HAS A PREFERENCE IN THE ASSETS OF THE CORPORATION IN THE EVENT OF INVOLUNTARY LIQUIDATION, THE BOARD MAY ALLOCATE TO CAPITAL SURPLUS ONLY A PORTION WHICH DOES NOT EXCEED THE AMOUNT BY WHICH THE CONSIDERATION EXCEEDS THE AGGREGATE AMOUNT OF THE PREFERENCE.

(C) EXCEPTION — ACQUISITION OF ANOTHER CORPORATION.

SUBSECTIONS (A)(2) AND (B) OF THIS SECTION DO NOT AFFECT A GOOD FAITH ALLOCATION OF AMOUNTS TO RETAINED EARNINGS, EARNED SURPLUS, OR A SIMILAR ACCOUNT IF:

(1) STOCK IS ISSUED IN A CONSOLIDATION, MERGER, OR ACQUISITION OF ALL OR SUBSTANTIALLY ALL OF THE STOCK OR ASSETS OF ANOTHER CORPORATION; AND

(2) IMMEDIATELY AFTER THE TRANSACTION, THE AGGREGATE RETAINED EARNINGS, EARNED SURPLUS, OR SIMILAR ACCOUNT OF THE CORPORATION WHICH ISSUED THE STOCK DOES NOT EXCEED THE AGGREGATE OF THE CORRESPONDING ACCOUNTS OF THE CORPORATIONS PARTIES TO THE TRANSACTION AS THEY EXISTED IMMEDIATELY BEFORE THE TRANSACTION.

REVISOR'S NOTE: Subsections (a), (b), and (c) of this section presently appear as Art. 23, §24 (a), (b), and (d), respectively.

Present Art. 23, §24(c), which relates to the determination of the consideration received for stock with par value issued together with stock with par value, now appears in §2-302.

In subsection (c) of this section, the definition of "assets" is relied on. See §1-101 of this article.

The language of present Art. 23, §24 (d)(i), which relates to the applicability of present §24(a), is deleted and subsection (c) is drafted as an exception to subsections (a)(2) and (b).

The only other changes are in style.

2-304. APPLICATION OF CAPITAL SURPLUS.

(A) PERMITTED USES.

BY RESOLUTION OF ITS BOARD OF DIRECTORS, A CORPORATION MAY APPLY ANY PART OF ITS CAPITAL SURPLUS FOR:

(1) THE REDUCTION OR ELIMINATION OF A CORPORATE DEFICIT ARISING FROM A LOSS, HOWEVER INCURRED,