

MANNER IN WHICH IT ELECTED TO BECOME SUBJECT TO THE PROVISION, INCLUDING THE SATISFACTION OF SUBSECTION (D)(1) OF THIS SECTION, IF APPLICABLE.

~~(C) NOTHING IN THIS SUBTITLE MAY BE DEEMED TO PRESCRIBE, MODIFY, OR CREATE ANY INFERENCE CONCERNING THE DUTIES OF DIRECTORS TO THE EXTENT THAT THIS SUBTITLE IS IN WHOLE OR IN PART INAPPLICABLE, BECAUSE:~~

~~(1) THE CORPORATION FAILS TO ELECT TO BE GOVERNED BY ALL OR PART OF THIS SUBTITLE; OR~~

~~(2) THIS SUBTITLE DOES NOT OTHERWISE APPLY.~~

(C) THE CHARTER OF A CORPORATION MAY CONTAIN A PROVISION OR THE BOARD OF DIRECTORS MAY ADOPT A RESOLUTION THAT PROHIBITS THE CORPORATION FROM ELECTING TO BE SUBJECT TO ANY OR ALL PROVISIONS OF THIS SUBTITLE.

(D) (1) A CORPORATION SHALL FILE ARTICLES SUPPLEMENTARY WITH THE DEPARTMENT IF:

(I) THE CORPORATION ELECTS TO BE SUBJECT TO ANY OR ALL PROVISIONS OF THIS SUBTITLE BY RESOLUTION OF THE BOARD OF DIRECTORS OR BYLAW AMENDMENT; OR

(II) THE BOARD OF DIRECTORS ADOPTS A RESOLUTION IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION THAT PROHIBITS THE CORPORATION FROM ELECTING TO BE SUBJECT TO ANY OR ALL PROVISIONS OF THIS SUBTITLE.

(2) THE ARTICLES SUPPLEMENTARY SHALL DESCRIBE ANY PROVISION OF THIS SUBTITLE TO WHICH THE CORPORATION:

(I) HAS ELECTED TO BECOME SUBJECT; OR

(II) MAY NOT ELECT TO BECOME SUBJECT IN ACCORDANCE WITH THE RESOLUTION OF THE BOARD.

(3) STOCKHOLDER APPROVAL IS NOT REQUIRED FOR THE FILING OF ARTICLES SUPPLEMENTARY IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION.

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(A) (1) BEFORE THE FIRST ANNUAL MEETING OF STOCKHOLDERS AFTER A CORPORATION ~~BECOMES~~ ELECTS TO BE SUBJECT TO THIS SUBTITLE, THE BOARD OF DIRECTORS SHALL DESIGNATE BY RESOLUTION, FROM AMONG ITS MEMBERS, DIRECTORS TO SERVE AS CLASS I DIRECTORS, CLASS II DIRECTORS, AND CLASS III DIRECTORS.

(2) TO THE EXTENT POSSIBLE, THE CLASSES SHALL HAVE THE SAME NUMBER OF DIRECTORS.