

**§1103. Share exchange****1. Share exchange.** Through a share exchange:

A. A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign business corporation, or all of the eligible interests of one or more classes or series of eligible interests of a domestic or foreign eligible entity, in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash or other property or any combination thereof pursuant to a plan of share exchange; or [PL 2003, c. 344, Pt. B, §97 (AMD).]

B. All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign business corporation or eligible entity in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash or other property or any combination thereof pursuant to a plan of share exchange. [PL 2003, c. 344, Pt. B, §97 (AMD).]

[PL 2003, c. 344, Pt. B, §97 (AMD).]

**2. Party to share exchange.** A foreign corporation or an eligible entity may be a party to a share exchange under this section only if the share exchange is permitted by the laws under which the corporation or eligible entity is organized or governed.

[PL 2003, c. 344, Pt. B, §97 (AMD).]

**3. Share exchange not contemplated in organic law.** If the organic law of a domestic eligible entity does not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved and the share exchange effectuated in accordance with the procedures, if any, for a merger. If the organic law of a domestic eligible entity does not provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may be adopted and approved, the share exchange effectuated and appraisal rights exercised in accordance with the procedures in this chapter and chapter 13. For the purposes of applying this chapter and chapter 13:

A. The eligible entity, its members or interest holders, eligible interests and organic documents taken together are deemed to be a domestic business corporation, shareholders, shares and articles of incorporation, respectively and vice versa as the context may require; and [PL 2003, c. 344, Pt. B, §97 (AMD).]

B. If the business and affairs of the eligible entity are managed by a group of persons that is not identical to the members or interest holders, that group is deemed to be the board of directors. [PL 2003, c. 344, Pt. B, §97 (AMD).]

[PL 2003, c. 344, Pt. B, §97 (AMD).]

**4. Plan of share exchange.** A plan of share exchange must include:

A. The name of each corporation or eligible entity whose shares or eligible interests will be acquired and the name of the corporation or eligible entity that will acquire those shares or eligible interests; [PL 2003, c. 344, Pt. B, §97 (AMD).]

B. The terms and conditions of the share exchange; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

C. The manner and basis of exchanging shares of a corporation or eligible interests in an eligible entity whose shares or eligible interests will be acquired under the share exchange into shares, other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash or other property or any combination thereof; and [PL 2003, c. 344, Pt. B, §97 (AMD).]

D. Any other provisions required by the laws under which any party to the share exchange is organized, or by the articles of incorporation or organic documents of any such party. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]  
[PL 2003, c. 344, Pt. B, §97 (AMD).]

**5. Extrinsic facts.** Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with section 121, subsection 10.  
[PL 2003, c. 344, Pt. B, §97 (AMD).]

**6. Amend plan prior to filing articles of share exchange.** The plan of share exchange also may include a provision that the plan may be amended prior to filing the articles of share exchange with the Secretary of State under section 1106, subsection 2. If the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by the shareholders the plan may not be amended to:

A. Change the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash or other property to be issued by the corporation or to be received under the plan by the shareholders of or holders of eligible interests in any party to the share exchange; or [PL 2003, c. 344, Pt. B, §97 (AMD).]

B. Change any of the terms or conditions of the plan if the change would adversely affect the shareholders in any material respect. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2003, c. 344, Pt. B, §97 (AMD).]

This section does not limit the power of a domestic corporation to acquire shares of another corporation or eligible interests in an eligible entity in a transaction other than a share exchange. [PL 2003, c. 344, Pt. B, §97 (AMD).]

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §B97 (AMD).

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