

214 (a) in the case of stock:

215 (i) the highest closing sale price during the 30-day period immediately preceding the
 216 date in question of a share of the stock on the composite tape for New York stock
 217 exchange-listed stocks;

218 (ii) if the stock is not quoted on the composite tape or listed on the exchange described
 219 in Subsection (11)(a)(i), the highest closing sale price during the 30-day period immediately
 220 preceding the date in question on the principal United States securities exchange registered
 221 under the Exchange Act on which the stock is listed; ~~H~~→ or

222 ~~[(iii) if the stock is not quoted on the composite tape or listed on the exchange described~~
 223 ~~in Subsection (11)(a)(i) and is not listed on an exchange described in Subsection (11)(a)(ii), the~~
 224 ~~highest closing bid quotation with respect to a share of the stock during the 30-day period~~
 225 ~~preceding the date in question on the National Association of Securities Dealers, Inc.,~~
 226 ~~Automated Quotations System, or any system then in use; or]~~

227 ~~[(iv)] (iii) ←H~~ if no quotation is available under Subsections (11)(a)(i) ~~H~~→ [through (iii)]
 227a or (ii) ←H , the fair
 228 market value on the date in question of a share of the stock as determined by the board of
 229 directors of the corporation in good faith; and

230 (b) in the case of property other than cash or stock, the fair market value of the property
 231 on the date in question as determined by the board of directors of the corporation in good faith.

232 (12) "Preferred stock" means a class or series of stock of a domestic corporation that
 233 under the bylaws or articles of incorporation of the corporation:

234 (a) is entitled to receive payment of dividends before any payment of dividends on
 235 some other class or series of stock; or

236 (b) is entitled in the event of a voluntary liquidation, dissolution, or winding up of the
 237 corporation to receive payment or distribution of a preferential amount before a payment or
 238 distribution is received by some other class or series of stock.

239 (13) "Stock" means:

240 (a) a stock or similar security, a certificate of interest, any participation in a profit
 241 sharing agreement, a voting trust certificate, or a certificate of deposit for stock;

242 (b) a security convertible, with or without consideration, into stock;

243 (c) a warrant, call, or other option or privilege of buying stock without being bound to
 244 do so; or

369 date of which were the date of the purchase, would have satisfied the requirements of
 370 Subsections (4) and (5) and this Subsection (6).

371 Section 5. Section **16-10a-1804** is enacted to read:

372 **16-10a-1804. Scope of part.**

373 This part does not apply to:

374 (1) a business combination of a domestic corporation that does not have a class of
 375 voting stock registered with the Securities and Exchange Commission pursuant to Exchange
 376 Act, Sec. 12, 15 U.S.C. Sec. 78l, unless the articles of incorporation provide otherwise;

377 (2) a business combination of a domestic corporation whose articles of incorporation
 378 are amended to provide that the domestic corporation is subject to this part that:

379 (a) did not have a class of voting stock registered with the Securities and Exchange
 380 Commission pursuant to Exchange Act, Sec. 12, 15 U.S.C. Sec. 78l, on the effective date of the
 381 amendment; and

382 (b) is a business combination with an interested shareholder whose stock acquisition
 383 date is before the effective date of the amendment;

384 (3) a business combination of a domestic corporation:

385 (a) the original articles of incorporation of which contain a provision expressly electing
 386 not to be governed by this part;

387 (b) that adopts an amendment to the corporation's bylaws before ~~§~~ → [May 9]

387a **December 31** ← ~~§~~ , 2017,

388 expressly electing not to be governed by this part; or

389 (c) that adopts an amendment to the corporation's bylaws, approved by the affirmative
 390 vote of a majority of votes of the outstanding voting stock of the corporation, excluding the
 391 voting stock of interested shareholders and the interested shareholders' affiliates and associates,
 392 expressly electing not to be governed by this part, provided that the amendment to the bylaws:

393 (i) may not be effective until 18 months after the vote of the corporation's shareholders;

394 and

395 (ii) may not apply to a business combination of the corporation with an interested
 396 shareholder whose stock acquisition date is on or before the effective date of the amendment;

396a ~~§~~ → **(4) a domestic corporation in the mineral extractive industry, including exploration,**
 396b **development, sand and gravel, mining, smelting, or refining of mineral properties;**

397 [~~(4)~~] ~~(5)~~ ← ~~§~~ any business combination of a domestic corporation with an interested
 397a shareholder

398 of the corporation that became an interested shareholder inadvertently, if the interested

399 shareholder;

400 (a) as soon as practicable, divests itself of a sufficient amount of the voting stock of the
401 corporation so that it no longer is the beneficial owner, directly or indirectly, of 20% or more of
402 the outstanding voting stock of the corporation; and

403 (b) would not at any time within the five-year period preceding the announcement date
404 with respect to the business combination have been an interested shareholder but for the
405 inadvertent acquisition; or

406 ~~H~~→ ~~(5)~~ **(6)** ←~~H~~ any business combination with an interested shareholder who was the
406a beneficial
407 owner, directly or indirectly, of 5% or more of the outstanding voting stock of the corporation
408 on May 9, 2017, and remained so to the interested shareholder's stock acquisition date.

Legislative Review Note
Office of Legislative Research and General Counsel