B) the public organic document or private organic rules of the acquired entity that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the interest holders of the acquired entity under its organic law or organic rules; or

(C) any other terms or conditions of the agreement, if the change would adversely affect the interest holder in any material respect.

(b) After an agreement of interest exchange has been approved by a domestic acquired entity and before a certificate of interest exchange becomes effective, the agreement may be terminated:

(1) As provided in the agreement; or

(2) unless prohibited by the agreement, in the same manner as the agreement was approved.

(c) If an agreement of interest exchange is terminated after a certificate of interest exchange has been filed with the secretary of state and before the filing becomes effective, a certificate of termination, signed on behalf of the acquired entity, shall be filed with the secretary of state before the time the certificate of interest exchange becomes effective. The certificate of termination takes effect upon filing and the interest exchange is terminated and does not become effective. The certificate of termination must contain:

(1) The name of the acquired entity;

(2) the date on which the certificate of interest exchange was filed; and

(3) a statement that the interest exchange has been terminated in accordance with this section.

History: L. 2009, ch. 47, § 20; July 1, 2010.