

RCW 23B.11.035 Plan of merger or share exchange—Separate voting group. (1) Except as otherwise required by subsection (3) of this section or otherwise permitted by subsection (4) of this section, the holders of the outstanding shares of a class or series are entitled to vote as a separate voting group on a proposed plan of merger or plan of share exchange if shareholder voting is otherwise required by this title and if, as a result of the proposed plan, holders of part or all of the class or series would hold or receive:

(a) Shares of any class or series of the surviving or acquiring corporation, or of any parent corporation of the surviving corporation, and either (i) that class or series has a greater number of authorized shares than the class or series held by the holders prior to the merger or share exchange, or (ii) the proposed plan effects a change in the number of shares held by the holders, or in the rights, preferences, or limitations of the shares they hold, or in the class or series of shares they hold, and such change adversely affects the holders;

(b) Shares of any class or series of the surviving or acquiring corporation, or of any parent corporation of the surviving corporation, and the holders who hold or receive shares of that class or series are adversely affected under the proposed plan, as compared to their circumstances prior to the proposed merger or share exchange, by the creation, existence, number of authorized shares, or rights or preferences with respect to distributions or to dissolution, of another class or series of shares of the surviving, acquiring, or parent corporation having rights or preferences with respect to distributions or to dissolution that are, or upon designation by the surviving, acquiring, or parent corporation's board of directors may be, prior, superior, or substantially equal to the shares of the class or series held or to be received by the holders in the proposed merger or share exchange; or

(c) Cash or any other form of consideration other than shares of the surviving or acquiring corporation or of any parent corporation of the surviving corporation, received upon redemption or cancellation of all or part of their shares pursuant to the proposed plan of merger or share exchange.

(2) If a proposed plan of merger or share exchange would affect only a series of a class of shares in one or more of the ways described in subsection (1) of this section, only the shares of that series are entitled to vote as a separate voting group on the proposed plan. A voting group entitled to vote separately under this section may never comprise a group of holders smaller than the holders of a single class or series authorized and designated as a class or series in the articles of incorporation, unless otherwise provided in the articles of incorporation or unless the board of directors conditions its submission of the proposed plan on a separate vote by one or more smaller voting groups.

(3) If a proposed plan of merger or share exchange, that would otherwise entitle two or more classes or series of shares to vote as separate voting groups under this section, would affect those two or more classes or series in the same or a substantially similar way, then instead of voting as separate voting groups, the shares of all similarly affected classes or series shall vote together as a single voting group on the proposed plan of merger or share exchange, unless otherwise provided in the articles of incorporation or unless the board of directors conditions its submission of the proposed plan on a

separate vote by one or more classes or series. Holders of shares of two or more classes or series of shares who will, under a proposed plan, receive the same type of consideration in the form of shares of the surviving or acquiring corporation or of any parent corporation of the surviving corporation, cash or other form of consideration, or the same combination thereof, but in differing amounts resulting solely from application of provisions in the corporation's articles of incorporation governing distribution of consideration received in a merger or share exchange, are affected in the same or a substantially similar way and are not, by reason of receiving the same types or differing amounts of consideration, entitled to vote as separate voting groups on the proposed plan, unless the articles of incorporation expressly require otherwise or the board of directors conditions its submission of the proposed plan on a separate vote by one or more classes or series.

(4) A class or series of shares is entitled to the voting group rights granted by this section although the articles of incorporation generally describe the shares of the class or series as nonvoting shares. The articles of incorporation may, however, limit or deny the voting group rights granted by this section as to any class or series of issued or unissued shares, by means of a provision that makes explicit reference to the limitation or denial of voting group rights that would otherwise apply under this section. [2003 c 35 § 7.]